

PART 1: INTRODUCTION

1. The purpose of this guidance is to explain how the Right to Buy (RTB) will apply in Scotland after the introduction of the changes contained in the Housing (Scotland) Act 2001. The guidance consists of 2 main parts:

- an explanation of the RTB provisions following the implementation of the 2001 Act (Section 2);
- an explanation of how the transition to the new provisions will work (Section 3).

2. The 2001 Act amends the Housing (Scotland) Act 1987 which sets out the current legislative provisions relating to the RTB. Significant parts of the 1987 Act remain unchanged, for example, the provisions relating to application procedures; some provisions are amended (e.g. discounts, qualifying periods and exemptions); some provisions are repealed (e.g. rent to loan, lender of last resort) and there are a range of new provisions setting out various limitations on the RTB (e.g. pressured areas) which did not exist before. For shorthand purposes, these provisions are referred to in the guidance as the “modernised RTB” but it is important to bear in mind that this term is used to refer to RTB as a whole following the implementation of the 2001 Act including those parts of the 1987 Act provisions that remain. Where it has been necessary to refer to the previous RTB arrangements, these are described as the “pre –2001 Act” provisions.

3. In line with Ministerial policy intentions, an order to protect the RTB entitlement of existing tenants will be introduced so that, after the introduction of the new provisions, it will still be possible for existing tenants to exercise the RTB after the qualifying period that is specified in the pre-2001 Act provisions and to benefit from the discounts provided for in this legislation. Points of detail concerning this key principle are contained in Section 3 whilst a copy of the draft order is at Annex B.

4. The guidance given here relates to the statutory RTB. In addition, landlords in the social housing sector may, if they so wish, consider disposing of houses to sitting tenants on a

voluntary basis. This is sometimes known as a “contractual” RTB. The powers of local authorities in this area are set out in section 14 of the 1987 Act and the relevant provisions relating to registered social landlords are in section 65 to 68 of the 2001 Act and require the consent of Scottish Ministers. Landlords will no doubt wish to seek appropriate legal advice if they are planning voluntary sales to sitting tenants.

PART 2: THE MODERNISED RIGHT TO BUY

Introduction

5. Sections 61 to 84 of the Housing (Scotland) Act 1987 (as amended) and the associated secondary legislation sets out the terms and conditions associated with the RTB and the procedures which landlords and applicants should follow. This part of the guidance sets out the details of the RTB, placing the recent modifications within the context of the wider provisions. The following information aims to provide a general outline to the right to buy rules, paying particular attention to the changes introduced to the 1987 Act by the Housing (Scotland) Act 2001. The main changes introduced by the new Act are:

- Sections 42, 43, 44, 45, 46, and 47 of the Housing (Scotland) Act 2001 insert new provisions into section 61 of the Housing (Scotland) Act 1987. These new sections amend the qualifying conditions and the exemptions associated with the right to buy and introduce various new limitations;
- Section 48 inserts a new section 70A into the 1987 Act to allow Scottish Ministers to approve proposals to refuse to sell houses liable to demolition;
- Section 49 amends various aspects of the discounts payable under section 62 of the 1987 Act;
- Section 50 amends section 66 of the Housing (Scotland) Act 1988 to extend the powers of local authorities to offer financial assistance to tenants to buy other accommodation;
- Section 51 repeals various provisions of the 1987 Act and schedule 10 also includes a number of further detailed amendments;
- Section 52 of the Act places a new duty on Scottish Ministers to prepare reports on the extent and effect of the RTB.

Who is potentially eligible for the RTB?

6. Section 61 of the 1987 Act, as modified by the 2001 Act, specifies that to be eligible for the RTB, tenants must have a Scottish secure tenancy from one of the follow landlords:

- A local authority (including joint boards or joint committees of two or more local authorities and the common good of a local authority or trust under the control of a local authority);
- A registered social landlord; or
- A water authority or sewerage authority.

The landlord must be the heritable proprietor of the house.

7. These provisions ensure that the RTB is linked to the Scottish secure tenancy and is, therefore, potentially available to RSL as well as local authority tenants, subject to the tenants having met the qualifying conditions, and the various exemptions and limitations on the RTB as described below.

8. Savings provisions have been used to ensure that tenants of the Scottish Homes residuary body will continue to have the same RTB entitlement as tenants of local authorities and registered social landlords.

Joint Purchasers

9. The RTB can be exercised by Scottish secure tenants if they so wish, together with one or more members of their family, provided that such members are at least 18 years of age and they have occupied the dwelling as their only or principal home with the tenant for a continuous period of 6 months immediately prior to the application (Section 61(6)(a) of the 1987 Act). The definition of a “family member” for this person is set out in section 83 of the 1987 Act and has been extended by the 2001 Act to include same sex couples (opposite sex cohabitantes are included in the previous 1987 Act definition) and persons brought up and treated as if they were a child of the tenant.

10. Evidence that this residence qualification has been satisfied should be obtained, and a check should be made that their residence in the dwelling is not a breach of any obligation of

the tenancy. Landlords have discretion to waive residency conditions as they think fit. (Section 61(6)(b) of the 1987 Act).

11. Where a joint tenancy exists not all the tenants are obliged to exercise their RTB. In such circumstances the written agreement of any joint tenants not wishing to exercise the RTB will be required in the RTB application form at the time notice is served on the landlord. Additionally, the formal consent of their spouse will be required irrespective of whether he or she is a joint tenant (Section 61(5) of the 1987 Act). Provision for such an agreement is necessary since the tenancy lapses when a sale is completed and those former tenants not buying will lose their status as Scottish secure tenants. If such persons intend to remain within the dwelling house, it will be up to them to make appropriate arrangements with the purchaser.

Qualifying Conditions

12. Under the modernised right to buy, tenants must have a 5-year continuous period of occupation of a house, or a succession of houses, with a relevant landlord before they can exercise the right to buy. The list of “relevant landlords” in section 61(11) of the 1987 Act is extensive and includes time spent in tenancies where the tenant would not have had a right to buy on that particular house. The list has not, however, been modified by the 2001 Act (except that registered social landlords have been added as a category of relevant landlords). In cases of doubt, landlords should check the legislation itself, but it includes tenancies of local authorities (both in Scotland and elsewhere in the UK), tenancies of registered social landlords and registered housing associations, and of Scottish Homes and tenancies of property owned by Scottish Ministers, UK Government Ministers and certain public bodies, for example, the Forestry Commission.

13. The modernised RTB now has an explicit requirement for “continuous occupation”. However, landlords may disregard an interruption in occupation at their discretion where they consider that the interruption resulted from circumstances outwith the control of the person in question, for example, as a result of fire, flood, the need to move to escape domestic abuse etc.

