

HAR 1/2011



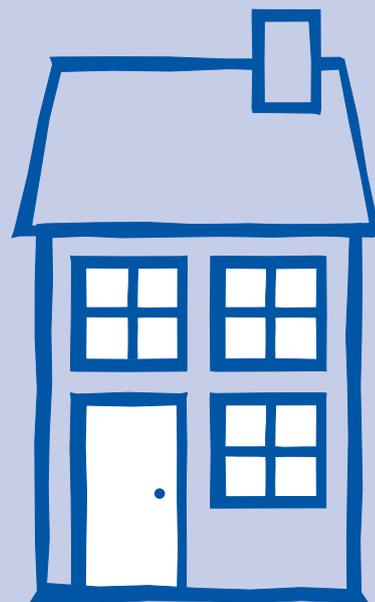
# Right

# to Buy



# Guidance Circular

**A guide for social landlords**





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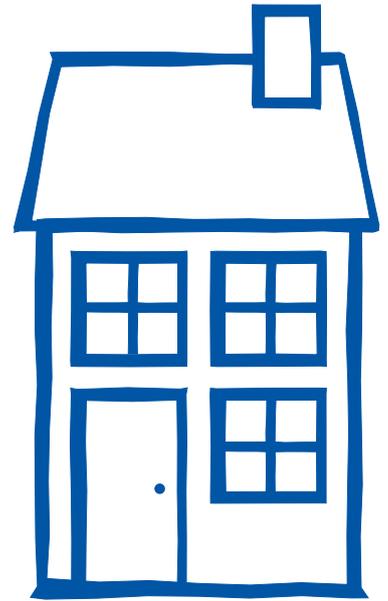
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# Introduction

1. The purpose of this guidance is to provide comprehensive advice on the Right to Buy (RTB) in Scotland with particular reference to how RTB applies in Scotland after the introduction of the changes contained in the Housing (Scotland) Act 2010 (“the 2010 Act”). The guidance consists of:
  - › an **overview** of all RTB provisions introduced by the 2010 Act;
  - › **comprehensive** guidance on RTB.
2. This circular is not a legal document and does not deal with every issue which might arise under the legislation governing the RTB. Social landlords will wish to obtain legal advice on interpretation of the relevant legislation, where necessary. In the event of a dispute, it is for the courts to decide the matter.
3. The legislative basis for the RTB is the Housing (Scotland) Act 1987 (“the 1987 Act”). RTB reforms were previously introduced in the Housing (Scotland) Act 2001, which amended certain provisions in the 1987 Act. Significant parts of the 1987 Act remained unchanged, for example, the provisions relating to application procedures. Others were amended (e.g. discounts, qualifying periods and exemptions) or repealed (e.g. rent to loan, lender of last resort). A range of new provisions setting out various limitations on the RTB (e.g. pressured areas) were introduced. These changes were explained in SEDD Circular 5/2002, which is superseded by this circular.
4. The 2010 Act introduces further reforms to the RTB provisions. It ends the RTB for most tenants new to the social housing sector or returning after a break and for most new supply social housing. It also amends the existing pressured area provision in section 61B of the 1987 Act.
5. In line with Ministerial policy intentions, the changes introduced by the 2010 Act do not generally affect the RTB entitlement of tenants who had such an entitlement before 1 March 2011.

## Contractual Right to Buy

The guidance in this circular 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, for example where a tenant has been the victim of anti-social behaviour (see page 10). The powers of local authorities in this area are set out in section 14 of the 1987 Act. The relevant provisions relating to registered social landlords (RSLs) are in sections 65 to 68 of the 2001 Act and currently require the consent of Scottish Ministers; once section 107 of the 2010 Act is commenced the consent of the Scottish Housing Regulator will be required instead. Landlords may wish to seek appropriate legal advice if they are planning voluntary sales to sitting tenants.



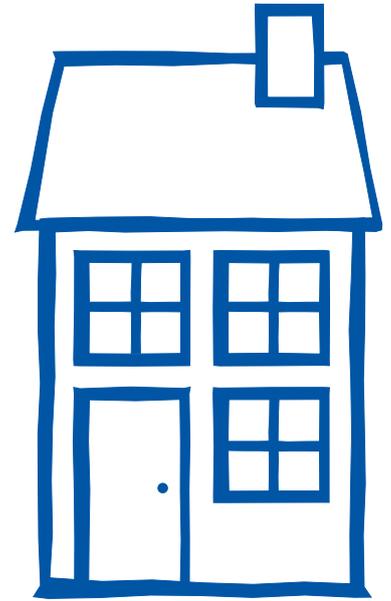
# Part 1

# Changes to Right to Buy as a result of the 2010 Act

## Part 1 – Changes to Right to Buy as a result of the 2010 Act

6. Sections 61 to 84A of the Housing (Scotland) Act 1987 (as amended) and the associated secondary legislation, set out the statutory basis for the RTB and the procedures which landlords and applicants should follow. This part of the guidance sets out the details of the most recent RTB reforms. The main changes introduced by the 2010 Act are:
  - › Section 140 amends sections 61(2), (10) and (11) of the 1987 Act to add to the list of persons who provide qualifying accommodation for the purposes of calculating RTB entitlement and discount, and to ensure that in certain circumstances the RTB entitlement of tenants who experience a break in occupation is protected.
  - › Section 141 inserts a new section 61ZA into the 1987 Act so that tenants taking up a Scottish secure tenancy (SST) for the first time or returning to the social rented sector after a break after 1 March 2011 will not have the RTB over any property they let from a social landlord, except in certain limited circumstances.
  - › Section 142 amends the pressured area provisions in sections 61B and 61C of the 1987 Act to remove Scottish Ministers' role in relation to designation of pressured areas. Instead, local authorities are given the power to designate pressured areas as well as to revoke and amend any such designation. Further amendments are made to extend the maximum designation period from 5 to 10 years and to allow designations to be made generally in relation to all houses in the area or in relation to particular types of house only. Scottish Ministers are given a power to issue statutory guidance which local authorities will be required to have regard to before making, amending or revoking any pressured area designation.
  - › Section 143 inserts a new section 61F into the 1987 Act to provide that the RTB does not apply to new supply social housing, except in certain limited circumstances.
  - › Section 144 inserts a new section 69A into the 1987 Act which applies to police houses. It allows local authority landlords to refuse RTB applications from tenants to purchase police houses (which are houses held by the local authority landlord for the purposes of a police force) where the tenant would otherwise have the RTB but the purchase would impact negatively on police operations and resources. The landlord is required to have regard to certain specified matters when deciding whether or not to refuse the application.
7. The above sections are now in force. In addition, three further sections make changes to statistical requirements, but had yet to be commenced when this circular was issued:
  - › Section 145 requires the Scottish Government, after the end of each financial year, to collect and publish information in respect of each local authority, during that financial year, on the number of houses sold under RTB; receipts derived from these sales; how much new debt has been incurred in respect of local authority housing stock and; how much debt in respect of local authority housing stock has been repaid.

