

# **The Housing Act 1980**

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# THE HOUSING ACT, 1980

by

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# Contents

	<i>Page</i>
1 Introduction and Table of 'Interests' .....	1
2 The Right to Buy for Public Sector Tenants .....	3
3 Security of Tenure and Rights of Secure Tenants .....	15
Secure tenancies .....	15
Terms of a secure tenancy .....	22
Housing management .....	24
Application to existing tenancies .....	27
Application to licenses .....	27
Housing associations .....	27
Interpretation .....	28
4 Private Sector Tenants .....	29
Protected shorthold tenancies .....	29
Assured tenancies .....	31
Rents .....	32
Conversion of controlled tenancies .....	37
Regulated tenancies .....	37
Rent agreements .....	38
Restricted contracts .....	38
Miscellaneous .....	40
Crown Estate etc. ....	40
Housing association etc. tenancies .....	40
Possession proceedings .....	41
Statutory tenancies by succession etc. ....	41
5 Tenant's Repair and Improvements .....	45
6 Jurisdiction and Procedure .....	47
7 Amendment of Part V of Housing Act 1957 .....	49
8 Housing Subsidies .....	53
Local authorities .....	53
Other housing authorities .....	54
Recoupment .....	54
Administration .....	55
Town development subsidy .....	55
Interpretation .....	55

9	Housing: Financial and Related Provisions .....	57
	Repairs and improvements .....	57
	Mortgages and home ownership .....	59
	Other provisions about local authority finance .....	61
10	Housing Associations and the Housing Corporation .....	63
11	General .....	69
	Housing revenue and housing repairs account .....	69
	Service charges .....	69
	Miscellaneous .....	71
	Supplemental and commencement .....	76

## APPENDICES

A	Recent Leading Cases in Housing Law (Supplemental to West's 'Law of Housing' .....	79
B	Amendments to Third Edition of 'Housing Management' .....	87
	Index .....	93

## CHAPTER 1

### Introduction

This Act is on substantially the same lines as the Housing Bill introduced by the Labour Government in 1977, but with the major difference of the introduction of a right for tenants in the public sector to buy their houses. No longer will they depend upon the local council being willing to exercise their discretion to sell or not to sell. Other important features are the introduction of a new form of 'shorthold' tenancy in the private sector and amendments to the period of phasing of rent increases in the private sector, and for housing association rents.

There are in the Act many other new features, some of which will interest people in the local authority sector, some will affect housing association landlords and tenants, others will affect the private sector, and others will be of general interest. Table 1 below indicates which sectors will be likely to affect each sector i.e.

(a) local authorities (b) housing associations, (c) private owners and (d) rent assessment committees.

Those readers who regularly use their copies of 'Housing Management' for reference purposes will find in Appendix B a detailed list of all the amendments which should be made to the main volume to bring it up-to-date with the provisions of the Housing Act 1980. Students will also find this Appendix useful as a means of correlating the law prior to 1980 with the changes made by the new Act.

### COMMENCEMENT

Throughout the text our paragraph numbers coincide with the numbers of the sections in the Act. Commencement dates are indicated where known. Paragraph numbers marked with an asterisk came into operation on 8th August 1980. Both Chapters of Part I came into operation on 3rd October 1980.

TABLE 1  
The Table Indicates which Sections will be of Particular Interest to Groups of Readers

<i>Sections</i>	<i>L.A.<sup>1</sup></i>	<i>H.A.</i>	<i>Pvte.</i>	<i>RAC</i>	<i>Subject</i>
1-27	YES	YES	—	—	Right to buy. Only few H.A.'s involved.
28-34	YES	YES	—	—	Security of tenure.
35-41	YES	YES	—	—	Terms of a secure tenancy.
42-47	YES	YES	—	—	Housing management.
48	YES	YES	—	—	Licences may become secure tenancies.
49	YES	YES	—	—	Exclusion of certain H.A.'s.
51-55	YES	YES	YES	YES	Protected shorthold tenancies.
56-58	YES	YES	—	—	Of limited interest—assured tenancies.
59-63	—	YES	YES	YES	Rents under Part IV of 1977 Act.
64	YES	—	YES	YES	Conversion of controlled to regulated tenancies.
68	YES	—	YES	YES	Rent agreements.
69-72	YES	YES	YES	YES	Restricted contracts. May also affect hostels.
73-79	—	YES	YES	YES	H.A. tenancies under Rent Act 1977 and amendments to Rent Act.
80-85	YES	YES	YES	YES	Tenant's improvements.
86-89	YES	YES	YES	YES	Jurisdiction.
90-95	YES	—	—	—	Housing reviews. Sale of Council Houses.
96-105	YES	—	—	—	Housing subsidies and finance.
106-109	YES	YES	YES	—	Repairs and improvements. Housing Action Areas etc.
110-116	YES	—	YES	—	Mortgages and home ownerships.
117-119	YES	YES	YES	YES	Housing Accounts, Rent rebates and allowances.
120-133	YES	YES	—	—	Housing Associations and the Housing Corporation.
134-135	YES	—	—	—	Housing Revenue and Repairs Accounts.
136	—	YES	YES	YES	Service charges where variable.