14. The way in which occupation of a house is defined has not changed and is set out in section 61(10) of the 1987 Act. Occupation can include time spent:

- as a sole or joint tenant;
- if and when the house was occupied on a rent-free basis;
- as a spouse of the tenant;
- as a child (or spouse of the child) or member of the family of the tenant but only for any period where the child, spouse or the child or other family member was aged 16 or over.

Again the relevant definitions of ‘family member’ and ‘spouse’ are set out in section 83 of the 1987 Act as extended by section 110 of the 2001 Act (see paragraph 5 above).

15. Those tenants who had a right to buy entitlement under the pre-2001 Act provisions will continue to be able to exercise their right to buy after 2 years occupation for as long as they remain in the same tenancy. The precise details of this “protection of rights” is set out in part III, paragraph 105 to 111..

Exemptions from the right to buy

16. The 2001 Act made extensive changes to the types of housing which are exempt from the RTB. The current provisions are set out below:

Registered Social Landlords with Charitable Status

17. The 2001 Act amends the 1987 legislation to exempt all registered social landlords from the right to buy providing they are recognised bodies (under section 1(7) (Scottish charities) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990) on the day the 2001 Act received Royal Assent (18 July 2001). A “recognised body” is one which the Commissioners of Inland Revenue have given notice that they qualify for tax relief on

account of its charitable purposes. Registered social landlords which obtain recognition under the 1990 Act after 18 July 2001 will not be exempt from the RTB.

18. The main effect of this change is to extend the exemption under the pre-2001 Act provisions to those registered social landlords which obtained charitable status after the previous cut off date of November 1985. Tenancies of registered social landlords that qualify for this new exemption which were not previously eligible for the right to buy ie those with assured tenancies which do not have a preserved RTB and all new tenancies will therefore, be exempt from the RTB but there will be protection for those existing tenants who currently have a right to buy entitlement. This is described in more detail in Part III paragraphs 112 to 117.

Group Housing Schemes for Persons with Special Needs

19. The 2001 Act repeals two of the existing exemptions (sheltered housing schemes for the elderly under section 61(4)(c) of the 1987 Act and certain other types of housing for persons with particular needs under section 61(4)(f) of the 1987 Act) and replaces them with a more general exemption for group housing schemes for persons with special needs inserted as 61(4)(ea) of the 1987 Act. To qualify for this exemption, any individual house must be part of a group of houses which have been designed for persons with special needs where either:

- the houses are provided with, or situated near, special facilities for use by their tenants; and/or
- the tenants of the houses are provided with housing support services, i.e. services which provide support, assistance, advice or counselling to an individual with particular needs which are necessary for them to live independently in their house (See section 91(8) of the 2001 Act for the full statutory definition).

20. The practical effect of this is to exempt all group housing schemes for persons with particular needs including, but going beyond, the sheltered housing and other schemes that were exempt under the previous provisions.

Individual houses provided for persons of pensionable age

21. Although not strictly speaking an exemption, the 1987 Act included a power for Ministers to refuse to sell certain specific individual houses which had been designed or adapted for use by persons of pensionable age (section 69). These provisions allow the landlord to request refusal from the Scottish Executive within one month of receiving an application to purchase. Such an application to refuse the right to buy must be accompanied by supporting documentation. The 2001 Act modifies the position slightly by removing the previous limitation to houses first let on a secure tenancy before 1 January 1990. In future, it will be possible for landlords to seek Scottish Ministers' approval to refuse an application irrespective of when the house was first let or the type of tenancy used at this time.

Fully Mutual Co-operative Housing Associations

22. The 2001 Act inserts a new provision into the 1987 Act - section 61(4)(ca) - which specifically exempts tenancies of registered social landlords which are fully mutual co-operative housing associations from the right to buy. This is, in effect, a continuation of the status quo but the exemption is required as a result of bringing fully mutual housing co-operatives within the scope of the Scottish secure tenancy.

Exemptions for Registered Housing Associations not in receipt of grant aid

23. The 2001 Act repeals section 61(4)(b) of the 1987 Act which exempted houses owned by registered housing associations built without grant aid given under specified legislation. This ensures that houses acquired by registered social landlords following a stock transfer continue to be potentially eligible for the right to buy following the repeal of the preserved right to buy (See paragraph 98 below).

Exemptions for Registered Social Landlords letting less than 100 houses.

This exemption (Section 61(4)(c) of the 1987 Act) for registered social landlords which have let (or had available for letting) less than 100 dwellings was not amended by the 2001 Act and, therefore, continues to apply.

The Selling Price

24. The price to be paid by the purchaser(s) is the market valuation of the property less any discount for which they are eligible, to any “cost floor” restrictions set out in an order under Section 62(6B).

The market valuation

25. When an application to buy is received, the landlord must establish the market value of the property. Section 62 of the 1987 Act specifies the method by which the market value is to be determined as either by:

- a. a qualified valuer, nominated by the association and acceptable to the purchaser; or
- b. the district valuer;

26. No account is to be taken of any element in the market value reflecting an increase in value as a result of works, the cost of which could qualify for reimbursement. Such works could be any alteration, improvement or enlargement, addition of new fixtures or fittings or erection of a garage, shed or any other structure, which has not been provided by the landlord and has received its consent (whether or not retrospective).

27. The market value is calculated on the assumption that the house is/was available for sale on the open market with vacant possession at the date of service of the application to buy (section 62 of the 1987 Act).

Calculation of discount

28. The modernised RTB brought in by the 2001 Act results in significant changes in the way in which the discount is calculated. There is no distinction in the discount between houses and flats and there is a minimum discount of 20% following the 5 year qualifying period which increases by 1% for every year of occupation of a relevant house to a maximum

of 35% of the market value or £15,000 (whichever is the lower). Consequently, unless the discount reaches the cap of £15,000 first, the maximum discount will be reached after 15 years occupation of a relevant house.

29. As with the pre-2001 Act provisions, tenants can count occupation of houses owned by a wide range of landlords. The way in which occupation is defined for the purpose of calculating the discount and the list of relevant landlords is identical to the way in which occupation is defined for the purposes of calculating the qualifying period (see paragraphs 12 to 14 above).

30. Section 62 of the 1987 Act requires a deduction to be made from the discount equal to any previous discount (or the aggregate of previous discounts) on any previous purchase minus any discount recovered by the landlord, for example, if the house was re-sold within a 3 year period (see paragraph 34 to 39 below).