- ▶ Section 146 requires the Scottish Government, after the end of each financial year, to collect and publish information in respect of each local authority, during that financial year, on the number of tenants with a RTB on preserved terms (i.e. pre Housing (Scotland) Act 2001) and the number of tenants with a modernised RTB (i.e. as amended by the Housing (Scotland) Act 2001).
- ▶ Section 147 requires the Scottish Government, after the end of each financial year, to collect and publish information in respect of each registered social landlord, during that financial year, on the number of houses sold under RTB and the receipts derived from these sales.



## Part 2

# Guidance on Right to Buy

## Part 2 – Guidance on Right to Buy

8. This part of the guidance gives a comprehensive overview of the legislation relating to the RTB, including the most recent changes as a result of the 2010 Act.
9. The basis for the current RTB rules is the Housing (Scotland) Act 1987. Until 2001, this gave most council and housing association tenants the right to buy their homes, with a 2-year qualifying period and a maximum discount of 70% of the market value of the property. In this guidance it is referred to as the “preserved right to buy”.
10. The Housing (Scotland) Act 2001 introduced the Scottish secure tenancy (SST) from 30 September 2002. This provided a single, common tenancy for nearly all tenants of local authorities and housing associations in Scotland and brought with it significant changes to the RTB. The qualifying period increased from 2 to 5 years and the maximum discount was reduced to 35% or £15,000, whichever is lower. These changes are referred to in this guidance as the “modernised right to buy”.
11. The Housing (Scotland) Act 2010 introduced further changes to the RTB. The main changes are that the RTB no longer applies to new supply social housing, people who take up a tenancy with a social landlord for the first time, and – with some exceptions – tenants who return to the social rented sector after a break, even if they return to a landlord from whom they previously rented.

### Who is potentially eligible for the Right to Buy?

12. Section 61 of the 1987 Act, as modified by the 2001 Act and other legislation, specifies that to be eligible for the RTB, tenants must have an SST from one of the following landlords:
  - › a local authority (including joint boards or joint committees of two or more local authorities, the common good of a local authority, or any trust under the control of a local authority);
  - › a Registered Social Landlord (RSL);
  - › Scottish Water.
13. The landlord must be the heritable proprietor of the house. The RTB is linked to the SST and is, therefore, available to tenants of RSLs and local authority tenants, subject to the tenant having met the qualifying conditions and subject to the various exemptions and limitations on the RTB.

### New Tenants

14. The 2010 Act inserts new section 61ZA into the 1987 Act which provides that people who become tenants of social housing for the first time after 1 March 2011, and those who return to social housing after a break (subject to limited exceptions), do not have the RTB. More information is provided in paragraphs 40 and 42.

## Joint purchasers

15. The RTB can be exercised by Scottish secure tenants alone or, 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 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). Evidence that the 6 months' residence qualification for family members 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. It should be noted that the landlord has discretion to allow joint purchases where the age and residency conditions set out in section 61(6)(a) are not met.
16. The definition of a "family member" for this purpose is set out in section 83 of the 1987 Act and as well as spouses and civil partners it includes (amongst others) cohabitees, same sex couples, and persons brought up or treated as if they were a child of the tenant.
17. Where a joint tenancy exists, not all the tenants are obliged to exercise their RTB. However, the written agreement of any joint tenants not wishing to exercise the RTB must be included in the RTB application form. Additionally, the formal consent of each tenant's spouse will be required if he or she is not a joint tenant (section 61(5) of the 1987 Act). Provision for such an agreement is necessary since the tenancy ends when a sale is completed and those joint tenants not buying will lose their status as Scottish secure tenants. If such persons intend to remain within the dwelling house, it is for to them to make appropriate arrangements with the purchaser. In circumstances where non-purchasers living at the property subsequently become homeless, they would be assessed on the same basis as other applicants for assistance under the homelessness provisions of the 1987 Act (as amended).
18. There is no RTB for any joint tenant who is a new tenant in terms of the 2010 Act. Please note that where a person becomes a joint tenant after 1 March 2011 by virtue of the alteration of an existing tenancy, with no new tenancy being created, they will not be a new tenant in terms of the 2010 Act in relation to the house to which that tenancy applies, and they may have the right to buy that house.

## Qualifying conditions

19. The way in which occupation of a house is defined is set out in section 61(10) of the 1987 Act. Occupation includes time spent:
  - ▶ as a sole or joint tenant;
  - ▶ occupying a house on a rent-free basis;
  - ▶ as the spouse of the tenant or of the person occupying rent free;
  - ▶ as a child (or spouse of the child) or member of the family of the tenant or person occupying rent free who has succeeded to the rights of that person but only for any period where the child, spouse or family member was aged 16 or over.

## Modernised RTB

20. Under the modernised RTB, 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 RTB. The list of relevant landlords in section 61(11) of the 1987 Act is extensive and includes landlords of properties to which the RTB does not apply. This means that time spent in tenancies of certain houses which were not available under the RTB nonetheless counts towards the 5-year period of continuous occupation. Examples of relevant landlords are: local authorities (both in Scotland and elsewhere in the UK); RSLs and registered housing associations; Scottish Homes; most Government departments; and certain public bodies, for example, Highlands and Islands Enterprise.
21. The modernised RTB has an explicit requirement for “continuous occupation”. However, section 140 of the 2010 Act amends section 61 of the 1987 Act to ensure that tenants retain their RTB in certain circumstances where they experience a break in occupation. The changes made by section 140 provide that a break in tenancy must be disregarded by landlords in determining the tenant’s period of occupation in cases where this is the result of a previous tenancy having been terminated in circumstances where:
  - ▶ The tenant’s previous tenancy was terminated by a landlord in the belief that the tenant was not occupying the property and did not intend to live in it as their home, but a court subsequently finds that the landlord acted wrongly or unreasonably and orders the tenancy to continue or directs the landlord to provide other suitable accommodation;
  - ▶ The tenant would otherwise have been a successor to a tenancy which has been terminated because the house to which they would succeed has been designed or substantially adapted for the use of persons with special needs.
22. It also provides for two additional types of qualifying occupation for the purposes of calculating continuous occupation and RTB discount:
  - ▶ accommodation provided where the tenant has agreed to termination of a previous tenancy because the landlord intended to demolish that house;
  - ▶ accommodation provided following termination of a previous tenancy by court order, for reasons such as overcrowding, or in other cases where a landlord is required to make other suitable accommodation available to a tenant.
23. Section 61(10)(b) also gives landlords the general power to disregard an interruption in occupation, when calculating the qualifying period and discount, where they consider that the interruption resulted from circumstances outwith the control of the person in question. It is for landlords to use their discretion to decide whether to exercise this power in particular cases, but possible examples where they may wish to disregard interruptions could include: the effect of fire, flood and the need to move as a result of anti-social behaviour or domestic abuse. This is not, however, intended to be a comprehensive list and cases should be considered on their merits.

