

HOUSING (SCOTLAND) ACT 2001: PROTECTION OF RIGHT TO BUY ON EXISTING TERMS AND CONDITIONS

The recently published Scottish Executive leaflet Housing (Scotland) Act 2001: Implementation of the provisions relating to the Scottish Secure Tenancy explained that Ministers are committed to ensuring that existing tenants with the right to buy will, on the conversion of the tenancy to a Scottish secure tenancy, still be able to exercise this right on existing terms and conditions. It also explained that Executive's policy as incorporated into the 2001 Act, is that tenants in new tenancies created after the introduction of the Scottish secure tenancy (including new tenancies created as a result of transfers and exchanges by existing tenants) and persons who succeed to existing tenancies will be eligible to the new modernised right to buy.

There have been a number of queries about the detailed application of these 2 principles and the Scottish Executive has concluded that there will be a need for an order (using various powers available to Scottish Ministers under the 2001 Act) to include a number of additional protections to safeguard the position of existing tenants. Our intention is that, subject to approval by the Scottish Parliament, the order will include the following provisions:

- Existing tenants with the RTB who are compulsorily transferred by the landlord to a new tenancy, for example, as a result of the house being demolished, will retain the RTB on existing terms and conditions in the new tenancy. (Our intention is that this would apply in all cases of compulsory transfers following the management grounds for recovery in schedule 2 of the 2001 Act except where there is a compulsory transfer as a result of anti-social behaviour. Please note that if a tenant moves out of a house while refurbishment work is carried out and then returns the tenancy is not terminated (section 16(6) of the 2001 Act) so no special protection is required).
- Successors to existing tenants who are widows, widowers or surviving partners of cohabitees and same sex couples (ie those falling into paragraph 2(1) of schedule 3 of the 2001 Act) would continue to enjoy the RTB on existing terms and conditions. Successors who are joint tenants will, in any event, continue to enjoy the RTB on existing terms and conditions.
- Existing tenants with the RTB before a stock transfer takes place will continue to have the RTB if their house is acquired by an RSL with charitable status which would otherwise make it exempt from the RTB. This is, in effect, a continuation of what happens at present as a result of the Preserved RTB Regulations but these Regulations will be repealed by the 2001 Act so a replacement is required.
- Existing tenants of RSLs with the RTB ie those with secure tenancies or assured tenancies with a preserved RTB) will be excluded from the 10 year exemption provided by section 44 of the 2001 Act. This has always been the Executive's clear policy intention.

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September 2001