- In calculating any previous discount to be deducted, account should be taken of discount received by the tenant putting forward the application, his or her spouse (if they are living together at the date the application is made), a deceased spouse if living with the tenant at the time of death and any joint tenant who is a joint purchaser of the house. The 2001 Act amendment to the definition of a spouse in Section 83 of the 1988 Act will also extend this term so that it includes cohabitees and same sex couples.
- Where 2 or more tenants have previously purchased a property receiving discount and either party purchases a subsequent property through the right to buy, then the landlord should make the deduction on the assumption that the previous discount had been received in equal proportions. For example, if £10,000 has been awarded to 2 tenants jointly and one re-applies to purchase a subsequent property then the landlord should only take £5,000 into account in calculating the reduction in the discount.

31. Tenants who had a RTB entitlement before the introduction of the Scottish secure tenancy will continue to have their discounts calculated in line with the provisions in the pre-2001 Act provisions for as long as they remain in their tenancies. Tenants of houses (as

opposed to flats) will, therefore, be eligible for a discount of 32% of the market value of the house after 2 years tenancy increased by 1% per annum to a maximum of 60% after 30 years tenancy. For tenants living in flats (including 4 in a block, tenement and multi-storey flats) the discount starts at 44% of the market value of the house after 2 years tenancy increasing by 2% per annum to a maximum of 70% after 15 years tenancy. The details of how this protection will work are described in part III, paragraphs 105 to 111..

32. The 2001 Act also gives Ministers the power to vary the discount regime (including changes to the minimum and maximum percentage discounts, the annual percentage increase and the cap) by order and to establish different discount regimes in different parts of the country. Landlords and tenants will be given early warning of any plans to make further changes of this nature.

The “cost floor” rules

33. Where the house was built recently or where the landlord has incurred substantial expenditure on improvement and repairs on a property which is subject to a right to buy application, the “cost floor” rules may apply. The house must have been built or the works must have been carried out within the preceding ten years and, if this is the case, the selling price must not be less than the eligible costs. Eligibility costs are defined to include the construction, erection or acquisition of the house or the site of the house; works following acquisition required to put the property into good repair; other works to the house and any attributable administrative costs. Also, cumulative repair or maintenance costs for the relevant period over a threshold of £5,500 count towards the cost floor. However, a total eligible expenditure of less than £5,000 is ignored. To calculate the ten year period, the starting date is the beginning of the financial year which was current ten years before the application to buy was served. Where the cost floor exceeds the market value of the dwelling, the selling price will be the market value and there shall be no discount entitlement. For full details of the cost floor rules and worked and examples see Scottish Office Circular 8/1999.

Recovery of Discount

34. Where a discount is to be given on the purchase price, the formal offer will be conditional upon the purchaser granting a standard security in favour of the landlord, obliging the purchaser to meet repayment or proportional repayment of the discount amount in the event of a resale taking place within three years from the date of conclusion of the missives between the landlord and purchaser.

35. Repayment of discount (often known as the “clawback”) is calculated proportionately, according to the date on which the property is sold. Section 72 of the 1987 Act specifies the proportion of discount recoverable and the circumstances in which this provision will/will not apply.

If the property is sold within the 1st year: 100% of discount must be repaid.

If the property is sold within the 2nd year: 66% of discount must be repaid.

If the property is sold within the 3rd year: 33% of discount must be repaid.

36. In calculating the relevant period, the date of service by the tenant of a notice accepting the offer to sell is the date from which the recovery period is determined. It should be noted that this date may precede the date of settlement by several months.

37. As an example: A landlord serves formal offer to sell on tenant in October 2000. Tenant accepts offer by serving formal notice on 1 December 2000. Settlement date agreed 1 February 2001. For discount recovery purposes, the relevant period would be 1 December 2000 – 30 November 2003.

38. The standard security for the recovery of discount will rank by statute after any standard security granted for a loan for the purchase of the house or for the improvement of the house. If the landlord consents, the discount standard security will also rank after a security granted over the house for any other loan (section 72 the 1987 Act).

39. Sections 72 and 73 of the 1987 Act specify certain circumstances in which the discount would not be recoverable. These are:

- (i) where the house is disposed of by one of the parties to the original sale to one of the other parties (e.g. a joint purchaser disposes of their interest to another joint purchaser); or
- (ii) a joint purchaser disposes of their interest to someone else but continues to occupy the property (or part of the property) as their only or principal home; or
- (iii) where the disposal is made by the executor of the deceased owner acting in that capacity (i. e. the property is being sold as part of the winding-up of the estate); or
- (iv) the disposal is the result of a compulsory purchase order; or
- (v) the disposal is to a member of the owner's family.

Limitations on the right to buy

40. In addition to the exemptions described above, the 2001 Act introduces a number of specific limitations on the RTB. In summary, these are:

- a limitation on the RTB from registered social landlords (sometimes known as the “10 year exemption”);
- a limitation on the RTB in designated pressured areas;
- a limitation on the RTB for tenants with arrears of rent or council tax;
- a limitation on the RTB for tenants subject to recovery of possession proceedings on “conduct” grounds.

The details of these provisions are set out below.

Registered Social Landlords – 10 year exemption

41. Section 44 of the 2001 Act inserts a new section 61A into the 1987 Act which has the effect of delaying the extension of the RTB to certain tenants of registered social landlords for a period of up to 10 years from the date when the new SST and RTB provisions are introduced. This delay was introduced to ensure that Registered Social Landlords have sufficient time to adjust to the new arrangements. During this 10 year period, tenants affected by this exemption will be able to count time in this tenancy towards the qualifying period and discount entitlement, but they will not be able to exercise their right to buy so long as they remain tenants of the houses in question.

42. The 10 year exemption applies to all houses let by registered social landlords with the following exceptions:

- Tenancies of houses acquired, for example, by a stock transfer or through purchase from a developer, by the registered social landlord after the date of the introduction of the Scottish secure tenancy;
- Tenancies of houses built by registered social landlords after the introduction of the Scottish secure tenancy except for those cases where the offer of grant (by either Scottish Ministers or local authorities) was made before the introduction of the new tenancy. (The houses would, in any event, be subject to the cost floor rules – see above, paragraph 33)
- Tenancies of registered social landlords which already enjoyed a right to buy entitlement and which will be protected when the Act is commenced.

43. Registered social landlords can, however, elect to set aside this limitation to the right to buy if they so wish. Any such decision would, of course, need to be made in accordance with the rules and procedures for the registered social landlord in question and the 2001 Act also requires:

- The registered social landlord to notify the Scottish Executive of its decision indicating the date from which the exemption will end (notifications should be sent to the Head of Housing Management Branch);
- The registered social landlord to inform the affected tenants and those lenders with an interest in the houses of the decision.

44. Registered Social Landlords will want to give careful consideration to the implications of “opting in” before making a decision and, in particular, the likely financial implications. This is particularly important since the Act is clear that any such decision is irrevocable. In most cases, they should aim to consult the regulatory section within Communities Scotland as well as seeking the views of tenants and lenders in advance of a decision being made. [Awaiting confirmation of this point from Communities Scotland.]