## Victims of Anti-Social Behaviour

There are a range of tools that agencies can use to deal with anti-social behaviour, these are set out in 'Promoting Positive Outcomes' the framework for tackling anti-social behaviour published by the Scottish Government and the Convention of Scottish Local Authorities (COSLA) in March 2009.

Dealing with the perpetrator, rather than moving the victim, is the preferred option. There may, however, be extreme circumstances in which landlords feel that they have no option other than to move a victim of anti-social behaviour. These situations can occur when an individual or household is the victim of a crime or crimes so serious that their personal safety is endangered and they are at immediate risk, often requiring a multi-agency response. In such circumstances it is likely that the landlord will have been advised to move the household by the police (or by another responsible authority such as the Scottish Prison Service) until the outcome of legal proceedings against the perpetrator is known.

Social landlords may be able to offer the victim the option of exchanging their current property for another one and allow any pre-existing preserved RTB entitlement to continue over the next property, subject to the wording of the agreement between the landlord and tenant. If the existing tenancy is expressly brought to an end by written agreement between the landlord and tenant however, preserved RTB entitlements will not continue.

Sections 61(10) of the 1987 Act (amended by the 2001 Act) and section 61ZA(2) (b) (introduced by the 2010 Act) give all social landlords discretion to disregard any interruption in occupation that appears to result from circumstances outwith the tenant's control. That allows a social landlord to deal with the consequences of a tenant being moved as a result of their being a victim of anti-social behaviour.

Social landlords also have discretion to sell properties outwith RTB and may consider using these contractual sales provisions to sell a property on appropriate terms to a tenant who has been a victim of anti-social behaviour.

## Ex-service personnel

An ex-service person who was housed by the regular Armed Forces and started that tenancy on or before 1 March 2011, who then transfers directly to the social rented sector after that date, has a modernised RTB entitlement and is able to use the years spent in Armed Forces accommodation towards their RTB qualifying period.

In the case of an ex-service person who was housed by the regular Armed Forces and started that tenancy on or before 1 March 2011, who then transfers to the social rented sector after that date but experiences a break between leaving Armed Forces accommodation and acquiring an SST, the landlord can choose to disregard the break if they believe it was outwith the tenant's control. The ex-service person would, in those circumstances, have a modernised RTB entitlement and would be able to use the years spent in Armed Forces accommodation towards their RTB qualifying period. Landlords should give serious consideration to disregarding breaks in these circumstances.

## Preserved RTB

24. Those tenants who had a RTB entitlement under the pre-2001 Act provisions continue to be able to exercise their RTB under the same terms as applied before the changes made by the 2001 Act. This means that they are entitled to exercise the RTB after 2 years' occupation for as long as they remain in the same tenancy. This includes any relevant period of occupation in the same tenancy before the introduction of the SST.
25. If the tenant had not completed the initial qualifying period at the point at which the SST was introduced, he or she is still able to exercise the RTB on pre-2001 Act terms and conditions, rather than those associated with the modernised RTB. Subject to certain exceptions, this protection is only available for tenants in tenancies which were converted from secure or assured tenancies to Scottish secure tenancies. In general, tenants of new tenancies which were created after the introduction of the SST on 30 September 2002, including new tenancies created as a result of transfers or exchanges by existing tenants, are only able to exercise the RTB on "modernised" terms and conditions.
26. Persons succeeding to tenancies will generally lose any protected entitlement enjoyed by the previous tenant. The exceptions to this, where the qualifying persons under the rules of succession will also inherit the entitlement to the RTB on pre-2001 Act terms and conditions, are:
  - ▶ the qualifying person was a tenant's spouse or civil partner who occupied the house at the time of the tenant's death as their only or principal home;
  - ▶ the qualifying person was a cohabitee (including a 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 qualifying person was a joint tenant.

## Exemptions from the Right to Buy

### Registered Social Landlords with charitable status

27. The 2001 Act amended the 1987 legislation to exempt tenancies of certain RSLs with charitable status from the RTB, provided they were 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). RSLs which obtained recognition under the 1990 Act after 18 July 2001 are not exempt from the RTB under this provision (but see paragraph 38 for a separate exemption that could apply). To qualify for the charitable status exemption, the body must also either have been a registered housing association at the time of Royal Assent of the 2001 Act or have been included in an Order made by Scottish Ministers which allowed it to be treated as if it were a registered housing association (see section 61(4)(e) of the 1987 Act, as amended, and section 57(2) of the 2001 Act). The exemption applies to:
  - ▶ all tenants who, before 18 July 2001, did not have the RTB either because they had an assured tenancy which did not give an entitlement to the RTB or they were also exempt from the RTB 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 SST.
28. The Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc.) Order 2002 (SSI 2002/318) protects the RTB for tenants of RSLs with charitable status obtained before Royal Assent, where the tenant had an entitlement to the RTB before the introduction of the SST and the modernised RTB. This includes:
  - ▶ tenants of housing associations with a charitable exemption under the 1987 Act who had a preserved RTB following a stock transfer from Scottish Homes or a local authority to the RSL in question;
  - ▶ tenants of RSLs with secure tenancies or tenants with an assured tenancy with a preserved RTB who obtained an exemption for the first time as a result of the 2001 Act.
29. Where a tenant of a RSL continues to have an entitlement to the RTB as a result of this protection, preserved RTB terms and conditions apply.
30. Protection for tenants in houses owned by RSLs 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, are subject to the exemption and do not, therefore, have a statutory RTB. There are, however, two sets of circumstances in which tenants moving house retain their preserved RTB (although the discount they enjoy may change as a result of the cost floor):
  - ▶ where the tenant is compulsorily transferred under any of the grounds in paragraphs 9 to 15 of schedule 2 to the 2001 Act, which require the landlord to provide suitable alternative accommodation;
  - ▶ where the tenant agrees to transfer to a different house because their landlord wishes to demolish their house.

