

PART 4: THE TRANSITION TO THE MODERNISED RIGHT TO BUY

Introduction

1. This part of the guidance explains how the modernised right to buy will be introduced after the relevant sections of the 2001 Act have been commenced. In particular, it explains the details of the protection given to tenants with an existing right to buy entitlement when their tenancy is converted to a Scottish secure tenancy as provided for by the [Protection of Rights] order 2002. A copy of the draft order is attached at Annex A.

Timetable for the Introduction of the Modernised Right to Buy

2. The timing of the introduction of the modernised right to buy will be determined by decisions on the timing of the introduction of the Scottish secure tenancy. The current intention is that the Scottish secure tenancy will be introduced in most areas of Scotland from 30 September 2002. The only exceptions to this will be those local authority areas where, subject to the results of a ballot of tenants, the intention is to transfer all of the existing local authority stock to new landlords before 30 September. In these areas, the tenants in question will transfer to the Scottish secure tenancy and the modernised right to buy on or just before the date at which the transfer of houses takes place.

3. Some aspects of the modernised right to buy will apply to **all Scottish secure tenants** following the introduction of the Scottish secure tenancy. These are:

- the replacement of the existing exemption for tenants in sheltered housing schemes by the exemption for group housing schemes designed for persons with special needs (see [] above);
- the ability of landlords to suspend the right to buy where there are arrears of rent or council tax or where the tenant is subject to recovery of possession on conduct grounds (see [] above);

- the new power for Scottish Ministers to refuse to sell houses liable for demolition (see [] above);
- the abolition of the “mortgage to rent” scheme (see [] above);
- the repeal of the obligation on landlords to act as lender of last resort (see [] above);
- the extension of the power of Scottish Ministers to authorise refusal to sell houses provided for persons of pensionable age (see [] above).

The 10 Year Exemption for Registered Social Landlords

4. The 10 year exemption for tenants of certain properties owned by Registered Social Landlords will also commence immediately following the introduction of the Scottish secure tenancy. The scope of this exemption and the way it is intended to work is explained in full above ().

The Designation of Pressured Areas

5. It will be possible for local authorities to submit proposals for pressured areas to Scottish Ministers for their consideration immediately following the implementation of the Scottish secure tenancy. The procedures for submitting proposals for pressured areas and the effect of the designation, ie the tenants whose right to buy will be suspended if the designation is made is explained above ().

Right to buy – terms and conditions

6. The phrase “terms and conditions” is used here to refer to:

- the discount to which the tenant is entitled; and
- the initial qualifying period before tenants become eligible to exercise the right to buy.

7. The effect of the [Protection of Rights] order 2002 will be to ensure that tenants with a right to buy their house before the introduction of the Scottish secure tenancy will continue, after their tenancy is converted to a Scottish secure tenancy, to be able to exercise that right on the “old” terms and conditions rather than the terms and conditions which apply to the “modernised” right to buy. These will be secure tenants of local authorities, registered social landlords and water authorities and some assured tenants of registered social landlords who have a preserved right to buy. These tenants will, therefore, continue to be able to exercise the right to buy after a 2 year qualifying period and be eligible, depending on the length of residence, to a maximum discount of up to 60% in the case of houses and 70% in the case of flats. If the tenant has not completed the initial qualifying period at the point at which the Scottish secure tenancy is introduced, he or she will still be able to exercise the right to buy on “old” terms and conditions rather than those associated with the modernised right to buy.

8. Subject to the exceptions described in paragraphs 9 and 11 below, this protection will be only available for tenants in tenancies which are converted from secure or assured tenancies to Scottish secure tenancies. In general, tenants of new tenancies created after the introduction of the Scottish secure tenancy, including new tenancies created as a result of transfers or exchanges by existing tenants, will only be able to exercise the right to buy on “modernised” terms and conditions, ie they will be subject to a 5 year qualifying period and be eligible for a maximum discount of 35% subject to a cap of £15,000. Tenants who would otherwise continue to be eligible for the right to buy on “old” terms and conditions who are contemplating a transfer or exchange should be advised of the possible implications of this so that they can consider their position.

9. The order does, however, provide for certain exemptions to this general rule to take account of the fact that, in some cases, tenants are required by their landlord to move to a new tenancy. Tenants will be able to retain the right to buy on “old” terms and conditions following a transfer to a new tenancy in 2 sets of circumstances:

- Where the landlord has sought to recover possession of the tenancy under section 14 of the 2001 Act under the following “management grounds” (as set out

in schedule 2) which requires the landlord to provide suitable alternative accommodation:

- The house is overcrowded within the meaning of section 135 of the 1987 Act (paragraph 9 of schedule 2);
 - It is intended to demolish or carry out substantial work on the house (paragraph 10 of schedule 2);
 - The house has been designed or adapted for persons with special needs and there is no longer any such person in the house and the landlord requires it for another household containing a person with relevant needs (paragraph 11 of schedule 2);
 - The house forms part of a group of houses designed or provided with special facilities or located near special facilities for persons with special needs and, as above, there is no longer a person with such needs in the house and it is required for another person (paragraph 12 of schedule 2);
 - The landlord leases the house and the lease has terminated or is likely to terminate (paragraph 14 of schedule 2);
 - The landlord is an Islands Council, the house is held by the council for educational staff and is required for this purpose (paragraph 15 of schedule 2);
 - The landlord wishes to transfer the tenancy to the tenant's spouse, former spouse or co-habitee where the tenant no longer wishes to live in the house (paragraph 15 of schedule 2);
- Where the landlord has made a decision to demolish the house even if formal recovery proceedings have not been instigated.