45. The 2001 Act also allows for registered social landlords to apply to the Scottish Executive for the suspension of the right to buy to be extended for a further period of up to 10 years. The Act does not place a limit on the number of exemptions that may be sought. Before submitting an application the landlord must consult with those lenders with an interest in the affected properties.

46. The expectation is that registered social landlords will use the period of the initial 10 year exemption to assess the implications of the extension of the right to buy for their organisations and plan accordingly. The Scottish Executive will need to be persuaded, therefore, that there are circumstances which justify an extension and it will want detailed information on the anticipated problems and the steps that have been considered and implemented or rejected. Before coming to a decision, the Scottish Executive will also ask Communities Scotland to undertake a detailed appraisal of the likely financial impacts of the introduction of the right to buy for tenants of the houses in question. Further guidance on this will be issued in due course.

Pressured Areas

47. The 2001 Act inserts new sections into the 1987 Act (Sections 61B and 61C) which allow Scottish Ministers to designate any part of a local authority's area as a "pressured area" following a proposal submitted by the local authority itself. The broad effect of designation is to suspend the right to buy for certain tenants living in the area for a period of up to 5 years.

48. The policy objective behind these provisions is to establish a mechanism for safeguarding the continued availability of social rented housing where the right to buy could otherwise lead to serious shortages.

The criteria for designation

49. The 2001 Act sets out 2 specific criteria which Scottish Ministers must take into account in considering proposals:

- the need for social rented housing, i.e. houses provided by the local authority or RSLs, in the area in question is or is likely to be substantially in excess of the social rented housing; and
- this situation is likely to be exacerbated by tenants in the area exercising their right to buy.

50. The shortfall referred to in the first of the 2 criteria may be a current shortfall or one that is expected to arise in the future.

51. It is necessary for both criteria to be met. Scottish Ministers only have authority under the Act to designate areas where they are satisfied that these criteria apply.

The effect of the designation

52. The effect of the designation is to suspend the right to buy for the following tenants living in the area:

- those who have taken out a new tenancy in the area on or after the introduction of the Scottish secure tenancy,
- those with tenancies created before the introduction of the Scottish secure tenancy who did not previously have the right to buy - these will be principally tenants of RSLs with assured tenancies (except for those with a preserved right to buy). Please note that a person has a right to buy entitlement in this context even if he or she has not yet fulfilled the occupancy requirement;
- those who have succeeded, following the introduction of the Scottish secure tenancy, to tenancies initially created beforehand.

53. Tenants in tenancies created before the introduction of the Scottish secure tenancy and which were converted to Scottish secure tenancies will, therefore, not be affected by the suspension providing:

- before the introduction of the Scottish secure tenancy they had the RTB (whether or not this is with their current landlord);
- they have not succeeded to their tenancy after the introduction of the Scottish secure tenancy.

54. Tenants who have taken out a new tenancy in the area (and will, therefore, be covered by the designation) will include those who occupy their house as a result of a transfer from another house owned by the landlord or as a result of an exchange with a tenant occupying a house owned by another landlord, providing this transfer or exchange has taken place after the introduction of the Scottish secure tenancy.

55. The suspension will be for a period of 5 years or less. Although 5 years is the maximum period allowed for each designation, it is open to local authorities to propose a further designation.

37. The suspension has no effect on notices to purchase under the right to buy which have been served prior to the designation of the area as a pressured area even if this application is still being processed by the landlord.

Selection of areas and consultation

56. Under the provisions of the 2001 Act, it is for local authorities to make proposals for the designation of pressured areas but they may wish to discuss any proposals informally with the Scottish Executive before they are submitted. In drawing up proposals, the Scottish Executive will expect local authorities to take account of their local housing strategies or, if these have not yet been finalised, any preliminary work that has been undertaken. Although the process of approving proposals for the designation of pressured areas is separate and distinct from the submission of local housing strategies to Scottish Ministers under section 89 of the 2001 Act, the Scottish Executive will expect such proposals to be consistent with the local housing strategy or the draft housing strategy if it has not yet been finalised.

57. The 2001 Act allows local authorities to propose the designation of any part of its area providing the specified criteria are met. Although the precise boundaries must be a matter for local determination, the Scottish Executive view is that the aim should be to identify recognised localities or neighbourhoods. In most circumstances, relevant areas are likely to be a contiguous group of houses, but this is not a statutory requirement and there may well be cases where an alternative approach is appropriate.

58. There is a statutory duty on local authorities, before submitting proposals in respect of specific areas, to consult:

- every RSL with houses in the proposed area;
- bodies representing the interests of tenants or other residents living in the area;
- any other persons as the authority think fit.

59. As a matter of good practice, the Scottish Executive will expect local authorities to undertake wide-ranging consultations locally before finalising proposals for pressured areas. These discussions should be about the need for a designation as well as amendments relating to the details of the boundaries and timing. Local authorities will need to bear in mind that registered social landlords, in particular, may wish to suggest the designation of a particular area.

60. As well as consulting groups of tenants and residents, local authorities should also ensure that all individual tenants affected are informed of the proposal and its likely effect on them and given an opportunity to offer and seek further information.

Submission of proposals to the Scottish Executive

61. Local authorities who wish to put forward proposals for the designation of pressured areas should submit the following information to the Scottish Executive:

- A paper map showing the boundaries of the proposed area, (or digitalised map of same) and a full listing of the Census Output Areas and Unit Postcodes included in the area. The map should be in sufficient detail to be able to clearly identify those houses which will fall within the designated area;
- A statement of the number, type and size of local authority and RSL houses within the proposed designated area and an estimate of the initial number of tenants whose right to buy will be suspended as a result of the designation;
- The period (not exceeding 5 years) proposed for the designation;
- Information of the consultation undertaken identifying the organisations and persons consulted together with a summary of their responses;
- Sufficient information to allow Scottish Ministers to satisfy themselves that the statutory criteria for designation are met.

62. It will be for local authorities to decide what information should be submitted to demonstrate that the statutory criteria are met. The precise nature of the information required is likely to vary according to the size and nature of the proposed pressured area. It is anticipated that local authorities will want to draw on the assessment and analysis of housing needs which underpins their local housing strategies where these are available and current.

63. Nevertheless, the Scottish Executive will expect the information submitted in support of the designation to address both criteria set out in paragraph 30. Taking account of the conclusions of the earlier Working Group on the Right to Buy which reported in December 2000 and the Rural Partnership for Change National Steering Group which reported in May 2001, the Scottish Executive will be looking in the first instance for information along the following lines:

Evidence of a substantial shortfall in social rented accommodation in relation to need

- The number of social rented houses expected to become available for let to households not currently in the social rented sector in the area through relets and new building over the period of the proposed designation;
- An estimate of the need for social rented housing from households not currently housed in the sector over the period proposed for the suspension;
- Evidence of pressure in the private sector arising from the demand by households for the available private housing stock or a reduction in the supply of private sector housing.