31. Persons succeeding to tenancies will generally lose any protected entitlement enjoyed by the previous tenant. Accordingly, they will not have the RTB a house owned by an RSL with a charitable status exemption. The exceptions to this are set out in paragraph 26.
32. Persons who are assigned a tenancy will also lose any protected entitlement enjoyed by the previous tenant, and will not have the RTB where the charitable RSL exemption applies.
33. RSLs with charitable status need to take account of these provisions if they wish to acquire social housing through a stock transfer. Social tenants with tenancies which started before the introduction of the SST continue to enjoy the same RTB entitlement as before the transfer. If they move to a new tenancy within the stock owned by the charitable RSL, then they lose their RTB entitlement unless they are covered by one of the exceptions described above, i.e. they are compulsorily transferred for one reason or another. Similarly, tenants whose tenancies started after the introduction of the SST, lose their “modernised” RTB entitlement when the house transfers to the charitable RSL. The RSL can consider whether it wishes, and is able, to offer a contractual RTB in these circumstances (see text box on page 2).

### **Group housing schemes for persons with special needs**

34. The 2001 Act introduced a 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 (whether or not other people use them too); 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 with a view to enabling that person to live in that house (see section 91(8) of the 2001 Act for the full statutory definition of housing support services).
35. Landlords will require to take their own view on whether any particular group housing scheme meets the criteria set out in statute and which are described above. The view of the Scottish Government is that houses in group housing schemes do not necessarily need to be physically contiguous, providing the conditions set out in section 61(4)(ea)(i) and (ii) are met. It is also the view of the Scottish Government that the houses in question would need to have facilities and services which go beyond the inclusion of a simple call system to qualify for the exemption. In the event of a dispute, however, this would be a matter for the courts to decide.

## **Individual houses provided for persons of pensionable age**

36. Although strictly speaking a “limitation” rather than an “exemption”, the 1987 Act includes a power for Ministers to authorise refusal to sell certain houses which have facilities which are substantially different from those of an ordinary house and have been designed or adapted for use by persons of pensionable age (section 69). These provisions allow the landlord to request authorisation from Ministers to refuse an application to buy. Such an application for authorisation to refuse the RTB must be accompanied by supporting documentation. This should include a copy of the plan of the house, including a plan of any relevant adaptations, together with other evidence that the house was designed or adapted for a person of pensionable age. In considering individual applications the Scottish Government looks, in particular, at the extent of the special facilities provided and whether these make the house “substantially different” from mainstream houses. The 2001 Act modified the position slightly as it removed an earlier limitation to houses first let on a secure tenancy before 1 January 1990. It is 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. The Scottish Government has produced further guidance to assist social landlords in the process of making an application under section 69.

## **Co-operative Housing Associations**

37. The 2001 Act inserted provision into the 1987 Act (section 61(4)(ca)) which specifically exempted tenancies of RSLs which are co-operative housing associations from the RTB. This has not changed. Where there is a stock transfer from a local authority or another housing association to a co-operative housing association, the tenant will lose the RTB.

## **Exemptions for Registered Social Landlords letting less than 100 houses**

38. This exemption (section 61(4)(c) of the 1987 Act) for RSLs which have let (or had available for letting) no more than 100 dwellings, continues to apply. Where there is a stock transfer from a local authority or another housing association to such a housing association, the tenant will lose the RTB.

## Limitations on the Right to Buy

39. In addition to the exemptions described in paragraphs 27 to 38 above, there are a number of additional specific limitations on the RTB. In summary, these are:

- › a limitation on the RTB for new social housing tenants;
- › a limitation on the RTB from RSLs (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;
- › a limitation on the RTB new supply social housing;
- › a limitation on the RTB police houses;
- › a limitation on the RTB houses liable to demolition.

Details of these provisions are set out below.

### **New tenants entering the social rented sector for the first time or after a break**

40. Section 61ZA of the 1987 Act (inserted by the 2010 Act) provides that people becoming tenants of social housing for the first time after 1 March 2011, and those returning to social housing after a break, do not have the RTB that, or any other, house. It does so by setting out that, for any new tenancies created on or after 1 March 2011, only those tenants who have been in continuous occupation of qualifying housing since 1 March 2011 will retain the RTB. “Qualifying housing” means housing provided by any person listed in section 61(11). The result is that the following “new tenants” will not have the RTB:

- › a person becoming a social housing tenant for the first time after 1 March 2011 by virtue of a new tenancy created after that date. If the new tenant occupies the house after that date under an existing SST (e.g. through succession, assignation or becoming a joint tenant), they may have a RTB entitlement;
- › a person who was a social housing tenant under a tenancy created on or before 1 March 2011 but who leaves the social housing sector for a period of time and then returns to a new tenancy after 1 March 2011 (except where the break in continuous occupation is disregarded in terms of section 61ZA(2)).

41. Section 61ZA(2) sets out the circumstances where an interruption in continuous occupation should be disregarded. These are:

- › where a landlord has brought the tenant’s previous tenancy to an end and re-possessed the tenant’s house because the landlord wrongly or unreasonably believes the tenant is not occupying it, and the court orders the landlord to provide the tenant with other suitable accommodation; or
- › where a tenant is re-accommodated who would otherwise have succeeded to a tenancy of a house designed or adapted for use of a person with special needs.

42. The provision also gives the landlord discretion to disregard an interruption in continuous occupation, where it appears to the landlord to result from circumstances outwith the control of the tenant.