<sup>1</sup> 'L.A.' covers both local authorities and new town corporations.

Sections 137 to 149 are miscellaneous and may affect any landlord or tenant. The subjects covered include displacement of residential occupiers by statutory undertakers; housing cooperatives; shared ownership; the Leasehold Reform Act; Leasehold Valuation Tribunals; identity of landlord; multiple occupation; power of local authority to require repair of houses.

Sections 150-155 are supplemental and cover interpretation, titles, and commencement dates.

## CHAPTER 2

### Part I, Chapter I—The Right to Buy for Public Sector Tenants

*All this Chapter came into operation on 3rd October 1980.*

#### 1. Right to buy

Part I of the Act is divided into two Chapters, the first of which deals with the right of a secure tenant as defined in Section 28—see Chapter 3—to buy the house in which he lives, and to have a mortgage thereon. The term ‘secure tenant’, as will be seen in Chapter 3, covers in a general way council house and other public sector tenants, though there are numerous exceptions. The right accrues to tenants when they have been a secure tenant for not less than 3 years but they need not have been ‘secure’ tenants in the same house for the whole period. Nor need the landlord have been the same landlord for the whole period of three years (Section 1). The qualifying period of three years may be the aggregate of two or more separate shorter periods.

By virtue of Section 27(3) the calculation of the three year period can be retrospective and many thousands of tenants became qualified immediately the act was passed. Section 153 indicates that both Chapters I and II of the Act *come into operation 8 weeks after the passing of the Act i.e. on 3rd October 1980.*

There are also provisions dealing with spouses. They can aggregate their qualifying periods as secure tenants. A person who previously purchased a house in the public sector and later became a secure tenant can qualify only if the qualifying period of three years falls wholly after the previous purchase. (Section 1(6)). Where a housing association is affected by this part of the Act (and this would seem to be comparatively rare) and any of their tenants wishes to exercise the right and to have a mortgage, the transaction will be handled by the Housing Corporation as mortgagee (Section 1). See also Housing Corporation Circular 12/80.

#### 2. Exceptions to Right to Buy

The right to buy does not arise unless the landlord owns the freehold (Section 2). Nor does the right to buy arise if the landlord



is (a) a housing trust or a housing association which in either case is also a charity within the meaning of the Charities Act 1960; or (b) a co-operative housing association incorporated under the Industrial and Provident Societies Act 1965 and having rules restricting membership to persons who are tenants or prospective tenants of the association. Most housing associations, including the large charitable trusts, have the charitable object of housing necessitous people and are therefore excepted from Chapter I.

The right to buy is further modified by Schedule 1. This excludes houses:

- (a) where the landlord is a local authority and the dwellinghouse is held by it otherwise than under Part V of the Housing Act 1957.
- (b) where the landlord is a development corporation, the Commission for New Towns or the Development Board for Rural Wales and the dwelling-house is held for purposes other than housing and the landlord is of the opinion that the right to buy ought not to apply to that dwelling-house.
- (c) which have features substantially different from those of an ordinary dwelling-house and which are designed for physically disabled persons.
- (d) which form part of a group of dwelling-houses which it is the practice of the landlord to let to persons of pensionable age and a social service or special facilities are provided nearby for the benefit of such persons.
- (e) where the landlord has, within six weeks of a notice served on it claiming to exercise the right to buy, applied to the Secretary of State for a determination under this paragraph, and the Secretary of State has determined that the right to buy is not capable of being exercised. He *shall* so determine if satisfied that the house is (a) designed or specially adapted for occupation by persons of pensionable age and (b) that it is the practice of the landlord to let it for occupation by such persons.

It will be noticed that (e) is a very involved arrangement by comparison with the previous four categories. This is because it was added in the very last stages of the passage of the Bill, following the rejection of a Lords amendment which would have excluded houses in this category in a clear and definite way. The initiative now lies with each local authority. If it decides to sell old peoples' 'houses' it can go ahead and do so. If it does not wish to sell them it will have to invoke Schedule 1, Part 1, para 5 and seek a determination by the Secretary of State. If the local authority can

satisfy him that conditions (a) and (b) are both met he must make a determination excluding the tenant of that house from the right to buy.