Key indicators are likely to be:

- average waiting times for waiting list applicants for houses in the area relative to the local authority as a whole (along with evidence that the waiting lists are being actively managed);
- recent trends in average house price increases as compared to the local authority area as a whole.

Evidence on the impact of the right to buy on the shortfall of social rented housing in relation to need

- the number of right to buy sales in the area in question (both in absolute numbers and as a percentage of the social rented sector in the area);
- estimates of likely future sales over the period of the designation (with the basis of the estimates clearly explained and reasons given for any assumptions made) identifying those likely to be affected by the designation;
- evidence on the impact or likely impact of right to buy sales and, in particular, whether re-sales have led or are likely to lead, to a shortage of housing for households in housing need.

Two potentially relevant indicators may be:

- local estate agent/solicitor views on the number of right to buy re-sales anticipated and the likely demand for these;
- the number of re-sales as a proportion of total right to buy sales made in the preceding 5 years.

64. Two copies of the relevant information as set out in paragraph [] above should be submitted to:

Action by the Scottish Executive following receipt of proposals for designation of pressured areas

65. Following receipt of proposals for a designation, the Scottish Executive will check to ensure sufficient and appropriate information has been submitted and providing this is the case, it will ask Communities Scotland to carry out an assessment of the proposals. Communities Scotland will look, in particular, at the way in which the proposals link in to the

local housing strategy. It may be necessary to have discussions with the local authority to clarify certain aspects of the proposals.

66. In the light of this assessment which will be made available to the local authority, Scottish Ministers will decide whether to make the designation if the proposals are approved or approved with modifications and will write to the local authority formally designating the area under section 61B of the 1987 Act. (Ministers have the power under these provisions to make the designation on terms of the proposal or on such terms as they see fit). The designation letter will:

- confirm the boundaries of the pressured area;
- specify the date on which the designation takes place;
- specify the period for which it has affect.

67. If Scottish Ministers decide not to approve the proposals, the Scottish Executive will write to the local authority explaining the reasons for this decision.

68. The Scottish Executive will aim to process and come to a decision on applications within a period of 2 to 3 months from the initial receipt of finalised proposals by local authorities.

Action by local authorities following designation

69. Once an area has been designated, the local authority should take any further steps necessary to publicise the decision and its effect. There is a statutory duty on landlords (both local authorities and RSLs) under section 23(5) of the 2001 Act to notify the tenants directly affected that the designation has been made and the effects of the designation on their right to buy. They may also wish to notify those bodies who were consulted before the proposals were submitted.

70. Once the designation has been made, both local authorities and RSLs as landlords are placed under a statutory duty by section 23(4) of the 2001 Act to notify prospective tenants of houses in the area of the designation and its implications.

71. If the local authority wishes to amend or revoke the designation during the specified period, it should write to the Scottish Executive with the details of the proposed amendment or revocation and the reasons for proposing this.

72. Scottish Ministers will consider these proposals and decide if the designation should be amended or revoked in line with the local authority's proposals. If necessary, they will issue a revised designation for the remaining period of the designation or written confirmation that the designation is to be revoked from a specified date. Local authorities will need to ensure that tenants and other interested parties are fully informed.

73. It is also open to local authorities to propose a further designation for up to a maximum of 5 years for all or part of the area that was originally designated. The local authority should undertake consultation before making such proposals and submit information as at paragraph 43 above.

Arrears of rent and council tax

74. The 2001 Act inserts two new provisions into the 1987 Act (Sections 61D and 61 E) entitling landlords to refuse a right to buy application when certain charges are in arrears and requiring RSL tenants to produce a certificate from the local authority demonstrating that they have no council tax or water or sewerage arrears.

75. Where the landlord is the local authority and their records show arrears of rent or other tenancy related charges (linked either to the current tenancy or any other tenancy) or council tax or water and sewerage charges in relation to the house or any other houses in the local government area, it can serve a refusal notice (under section 68 of the 1987 Act). It can repeat this process until such time as it is confident that no such arrears remain. Alternatively, the local authority may disregard any such arrears when an application is received, if it so wishes.

76. Where the landlord is a registered social landlord, it may also refuse an application to purchase if its records show that any rent or tenancy related charges are in arrears. For council tax or water and sewerage charges, if the tenant does not provide a certificate (see

following paragraph) demonstrating that there are no arrears or any certificate does indicate such arrears, then the RSL should normally serve a notice of refusal on the tenant. If there are arrears shown, then the landlord should consult with the local authority regarding the circumstances and the approach to be adopted. A decision to proceed with the sale where there are such arrears should only be made where the authority agrees that no notice of refusal should be served. If the tenant provides a certificate without arrears, then the sale should proceed.

77. The Act places a clear duty on local authorities to provide, on request, a certificate to tenants of registered social landlords who wish to exercise the right to buy giving confirmation that there are no arrears of council tax or water and sewerage charges outstanding or details of any arrears. The certificate can be in the form of a letter signed by an appropriate official containing the necessary details. When the local authority receives such a request from an RSL tenant, they should issue a certificate – free of charge – within 21 days. From the date of the certificate, the tenant then has one month to submit it, together with their right to buy application (APP1) form. If the certificate is dated more than one month before the date upon which it is submitted to the RSL, then the RSL can deem it to have expired and request that a more recent certificate be obtained.

78. Landlords can only refuse to sell on the grounds of relevant outstanding arrears at the time of application and not if arrears arise subsequent to this.

Tenants subject to recovery of possession on conduct grounds

79. Any applications to purchase a house through the right to buy should not be accepted if they are received after the landlord has commenced recovery of possession on any “conduct grounds” set out in paragraphs 1 to 7 of schedule 2 of the 2001 Act. While the repossession proceedings are ongoing, the application should remain suspended and only be reconsidered once the recovery of possession are “finally determined”. According to the 2001 Act, proceedings are only finally determined when either:

- the relevant notice has been withdrawn by the landlord or expired in line with section 14(5) of the 2001 Act; or

- the court has made a decision on the landlord's request and any appeals have been considered and dealt with.

80. While such proceedings are ongoing, the relevant period of time will continue to count in the calculation of length of residence for the purpose of calculating the qualifying period and discount entitlement.

Houses liable to demolition

81. A provision in the 2001 Act inserting a new section 70A into the 1987 Act allows for landlords to seek the approval of Scottish Ministers to refuse a RTB application on the grounds that the property is earmarked for demolition. The section sets out the procedures to be followed and the considerations which Ministers should take into account in assessing applications from landlords. It also provides a power for Scottish Ministers to specify by order what information should be supplied by landlords in support on the application.