### **Registered Social Landlords – 10-year exemption**

43. Section 61A of the 1987 Act suspended the extension of the RTB to certain tenants of RSLs for a period of up to 10 years from 30 September 2002. The 10-year exemption applies to all houses let by RSLs after 30 September 2002, with the following exceptions:
- ▶ tenancies of houses acquired, for example, by a stock transfer or through purchase from a developer, by the RSL after the date of the introduction of the SST (30 September 2002);
  - ▶ tenancies of houses built by RSLs after 30 September 2002, if an offer of grant (by either Scottish Homes, Scottish Ministers or a local authority) was made after that date;
  - ▶ tenancies of RSLs which already enjoyed a RTB entitlement which is protected by the Scottish Secure Tenancy Order 2002 SSI 2002/318 (i.e. a preserved RTB entitlement).
44. RSLs can elect to set aside this limitation to the RTB if they so wish. Any such decision would need to be made in accordance with the rules and procedures for the RSL in question. Section 61A also requires:
- ▶ the RSL to notify the Scottish Government of its decision indicating the date on which the limitation will end (notifications should be sent to the Deputy Director, Housing Supply Division, Scottish Government, Victoria Quay, Edinburgh EH6 6QQ);
  - ▶ the RSL to inform the affected tenants and those lenders with an interest in the houses to which the decision relates.
45. RSLs should give careful consideration to the implications of ‘opting in’ before making a decision and, in particular, the likely financial implications. The 2001 Act is clear that any such decision is irrevocable. They should consult the Scottish Housing Regulator as well as seeking the views of tenants and lenders in advance of a decision being made.
46. Section 61A also allows for RSLs to apply to Scottish Ministers for the suspension of the RTB to be extended for a further period of up to 10 years. The Act does not place a limit on the number of such further periods of suspension that may be sought. The Scottish Government has produced guidance to assist RSLs in the process of making such an application.

### **Pressured areas**

47. The 2001 Act inserted sections 61B and 61C into the 1987 Act which allowed Scottish Ministers to designate any part of a local authority’s area as a ‘pressured area’ following a proposal submitted by the local authority. The 2010 Act makes amendments to sections 61B and 61C of the 1987 Act.

48. Scottish Ministers' role in designating pressured areas has been removed, and local authorities are given the power to make, amend and revoke pressured area designations. The power may be exercised if the needs for social rented housing in a part of the local authority's area exceed substantially (or are likely to exceed substantially) the amount of housing available in that part; and if the exercise of the RTB by tenants, in that part, is likely to worsen the situation.
49. New section 61B(1A) allows designations to be made generally in relation to all houses in the designated area, or in relation to particular house types only. So, any particular housing type may be designated as pressured if substantially more social rented housing of that type is (or is likely to be) needed than is available; and if the RTB would worsen the situation. Houses of any other type in that area would remain available under RTB.
50. New section 61B(1C) increases the maximum period for which a pressured area can be designated from 5 years to 10 years. This has the effect of suspending, for a maximum period of 10 years, the modernised RTB entitlements of tenants who live in a designated area or in a particular type of house in that area. Those tenants with preserved RTB entitlements remain unaffected.
51. The effect of a pressured area designation is to suspend the RTB for the following tenants living in the area or in house types designated as pressured:
  - ▶ those who took out a new tenancy in the area on or after the introduction of the SST (30 September 2002);
  - ▶ those with tenancies created before the introduction of the SST who did not previously have a RTB entitlement – these will be principally tenants of RSLs with assured tenancies (except for those with a preserved RTB). Please note that a person has a RTB entitlement in this context even if he or she has not yet fulfilled the occupancy requirement in section 61(2)(c) of the 1987 Act;
  - ▶ all those who have succeeded, following the introduction of the SST, to tenancies initially created beforehand irrespective of the terms on which they would be able to exercise their RTB entitlement in the absence of the pressured area designation.
52. Tenants in tenancies created before the introduction of the SST and which were converted to SSTs will not be affected by a suspension provided that:
  - ▶ before the introduction of the SST they had a RTB entitlement (whether or not this is with their current landlord), as a result of having a secure tenancy or an assured tenancy with a preserved RTB;
  - ▶ they have not succeeded to their tenancy after the introduction of the SST.
53. 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 SST.

54. The suspension will be for a period of 10 years or less. Although 10 years is the maximum period allowed for each designation, local authorities can make a further designation, provided the criteria for designation remain satisfied, and can amend or revoke designations they have made. Section 61C sets out procedural steps that must be followed, including consultation requirements. The duty to inform tenants of changes to their rights under a secure tenancy, at section 23(5) of the 2001 Act, is also relevant.
55. The suspension has no effect on applications to purchase under the RTB 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.
56. Statutory guidance for local authorities on the changes to pressured area designations has been provided. This sets out the factors which local authorities should take into account in designating a pressured area.

### **Arrears of rent and council tax**

57. Section 61D of the 1987 Act entitles landlords to refuse a RTB application when certain charges are in arrears, and section 63 requires RSL tenants to produce a certificate from the local authority demonstrating that they have no council tax or water or sewerage arrears.
58. 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 that specific local government area, it can serve a refusal notice (under section 68 of the 1987 Act). It can repeat this process on a subsequent application if arrears remain. Alternatively, the local authority may disregard any arrears when an application is received, if it wishes.
59. Where the landlord is an RSL, 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, then the RSL must serve a notice of refusal on the tenant. If the certificate is served and there are arrears shown, then the landlord must seek the views of the local authority on the way forward and serve a notice of refusal unless the local authority agrees that it should not be served. If the tenant provides a certificate without arrears, then the sale should proceed.
60. Local authorities are required (by section 63 of the 1987 Act) to provide free of charge, on request, a certificate to tenants of RSLs who wish to exercise the RTB 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 must issue the certificate within 21 days. From the date of the certificate, the tenant then has one month to submit it, together with their RTB application form (APP2). If the certificate is dated more than one month before the date upon which it is submitted to the RSL, then the RSL should deem it to have expired, must refuse the application and should advise that a more recent certificate must be obtained before an application can be entertained.

61. 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. However, this should not affect other arrears procedures landlords may have in place.

### **Tenants subject to recovery of possession on conduct grounds**

62. Section 61E deals with any application to purchase a house through RTB that is made after a notice has been served allowing proceedings for recovery of possession on any of the “conduct grounds” (as set out in paragraphs 1 to 7 of schedule 2 of the 2001 Act). Such an application must be rejected and a notice of refusal issued. The only exceptions are if:
- ▶ the notice has been withdrawn by the landlord or has expired in line with section 14(5) of the 2001 Act; or
  - ▶ a court application has been made and determined, which means that the court has reached a decision on the landlord’s request and any appeals have been considered and dealt with, or the time within which the decision can be appealed has expired without any appeal being made.
63. Where the application is refused, the tenant will be able to re-apply once the notice ceases to have effect (unless another notice on conduct grounds has been served) or if any recovery of possession proceedings are subsequently abandoned or rejected by the court.
64. If repossession proceedings are abandoned and the tenant re-applies at a future date, the relevant period when proceedings were ongoing will still count towards eligibility and discount.
65. If the RTB application is received before the recovery of possession notice has been served, then it should be progressed in the normal way, unless there are other grounds for refusal, for example, if the tenant has outstanding rent arrears.