10. Where a tenant moves out of the house for a temporary period while the house is being renovated and subsequently returns, the tenancy is not terminated and any entitlement to the right to buy on “old” terms and conditions will continue as a matter of course.

11. The order also provides that persons who succeed to existing tenancies under the provisions of section 22 and schedule 3 of the 2001 Act will have a right to buy entitlement based on the “modernised” terms and conditions providing the house in question is not subject to any of the specified exemptions. As a result, with some limited exceptions, persons succeeding to tenancies where the tenant that died had a protected entitlement to the right to buy on the “old” terms and conditions will only be eligible for the right to buy on “modernised” terms and conditions. The exceptions to this where the successor will also inherit the entitlement to the right to buy on “old” terms and conditions are where:

- The successor is a tenant’s spouse who occupied the house at the time of the tenant’s death as their only or principal home;
- the successor is a cohabitee or same sex partner of the tenant and had been living in the house as their only or principal home for at least 6 months before the tenant’s death;
- the successor is a joint tenant.

12. The order also provides that any right to buy entitlement of persons who are assigned a tenancy under the provisions of section 32 and schedule 5 of the 2001 Act is limited to the “modernised” terms and conditions. Again this will apply even if the tenant who assigns the tenancy has a right to buy entitlement based on the “old” terms and conditions

The exemption for Registered Social Landlords with Charitable Status

13. The exemption for Registered Social Landlords who obtained charitable status before the 2001 Act received Royal Assent will apply at the introduction of the Scottish secure tenancy to:

- all tenants who before that date did not have the right to buy either because they had an assured tenancy which did not give an entitlement to the right to buy or they were also exempt from the right to buy on account of the previous exemption for housing associations with charitable status as set out in section 61(4)(e) of the 1987 Act – (See [] above);
- new tenants whose tenancy started after the introduction of the Scottish secure tenancy.

14. The [Protection of Rights] Order 2002 protects the right to buy for tenants of registered social landlords with charitable status obtained before Royal Assent where the tenant had an entitlement to the right to buy before the introduction of the Scottish secure tenancy and the modernised right to buy. This will include:

- tenants of housing associations with a charitable exemption under the 1987 Act who had a preserved right to buy following a stock transfer from Scottish Homes or a local authority to the registered social landlord in question;
- tenants of registered social landlords who will obtain exemption for the first time as a result of the 2001 Act with secure tenancies or tenants with an assured tenancy with a preserved right to buy following a stock transfer of houses from Scottish Homes or a local authority to the registered social landlord in question.

15. Where a tenant of a registered social landlord continues to have an entitlement to the right to buy as a result of this protection, this will be on “old” terms and conditions.

16. The [Protection of Rights] Order 2002 also provides protection for tenants in houses which are transferred, following the introduction of the Scottish secure tenancy, to a registered social landlord which is exempt from the right to buy on account of its charitable status. This protection only applies to tenants who, but for the stock transfer, would have had an entitlement to the right to buy. It does not apply to tenants who are exempt from the right to buy for other reasons, for example, because their house is part of a group housing scheme for persons with special needs, or to tenants subject to the 10 year exemption or a pressured

area designation (for as long as these apply). The order effectively continues the protection afforded by the Preserved Right to Buy Regulations which are repealed by the 2001 Act.

17. Protection for tenants in houses owned by registered social landlords with a charitable status exemption applies only for as long as the tenancy is in existence. Tenants of new tenancies, including new tenancies created as a result of existing tenants moving to a new house, will be subject to the exemption and will not, therefore, have a right to buy. The same exceptions to this will apply in the case as described in paragraphs 9, 11 and 12 above:

- tenants who are compulsorily transferred to a new house or who are required to transfer to a new house because their house is to be demolished will continue to retain their right to buy entitlement;
- persons succeeding to tenancies will lose any protected entitlement enjoyed by the previous tenant (with the exception of spouses, cohabitants, same sex partners and joint tenants);
- persons who are assigned a tenancy will also lose any protected entitlement.

18. Where tenants continue to enjoy a protected right to buy following a stock transfer to a registered social landlord with a charitable status exemption, their protected entitlement (ie whether or not it is on “old” or “modernised” terms and conditions) will be the same as whatever entitlement they enjoyed before the stock transfer took place.