82. When an application to purchase (APP1 form) is received from an otherwise eligible tenant for a property already earmarked for demolition, the landlord will have one month from receipt of the application to request authority to refuse from Scottish Ministers. The landlord must have made a clear decision to demolish the house in question which has been recorded according to its rules and procedures.

83. As specified in the draft order (copy attached at Annex C), landlords must submit the following information in support of an application to refuse:

- Details of the house itself, including its address, its type (detached, semi-detached, terraced, walk up flats, multi-storey flat, four in a block and other), size (in terms of number of apartments), its estimated market value and whether or not the house would be affected by the cost floor rules;
- Details of the applicants length of residence and estimated discount eligibility;

- Details of the landlord's demolition proposals including:
 - a copy of the relevant minute or resolution recording the decision to demolish;
 - an explanation of reasons for the demolition proposal and why it is considered necessary to refuse the applicant;
 - information on the demolition timetable as it will affect the right to buy applicant and any factors which may lead to delay or abandonment of the proposal;
 - details of any consultation which took place with the tenant prior to the decision being taken

The application should be sent to the Head of Housing Management Branch, Scottish Executive, and there may be a need for follow up discussions or contact to clarify particular points.

84. Scottish Ministers will make their decision in the light of all the circumstances of the case, but they are required by the 2001 Act to pay particular attention to the period that is expected to elapse before the demolition takes effect and the extent to which the tenant has been consulted about the demolition proposal and the implications for his or her right to buy entitlement. Each case will be considered on its merits, but as a general rule Scottish Ministers would expect relatively small demolition proposals to be implemented in 2 years and larger proposals affecting 100 houses or more to be implemented within 5 years.

A decision on the application for refusal will then be taken by the Scottish Executive as soon as is practicable after receipt of all the relevant information. The Scottish Executive will aim to make a decision within 28 working days of receipt, providing the necessary information is supplied.

85. Where the application to refuse is successful, the landlord should inform the tenant as soon as possible. The 2001 Act requires that, at the very latest, the decision must be conveyed to the tenant within one month of the date when the proposed refusal was agreed by

the Scottish Executive. If the application to refuse is unsuccessful, the landlord should attempt to provide the tenant with an offer to sell within one month of the Scottish Executive's decision to refuse or, if this is not possible, within the 2 month period indicated in section 63(2) of the 1987 Act following the service of the initial application.

86. Once a final decision is taken on the basis of the information provided, there is no right to appeal by either the landlord or the tenant. However, the tenant would be free to submit further applications if there is a material change of circumstances, for example, significant delay in, or the abandonment of, the original demolition proposal.

Assistance to tenants to obtain other accommodation (cash incentive schemes)

87. Under section 66 of the Housing (Scotland) Act 1988 a local authority, with the approval of Scottish Ministers, may operate a scheme to offer grants to qualifying tenants of their authority to assist them to purchase a house in the private sector. These are often known as "cash incentive schemes". The main aim of such schemes under the legislation, as originally introduced, was to help alleviate the problems of homelessness by releasing accommodation which can then be made available for letting to people in housing need.

88. Section 50 of the Housing (Scotland) Act 2001 amends section 66 of the Housing (Scotland) Act 1988 in 2 respects:

- To allow local authorities to provide grants to RSL tenants in their area (linked to the more strategic role councils will be taking in the future);
- To provide explicit powers for local authorities to establish a cash incentive scheme for a designated pressured area.

Section 50 of the 2001 Act also extends the scope of cash incentive schemes so that assistance can be given not only towards buying an existing house but also towards the cost of buying land and building a house on that land.

89. These new provisions are intended to give local authorities the necessary powers to establish a cash incentive option, if they so wish, as a means of helping to tackle the shortfall of social rented housing in pressured areas. This guidance is concerned exclusively with the use of cash incentive schemes in pressured areas and reference should be made to SDD Circulars 31/1988 and 19/1989 for more general guidance on cash incentive schemes.

90. Before submitting a scheme, local authorities should consult with registered social landlords operating in the area and other relevant local bodies. The decision to opt for a cash incentive scheme should be taken after carefully considering, through the process of preparing a Local Housing Strategy, various possible ways of tackling housing pressure in the designated area and their relative cost-effectiveness.

91. Sub-section 5A of section 66 of the 1988 Act (as inserted by the 2001 Act) allows Scottish Ministers to issue guidance on the form and content of cash incentive schemes which would be taken into account in considering whether to approve any such scheme. The Scottish Executive does not wish to be too prescriptive on the precise nature of cash incentive schemes drawn up for pressured areas (or elsewhere) but it would recommend that careful consideration be given to the following points:

- setting a flat rate payment (on grounds of simplicity) for each applicant (the Scottish Executive's view is that it should not normally exceed £10,000 unless there are good reasons locally for offering a more generous payment);
- establishing a relatively simple test of resources to ensure that assistance does not go to tenants who can afford to buy without help and, equally, that the applicant has the resources to cope with owner-occupation after purchase;
- setting a maximum limit on the price of the house that might be purchased (or the value of the house and sale if the self-build option is chosen) to avoid assistance being given for the purchase of relatively expensive houses;

92. When the authority wishes to make a scheme in a pressured area it should submit a draft scheme document and supporting statement to Scottish Ministers for approval. Local

authorities should include the following information in their documentation seeking approval to operate a scheme:

- the date of commencement and duration of the scheme (this should preferably tie into the designation of the area), total expenditure proposed and maximum number of tenants expected to be assisted;
- the amount to be offered to individual applicants and rules for determining eligibility;
- any proposed limits on type of property which would be eligible, for example, a proposed price limit;
- whether it is intended to make grants for extension or adaptation of existing accommodation or for land acquisition and new building;
- confirmation that the scheme will be available to both local authority and registered social landlord tenants in the area;
- arrangements for publicising the scheme and proposals for monitoring the operation of the scheme.

93. An application should be accompanied by a supporting statement of how the scheme fits within the local housing strategy and how the vacancies released will help the authority meet housing need. The statement will need to consider the extent to which needs could be met in other ways, and indicate what effect the scheme might have on local house prices.

94. The funding of cash incentive schemes in pressured areas will be resourced in different ways according to whether or not the local authority has responsibility for development funding in its area. If it has been allocated a strategic “budget” from resources previously controlled by Communities Scotland then the funding should be found from this budget. If Communities Scotland is responsible for development funding in its area, then it should make a bid for resources for a cash incentive scheme as part of its normal discussions with the agency about future expenditure priorities.