### **New Supply Social Housing**

66. Section 61F of the 1987 Act (inserted by the 2010 Act) provides that the RTB does not apply to new supply social housing. This limitation applies to houses let under an SST created on or after 1 March 2011 if the house was either not let under an SST on or before 25 June 2008, or was acquired by the landlord on or after that date.
67. The definition of “new supply”, therefore, includes newly built houses and newly-acquired houses being rented as social housing for the first time as well as former social housing which had been sold (e.g. under RTB) and subsequently acquired by the landlord, for example, under the Scottish Government’s Mortgage to Rent scheme or as a result of a stock transfer. This means that, in general, people becoming Scottish secure tenants of a new supply social house on or after 1 March 2011 will not have the RTB the house. There are limited exceptions which mean that a tenant of a new supply social house will not be prevented from exercising the RTB where:
- ▶ the tenant has moved to the new supply social house following the landlord obtaining a court order for termination of a previous tenancy of another

house (where that tenancy was created before 1 March 2011) on any of the grounds set out in paragraphs 9 to 15 of schedule 2 to the 2001 Act. Examples of those grounds include that the house was overcrowded, or was specially adapted for a person with special needs and there was no longer such a person living there and the landlord required it for a person with such needs;

- ▶ a tenant whose previous tenancy was created before 1 March 2011 moves to a new supply social house where the landlord has erroneously brought the previous tenancy to an end and re-possessed the house because the landlord believed the tenant was not occupying the house;
- ▶ the tenant of a house that has been adapted for a person with special needs dies (where the tenancy was created before 1 March 2011) and as a result of section 22(6) of the 2001 Act, the landlord is required to re-accommodate a person who was not qualified to succeed to the tenancy;
- ▶ the tenant moves to the new supply social house following their written agreement to the termination of a previous tenancy (where that tenancy was created before 1 March 2011) of a house which the landlord has decided to demolish;
- ▶ the tenant occupied a new supply social house immediately before 1 March 2011 under a short SST (for example temporary lets pending development affecting the house, or for those moving into the area to take up employment) which has since then been converted into an SST;
- ▶ an owner agrees to sell their property to a social landlord in order to continue to living there under an SST but is not informed within the set timescale of at least 7 days before conclusion of missives for the purchase/sale that they will not have a RTB the property;
- ▶ the landlord did not inform the tenant within the set timescale of at least 7 days before creation of the tenancy that they would not have a RTB the new supply social house that has been offered for rental.

68. The changes do not affect the RTB of tenants of houses which were first let under an SST, or were acquired by the landlord, after 25 June 2008 where the tenancy was created before 1 March 2011. This means that people who took up tenancies of new supply social housing after 25 June 2008, but before 1 March 2011, will keep their RTB entitlement over those properties. However, the next tenant to live in that house will have no RTB entitlement over it unless that next tenant occupies the house under an existing SST (e.g. through succession, assignation or becoming a joint tenant) and unless any of the exceptions in 61F(2) apply – see the previous paragraph.
69. Where a tenant moves from a house which was available under the RTB to a new supply social house (over which they would not have any RTB entitlement) and later moves to a second property that is not a new supply social house, with no break in qualifying occupation, the tenant's RTB that second property would generally be unaffected. Their period in occupation of the new supply social house will count for the purposes of calculating continuous occupation and for discount entitlement purposes.

70. Tenants who would otherwise be eligible for the RTB (either modernised RTB or preserved RTB) who are contemplating a transfer to a new supply social house must be advised of the implications of this at least seven days before the start of the proposed SST of that new supply social house, so that they can consider their position. If a tenant is not given such notice, the new supply social housing limitation will not apply and (if they are otherwise eligible for RTB) they will be able to purchase the new supply social house. To be effective notice must be given in the prescribed form as set out in SSI 2010 No. 468 (The Limitation on Right to Purchase (Form of Notice) (Scotland) Regulations 2010).

### Mortgage to Rent

Social landlords sometimes acquire properties when the owner has financial difficulties and applies to the Government's Mortgage to Rent scheme. Mortgage to Rent allows owners who are in danger of having their home repossessed, to remain in their home as a tenant, and the house is bought by a social landlord. The provisions introduced by the 2010 Act mean that the house will become a new supply social house and will, therefore, not be available for future purchase under RTB. The owner/prospective tenant will also become a "new tenant" and will, therefore, not have a RTB over this property (or any others in the future, as a result of section 61ZA). Owners must be informed of the effect of selling their home to a social landlord by that social landlord, on their future RTB, at least seven days before conclusion of the missives for sale.

### Police houses

71. The 2010 Act inserts new section 69A into the 1987 Act to permit local authority landlords to refuse applications from tenants to purchase a house which is held by the local authority landlord for the purposes of a police force, such as in its capacity as police authority or joint police board, where the tenant would otherwise have the RTB under section 61.
72. In circumstances where any tenancy of a police house carries the RTB, the landlord may refuse an application to buy the house, provided the landlord has regard to the matters set out in section 69A(3) and (4) In deciding whether or not to refuse the tenant's application, the landlord must have regard to two factors:
- › the likely impact which the proposed purchase would have on police operations and resources; and
  - › any representations by the tenant which indicate special reasons for wishing to purchase the house.
73. In having regard to these two factors, the landlord must consider in particular the following:
- › whether the policing needs of the area in which the house is situated are such that it would be desirable for the house to be occupied by a constable;
  - › whether the landlord is likely to be able reasonably to provide other suitable accommodation for a constable in that area;
  - › whether it is likely that a constable may need to be accommodated in that area at short notice;

- ▶ any representations by the tenant about their state of health, or family associations or other local connection to that area.
74. The power to refuse applications to purchase such houses only applies to tenancies which carry the RTB. Section 154 of the 2010 Act amends schedule 1 to the 2001 Act to ensure that a police tenancy created on or after 1 March 2011 will, in general, not be an SST. Such tenancies will therefore not include the RTB.
75. There are some exceptions to this rule. A tenancy of a police property is not prevented from being an SST in the following circumstances:
- ▶ Where the tenant moved to the house following an order for recovery of possession under section 16(2) of the Housing (Scotland) Act 2001, on any of the grounds set out in paragraphs 9 to 13 and 15 of schedule 2 to that Act.
  - ▶ Where the tenant moved to the house from another house where the landlord erroneously terminated the previous tenancy in the belief that the tenant was not occupying the house; or where the tenant of a house that has been designed for a person with special needs dies and as a result the landlord is required to re-accommodate the tenant.
  - ▶ Where the tenant was re-accommodated by the landlord in the house after moving from another house, the tenancy of which was terminated by written agreement between the landlord and tenant following the landlord's decision to demolish that other house.
  - ▶ Where a tenant's short SST is converted into an SST under section 37 of the 2001 Act.
  - ▶ Where the tenant occupied that, or another police house, under an SST immediately before the creation of the tenancy and agreed to terminate that SST without being given at least 28 days notice before so agreeing that the new tenancy would not be an SST.

### **Houses liable to demolition**

76. Section 70A of 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 will take into account in assessing applications from landlords. Scottish Ministers have specified by order what information should be supplied by landlords in support of the application. See paragraph 78.
77. When an application to purchase is received from an otherwise eligible tenant for a property which a landlord has decided to demolish, 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.
78. As specified in the Order (the Housing (Right to Buy) (Houses Liable to Demolition) (Scotland) Order 2002/317), 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 market value and whether or not the house would be affected by the cost floor rules;
- › details of the applicant's 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 application;
  - information on the demolition timetable as it will affect the RTB 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 demolition decision being taken.

79. The application should be sent to the Deputy Director, Housing Supply Division, Scottish Government, Victoria Quay, Edinburgh EH6 6QQ. There may be a need for follow-up discussions or contact to clarify particular points.
80. Scottish Ministers will make their decision in the light of all the circumstances of the case, but they are required to pay particular attention to the period that is expected to elapse before the demolition takes effect; the extent to which the tenant has been consulted about the demolition proposal; and the implications for his or her RTB 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.
81. A decision on the application for refusal will then be taken by Scottish Ministers as soon as is practicable after receipt of all the relevant information. Scottish Ministers will aim to make a decision within 28 days of receipt of all necessary information.
82. Where the application for authorisation to refuse is granted, the landlord must inform the tenant as soon as practicable. The 1987 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 authorised by Scottish Ministers. If the application for authorisation to refuse is unsuccessful, the landlord must provide the tenant with an offer to sell within one month of Scottish Ministers' decision to refuse or, if later, within the 2-month period indicated in section 63(2) of the 1987 Act following the service of the application to purchase.
83. 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, for example if there is a material change of circumstances such as significant delay in, or the abandonment of, the original demolition proposal.

## The selling price

84. The price to be paid by the purchaser(s) is the market valuation of the property less any discount for which they are eligible, subject to any “cost floor” restrictions set out in a determination under section 62(6A) of the 1987 Act (see paragraph 94 below).

## The market valuation

85. 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 qualified valuer, nominated by the landlord and accepted by the purchaser; or
  - ▶ the district valuer.
86. It is for the landlord to decide whether or not to nominate a qualified valuer.
87. The market value is calculated as if the house were available for sale on the open market with vacant possession at the date of service of the application to buy (section 62(2) of the 1987 Act).
88. No account is to be taken of any element in the market value reflecting an increase in value as a result of works by the tenant, the cost of which would 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. They do not include repair and maintenance works. Sections 28 and 29 of the 2001 Act describe what is eligible and what is not.

## Calculation of Discount

### Under modernised RTB terms

89. The modernised RTB, brought in by the 2001 Act, resulted in significant changes to the way in which the discount was calculated. Under the modernised RTB 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 20 years occupation of a relevant house(s).
90. 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. But as pointed out in paragraph 20, only periods of continuous occupation can be counted. These can be with any relevant social landlord as long as the tenant moved from one tenancy to another without any break, or the landlord decides to disregard any break (see paragraph 21 for instances where this may be appropriate).

91. For joint tenants who are joint purchasers, the discount is calculated according to which has the longest qualifying occupation. If a spouse, cohabitee or civil partner lives together with the tenant at the date the application is made, or the tenant had a deceased spouse, cohabitee or civil partner who lived with them at the time of death, that person's qualifying occupation must be used for the calculation if it is longer than the tenant's own occupation. (The definition of a "spouse" in section 83(3) of the 1987 Act extends it to include civil partners and cohabitees, including those of the same sex.)
92. 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 a landlord if, for example, the house was re-sold within a 3-year period (see paragraphs 96 to 100).
- ▶ 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 or civil partner (if they are living together at the date the application is made), a deceased spouse or civil partner (if living with the tenant at the time of death) and any joint tenant who is a joint purchaser of the house.
  - ▶ Where two or more tenants have previously purchased a property receiving discount and either party purchases a subsequent property through the RTB, 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 discount has been given to two 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.

#### Under preserved RTB terms

93. Tenants who had a RTB entitlement before the introduction of the SST have their discounts calculated in line with the pre-2001 Act provisions for as long as they remain in their current tenancies. Tenants of houses (as opposed to flats) are, therefore, 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 four 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. Years spent in previous tenancies, even where breaks from the social rented sector followed, can count towards discount entitlement.

#### **The cost floor rules**

94. Where the house was acquired or built recently, or where the landlord has incurred substantial expenditure on improvement and repairs on a property which is subject to a RTB application, the "cost floor" rules may apply. The house must have been acquired or built, or the works must have been paid for within the preceding 10 financial years and, with limited exceptions, prior to the date of the application. (The period is set by the Housing (Right to Buy) (Cost Floor) (Scotland) Order 1999 (S.I. 1999/611). If this is the case, the selling price must not be less than the eligible costs.

95. Eligible costs include: the construction, erection or acquisition of the house or the site of the house; works following acquisition required initially to put the property into good repair; other works to the house other than repair and maintenance, and any attributable administrative costs. However, cumulative repair or maintenance costs for the relevant period do count towards the cost floor if they exceed a threshold of £5,500, to the extent that they exceed that amount. A total eligible expenditure of less than £5,000 is ignored. To be included in the specified period, the cost must have been incurred from the start of the financial year which was current 10 years before the date at which 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. Further, and more detailed, information can be found in the guidance, Cost Floor Determination 2002.

### **Recovery of discount**

96. Where a discount is to be given on the purchase price, the formal offer to sell will often be made 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 or other disposal taking place within 3 years from the date of service of a notice of acceptance (of the offer to sell) by the purchaser. Whether or not the landlord records such a security, discount is repayable.
97. Repayment of discount (often known as the “clawback”) is calculated proportionately, starting from the date on which the offer of sale is accepted (received by the landlord). Section 72 of the 1987 Act specifies the proportion of discount recoverable and the circumstances in which this provision will or 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.
98. 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 is likely to precede the date of settlement by several months.
99. As an example: a landlord serves formal offer to sell on tenant in October 2011. Tenant accepts offer by serving formal notice on 1 December 2011. Settlement date agreed 1 February 2012. For discount recovery purposes, the relevant period would be 1 December 2011-30 November 2014.
100. 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(5)(b) of the 1987 Act).