Sales procedure and conditions of sale

95. The procedure in relation to RTB sales in sections 63 to 68 of the 1987 Act. The only changes made to these provisions are those which are consequential on other changes, for example, the requirement on local authorities to provide certificates to tenants of registered social landlords who wish to apply to buy stating whether they have paid council tax or water and sewerage charges (see paragraphs 73 to 76 above) and the abolition of the fixed price option. Annex A gives an outline of the 1987 Act provisions on sale procedures and conditions.

Repeals

Lender of last resort

96. Section 21 of the 1987 Act made provision for local authorities receiving an application to buy to act, in effect, as the lender of last resort in cases where the tenant has been unable to acquire a building society loan. Under this section, the local authority could only refuse a loan application “on the ground that information contained in the loan application is incorrect in a material respect”. The 2001 Act ends the obligation placed on landlords to offer such loans and it also repeals the fixed price option in section 67 of the 1987 Act which was linked to the use of this power. However local authorities will still have the discretion under its general power to provide house loans (section 14 of the 1987 Act) to provide loans for right to buy purchasers, if they so wish. Any loans applied for or agreed by September 2002 should be progressed and existing loans will, of course, continue until the loan is discharged.

Rent to loan scheme

97. The various elements of this scheme, as established in section 62A and 73A to 73D of the 1987 Act are also repealed and the scheme will end when the relevant provisions of the 2001 Act are commenced. However, this will not affect persons already buying through this mechanism.

Preserved Right to Buy

98. Paragraph 13(17) of Schedule 10 of the 2001 Act repeals section 81A of the 1987 Act which provides that the right to buy should continue to apply where a former secure tenant lost his secure tenancy as a result of a transfer of the ownership of the house to a “private sector landlord”. This was necessary because a move to an assured tenancy linked to a stock transfer would have, otherwise, removed the tenant’s right to buy. With the introduction of Scottish secure tenancy there will be no need for tenants to change their tenancies as a result of a stock transfer. As all Scottish secure tenants have an entitlement to a right to buy (subject to the various exceptions and limitations set out in the 1987 Act, as amended by the 2001 Act), a transfer of houses from one social landlord to another will not in itself change their entitlement. Section 4 gives more detailed guidance on the circumstances in which tenants subject to stock transfers will continue to be able to exercise the right to buy on pre-2001 Act terms and conditions and the implications for tenants whose houses are acquired by registered social landlords who have an exemption from the right to buy on account of their charitable status.

Provision of Information

99. Paragraph 13(14) of Schedule 10 of the 2001 Act repeals sections 75A and 76 of the 1987 Act which set out the information landlords should provide to secure tenants, particularly about the right to buy, which formerly has had to be issued annually. Instead, section 23 of the 2001 Act requires landlords to inform tenants of their rights and obligations under RTB when their new Scottish secure tenancy is being created and when any subsequent changes are made. Landlords are also required to provide SST tenants with details of their RTB on request. (More detailed information on this is given in the linked guidance on the Scottish secure tenancy).

PART 3: THE TRANSITION TO THE MODERNISED RIGHT TO BUY

Introduction

100. 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 B.

Timetable for the Introduction of the Modernised Right to Buy

101. 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.

102. 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 part II, paragraph 19);
- 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 part II, paragraphs 74 to 80);

- the new power for Scottish Ministers to refuse to sell houses liable for demolition (see part II, paragraphs 81 to 86);
- the abolition of the “mortgage to rent” scheme (see part II, paragraph 97));
- the repeal of the obligation on landlords to act as lender of last resort (see part II, paragraph 96);
- the extension of the power of Scottish Ministers to authorise refusal to sell houses provided for persons of pensionable age (see part II, paragraph 21).

The 10 Year Limitation for Registered Social Landlords

103. The 10 year limitation 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 limitation and the way it is intended to work is explained in full in part II, paragraphs 41 to 46)

The Pressured Areas Limitation

104. 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 in part II, paragraphs 47 to 63.

Right to buy – terms and conditions

105. 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.

106. 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 pre-2001 Act 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 pre-2001 Act terms and conditions rather than those associated with the modernised right to buy.

107. Subject to the exceptions described in paragraphs 108 and 110 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 pre-2001 Act 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.

108. 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 pre-2001 Act 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.

109. 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 pre-2001 Act terms and conditions will continue as a matter of course.

110. 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 pre-2001 Act 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 pre-2001 Act 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.

111. 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 pre-2001 Act terms and conditions

The Exemption for Registered Social Landlords with Charitable Status

112. 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;
- new tenants whose tenancy started after the introduction of the Scottish secure tenancy.

113. 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.

114. 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 pre-2001 Act terms and conditions.

115. 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).

116. 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 different 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 108 and 110 above, ie

- tenants who are compulsorily transferred or who are required to transfer to a different house because their house is to be demolished will continue to retain their right to buy entitlement (although the discount they enjoy may change as a result of the cost floor);
- persons succeeding to tenancies will lose any protected entitlement enjoyed by the previous tenant (with the exception of spouses, cohabitees, same sex partners and joint tenants);
 - persons who are assigned a tenancy who also lose any protected entitlement.

117. 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.

ANNEX A

Sales procedure and conditions of sale

1. This annex summarises the process to be followed in administering the Right to Buy. It sets out the key stages and the timeframe within which they should be met.

Service of Notice

2. The purchaser(s) must serve notice to their landlord on claiming the Right to Buy, on the statutory Right to Buy application form APP1. The form is produced by the Scottish Executive who make it available to landlords and individual applicants.

3. When an application is received the landlord should check this application in respect of entitlement under the legislation to buy his/her house and also for accuracy of completion.

Key issues include:

- a) whether the applicant meets the criteria (2 or 5 years depending on the RTB entitlement of the tenant); that the applicant is not in arrears with their rent or council tax; and that no eviction proceedings have been raised against the tenant due to their conduct and that, where joint tenants wish to exercise the RTB, all such applicants sign the declaration to this effect. establishing that the property can be purchased under the RTB, either through the property being exempt or it is in a designated pressured area; or the landlord is exempt from the RTB
- b) the discount entitlement claimed, and details of the tenancies on which the claim is based (section 63(1), 1987 Act).

4. If the application is in order, the landlord should:

- a. calculate the cost floor in respect of the property, (see Scottish Office Circular 8/1999);

- b. instruct the district valuer (or other qualified valuer acceptable to the tenant) to provide a market value of the property;
- c. determine the sale price and the amount of discount entitlement;
- d. advise the tenant of the proposed selling price (taking account of discount entitlement and the cost floor provisions) and informally discuss the proposed date of entry with the tenant, in the event of the sale proceeding.