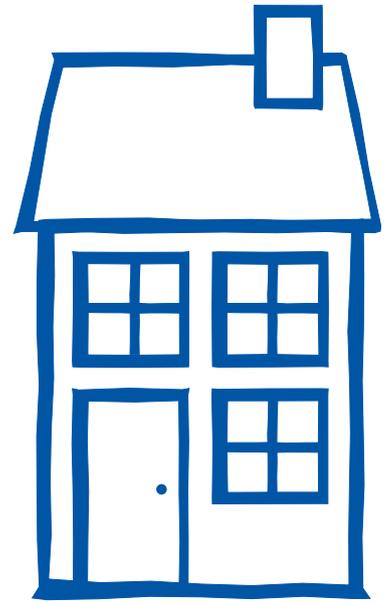
101. Sections 72 and 73 of the 1987 Act specify certain circumstances in which the discount would not be recoverable. These are:
- (i) where there is a disposal of part of the house by one of the parties to the original sale to one of the other parties (e.g. a joint purchaser disposes of their interest to another joint purchaser); or
  - (ii) where there is a disposal of part of the house and the seller continues to occupy the remainder of the property as their only or principal home; or
  - (iii) 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 made for no consideration to a member of the owner's family who has lived with him or her for the previous 12 months, though in this situation the person acquiring the property is subject to the clawback if they dispose of it in the original 3-year period.

### **Sales procedure and conditions of sale**

102. The procedure in relation to RTB sales can be found in sections 63 to 68 of the 1987 Act. Annex A gives an outline of the 1987 Act provisions on sale procedures and conditions.

### **Provision of information**

103. Section 23 of the 2001 Act requires landlords to inform tenants of their rights and obligations under RTB when their SST 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. The Scottish Government booklet "Your Right to Buy your Home – a guide for Scottish Secure Tenants" includes information on how the RTB applies following implementation of the Housing (Scotland) Act 2010, as well as more general information on RTB.



# Annex A

## Sales procedure and conditions of sale

## Annex A – Sales procedure and conditions of sale

### Service of notice

1. This annex summarises the process to be followed in administering the RTB. It sets out the key stages and the timeframe within which they should be met.
2. The purchaser(s) must serve notice to their landlord on claiming the RTB on the statutory RTB application form (APP2). The current form is set out in an Order, the Right to Purchase (Application Form) (Scotland) Order 2011 (SSI 2011/97) and is available for social landlords to download and print. The Scottish Government no longer prints and distributes the application form.
3. When an application is received the landlord should check this application in respect of entitlement under the legislation to buy the house and also for accuracy of completion.

#### Key issues include:

- (a) whether the applicant meets the qualifying criteria (2 or 5 years depending on the RTB entitlement of the tenant) and is not a new social housing tenant; that the applicant is not in arrears with their rent or council tax; that no notice of eviction proceedings has been served on the tenant due to their conduct; that where joint tenants wish to exercise the RTB, all such applicants sign the declaration to this effect; and establishing that the property can be purchased under the RTB, rather than being exempt, in a designated pressured area, new supply social housing, or with a landlord which 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;
    - (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.

### 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 2 months of the application to buy being received (section 63(2), 1987 Act). If the offer of sale is not made within 3 months the selling price can be reduced by the amount of rent incurred due to delay (section 66A requires the tenant to serve a notice after the statutory 2 months have elapsed, with which the landlord has a further month to comply). 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, including future owner-occupier responsibilities with regard to repairs and improvements to common parts or areas, as well as service and factoring charges.
6. The offer from the landlord should also propose a date of entry if the offer is accepted, which is likely to be calculated from the acceptance date. Paragraphs 12-15 below give guidance on the issuing of the offer of sale.

### **Application not proceeding to sale**

7. Where the landlord disputes the tenant's RTB, 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(1) of the 1987 Act, or s.69A(2) where the house is held for police purposes).
8. Where the landlord intends to seek authority from the Scottish Ministers to refuse an application because the property has been specially adapted for persons of pensionable age (section 69 of the 1987 Act), or because the house has been earmarked for demolition (section 70A 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.
9. 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 incorrect (which may include information being missing), a notice of refusal must be served within 2 months of the application having been received (section 68(2), 1987 Act).
10. At the landlord's request, the solicitor acting on its behalf should issue the formal refusal to the tenant, or any agent the tenant has advised is acting on their behalf. As this refusal must normally be issued not later than one month from the date of receipt of the tenant's application to buy or Scottish Ministers' authorisation of refusal, the landlord's solicitor must be advised of the deadline by which the refusal must be issued and how it is calculated. The solicitor will also need to know the basis of refusal, with the material that supports it, if the solicitor has not already been involved in considering the possible refusal of the application.
11. 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. 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, for a finding that he/she does have the RTB (section 68(4) 1987 Act).

## Issue of offer

### Instruction to solicitor

12. 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, or any agent the tenant has advised is acting on their behalf. This formal offer must normally be issued not later than 2 months from the date of receipt of the tenant's application to buy (section 63(2)). 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.
13. The following information should also be passed to the solicitor:
  - (a) the 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.
14. 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 date of offer to accept it. The tenant has one month from the date of offer to propose variation of the conditions in the offer, or to add or remove a joint purchaser, which the landlord should respond to within one month (section 66A(1)).
15. If the landlord fails to meet these time deadlines, or fails to deliver a good title in terms of a concluded 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 landlord's offer to sell within the specified 2 months, then the application can be treated as withdrawn and the sales procedure terminated.

### Conditions of sale

16. Section 64 of the 1987 Act stipulates that no conditions of sale should be introduced which would unreasonably 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 the offer should contain such terms as are necessary to give a marketable title to the house. 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.
17. 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 attached to the sale. This would provide the landlord with first refusal at market value when the property is subsequently made available for sale. In such circumstances and subject to any discount clawback, the landlord would be able to buy the property at market value as determined by the district valuer.

## **Lands Tribunal**

18. Section 65 of the 1987 Act allows for disputes over the conditions of sale to be referred to the Lands Tribunal for Scotland. The time limits for such a referral can be found in section 65(2) of the 1987 Act and are linked to a landlord's refusal to vary a condition.

## **Conclusion of contract of sale**

19. Once a tenant has accepted the conditions attached to the sale, or the landlord has accepted any variation proposed by the tenant, the contract of sale is concluded. It is legally binding on both parties.





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