Responding to Notice Served by Tenant

Application proceeding to sale

5. Where the landlord is satisfied that a valid application has been received and that all necessary information has been provided, an offer to sell must be served on the tenant (and any joint tenant named in the original application) within two months of the application to buy being received (section 63(2), 1987 Act). The formal offer to sell must contain:

- a. the market value of the house, as determined by the District Valuer or other qualified valuer;
- b. the discount entitlement (which may be restricted by the cost floor);
- c. the selling price;
- d. any reasonable conditions which the landlord intends to impose in terms of Section 64(1) of the 1987 Act;

Application not proceeding to sale

6. Where the landlord disputes the tenant's right to buy a Notice of Refusal must be served on the tenant (and any joint tenant named in the original application) within one month of receipt of the application to buy (section 68(i) 1987 Act).

7. Where the landlord intends to seek authority from Scottish Ministers to refuse an application because the property has been specially adapted for persons of pensionable age (section 69 of the 1987 Act), application must be made to Scottish Ministers within one month of receipt of the application. A Notice of Refusal must be served on the tenant within one month of authority being granted by Scottish Ministers (section 69, 1987 Act).

8. Where the application received was incorrect in a material respect and the tenant has had an opportunity to amend the application if, after enquiries by the landlord, material information is still missing, Notice of Refusal must be served within two months of the application having been received (Section 68(2), 1987 Act).

The Notice of Refusal must contain:

- the grounds on which the landlord is refusing the application to buy, or, as the case may be, the grounds on which the landlord disputes the accuracy of the information provided by the tenant;

9. Where an application to buy has been refused, the tenant may apply to the Lands Tribunal, within one month of the Notice of Refusal being received, to determine that he/she does have the right to buy (section 68(4) 1987 Act).

Conclusion of missives

Instruction to Solicitor

10. At the landlord's request, the solicitor acting on its behalf should proceed with the sales transaction, and should submit a formal offer to sell to the tenant. This formal offer must be issued not later than two months from the date of receipt of the tenant's application to buy. The landlord's solicitor must therefore be advised of the date on which the tenant's application was made, and of the deadline by which the offer to sell must be issued.

11. The following information should also be passed to the solicitor:

- a. a current District Valuer's or other qualified valuer's report;

- b. a detailed plan showing the boundaries of property to be sold with a clear description of any joint or common parts; and
- c. an extract of any prepared Deed of Conditions. It is particularly important that the Deed of Conditions makes provision for factoring or service charges, where these are appropriate, otherwise such charges may not be enforceable.

12. Where an offer to sell is served on the tenant and the tenant wishes to proceed, they will have up to 2 months from the most recent offer to accept the landlords offer.

13. If the landlord fails to meet these time deadlines both before or after the contract of sale, then they will be subject to the penalties outlined in sections 66A-C of the 1987 Act. If the tenant does not respond to the landlords offer to sell within the specified 2 months, then the offer can be withdrawn and the sales procedure terminated.

Conditions of Sale

14. Section 64 of the 1987 Act stipulates that no unreasonable conditions of sale should be introduced which would affect the tenant's position as owner. They should at least have as much enjoyment of the property as owner as they previously realised as tenant and their marketable title to the house should not be undermined. While the purchase may bring new responsibilities (particularly for the likes of common parts of a shared building), any charges should be in reasonable proportion to the cost of the service provided.

15. In most circumstances, the landlord seller cannot specify conditions for the future sale of the property. However, under section 64 of the 1987 Act, properties which are substantially different to accommodate the requirements of people of pensionable age or disabled people can have a pre-emption condition placed in the sale document. This would provide the landlord with first refusal at market value when the property is subsequently made available for sale. Similarly, where a property is in a rural area as designated by the local authority, that body can apply to Ministers to request pre-emption on the first re-sale of any properties in that area. In such circumstances and subject to any discount clawback, the landlord would have to buy the property at market value as determined by the district valuer.

Lands Tribunal

16. Section 65 of the 1987 Act allows for disputes over the conditions of sale to be referred to the Lands Tribunal for Scotland, but the application must be made within one month of receiving the offer of sale. Once a tenant has accepted the conditions attached to the sale and the sale is concluded it is legally binding on both parties. Any condition that the tenant wishes to challenge thereafter would be for those concerned to resolve with their legal advisers, and ultimately for the courts.

2001 No. []

HOUSING

The Housing (Right to Buy) (Houses Liable to Demolition) Order 2001

<i>Made</i>	2001
<i>Laid before the Scottish Parliament</i>	2001
<i>Coming into force</i>	2001

The Scottish Ministers, in exercise of the powers conferred by section 70A(3) of the Housing (Scotland) Act 1987⁽¹⁾, and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Housing (Right to Buy) (Houses Liable to Demolition Order) 2001 and shall come into force on [2001].

Information to be submitted to Scottish Ministers in support of an application for authorisation to refuse to sell houses to demolition

2. The information set out in Article 3 below is hereby prescribed as the information which shall be required to accompany an application to the Scottish Ministers under section 70A(1) of the Housing (Scotland) Act 1987⁽²⁾ (authorisation of refusal to sell houses liable to demolition).

3. The information referred to in Article 2 above is as follows:-

- (a) a description of the house to which the application relates including:-
 - (i) its postal address;
 - (ii) its type and size (number of apartments);
 - (iii) its market value; and
 - (iv) whether the regulations contained in the Housing (Right to Buy) (Cost Floor) (Scotland) Order 1999⁽³⁾ will apply to the sale;

⁽¹⁾ 1987 c.26; section 70A was inserted by section 48 of the Housing (Scotland) Act 2001 (asp 10).

⁽²⁾ 1987 c.26; section 70A was inserted by section 48 of the Housing (Scotland) Act 2001 (asp 10).

⁽³⁾ S.I. 1999/611.

ANNEX C

DRAFT – 16 NOVEMBER 2001 – SSI1113

- (b) the duration of the tenancy of the house to which the application relates and the estimated discount entitlement of the person who has applied to purchase the house;
- (c) details of the demolition proposals including–
 - (i) a copy of the relevant minute of the board or committee or of a resolution of the members of the landlord body recording the decision to demolish;
 - (ii) the reasons for the demolition proposal;
 - (iii) the reasons why it is considered that the application to purchase should be refused;
 - (iv) a copy of the demolition programme timetable and the likely effect on the applicant;
 - (v) details of factors which may cause the demolition proposal to be delayed or abandoned; and
 - (vi) details of any consultation with the tenant prior to the decision to demolish being taken.

[A member of the Scottish Executive]
[Authorised to sign by the Scottish Ministers]

St Andrew's House,
Edinburgh
2001

ANNEX C

DRAFT – 16 NOVEMBER 2001 – SSI1113

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides details of the information to be submitted to Scottish Ministers by a landlord in support of an application for authorisation to refuse to sell a house to an applicant under the right to buy legislation where the landlord has already made a decision to demolish that house.