Schedule 1 also excludes the right to buy from tenants against whom a possession order has been made, or where bankruptcy is involved.

It is noteworthy that Section 2(5) gives the Secretary of State wide powers to modify the provisions of this chapter of the Act, including a power to apply the right to buy to houses held otherwise than under Part V of the Housing Act 1957.

### **3. Definitions**

The tenant will be entitled to acquire the freehold if it is a house as defined in Section 3. However, if it forms part of a structure which is divided horizontally into 'dwelling-houses'; or if a material part of it lies above or below the remainder of the structure it will be classed as a 'flat' for the purpose of the Act. It is customary in public housing circles to define a maisonette as a dwelling built on two or more floors which is part of a structure containing other dwellings, some of which are below or above it. Such a dwelling will be a flat for the purposes of the Act. Tenants of 'flats' will not be entitled for legal and practical reasons of support and maintenance to acquire a freehold interest but will be entitled to a lease for not less than 125 years.

Section 3 also defines 'the relevant time'. This is the date on which the tenant's notice claiming to exercise the right to buy is served, except that, if the notice is served within six months of the commencement of the Part of the Act, the 'relevant time' is the date on which this Act is passed. This particular commencement date is 3rd October 1980. Thus, if notice is served by 2nd April 1981 the 'relevant time' is 8th August 1980. If notice is served on or after 3rd April 1981 the valuation will be as at the date of application.

### **4. Joint tenants etc.**

Where a secure tenancy is a joint one the right to buy and the right to a mortgage belong jointly to all of the joint tenants though they may not all use the house as their only or principal home. They may agree among themselves as to which ones shall exercise the right to buy but at least one of the parties to such an agreement must be occupying the dwelling as his only principal home (Section 4). This section also enables a secure tenant exercising his right to buy to name not more than three members of his family who are not joint tenants to share the right with him, and to be treated in all respects

as joint tenants. The tenant may validly do so in the case of any such member only if:

- (a) that other member is his spouse or has been residing with him throughout the period of twelve months ending with the giving of the notice; or
- (b) the landlord consents.

## 5. Notices claiming right to buy

The process of purchase starts with the tenant's notice, as already described. The landlord must, within 4 weeks, either serve on the tenant a written notice admitting his claim or a notice denying his right, and giving reasons. The period of 4 weeks is extended to 8 weeks where the qualifying period of three years includes a period when the current landlord was not the landlord upon which the tenant's notice was served (Section 5). The tenant may at any time withdraw his notice by serving notice in writing upon the landlord.

## 6. Purchase price

The purchase price is dealt with in Section 6. In the case of a grant of the freehold of a house, it will be the vacant possession freehold market value at the relevant time (as defined in para 3), less an allowance for the covenant covering disposals and subject to the appropriate discount as described below. In the case of a lease it will be the market value on the assumption that the vendor is granting a lease for 125 years with vacant possession at a ground rent not exceeding £10 per annum, less an allowance for the covenant concerning disposals and subject to the appropriate discount. The discount is, one supposes, in recognition of the fact that the landlord is not, in fact, in a position to sell with vacant possession.

In either case it has to be assumed (a) that the tenant does not want to buy or to take a lease (in other words he has not a special interest in bidding for the freehold or the lease) or (b) that the house will be conveyed or leased (as the case may be) with the rights and burdens imposed by the Act e.g. the obligation to repay all or part of the discount if the house is sold within 5 years.

In making the valuation any improvements made by the tenant or a member of his family are to be disregarded, and no reduction is to be made in respect of his failure to keep the dwelling-house in good internal repair.

Certain other 'assumptions' which govern the basis of valuation are set out in this section.

## 7. Discounts

In accordance with Section 7 the discount from the market value varies from 33 per cent to 50 per cent according to the length of the period for which the tenant has been a secure tenant. i.e. it starts at 33 per cent and rises by 1 per cent for each complete year by which the qualifying period exceeds three years. By virtue of Section 27(3) this includes periods prior to the passing of the Act for which the person would have been a secure tenant had the Act then been in force. However, in respect of any house let for the first time as a secure tenancy since 31st March 1974 the discount must not reduce the price below the cost of providing the dwelling-house, except in such cases as the Secretary of State may allow. The Secretary of State has further powers under Section 7 to determine maximum discounts, and the discount shall not in any case reduce the price by more than such sum as he may by order prescribe. There are complicated provisions in this section as to the way in which the period governing the amount of discount is to be assessed. There is provision for taking into account periods during which the tenant or his spouse occupied accommodation provided for him or her as a member of the regular armed forces (sub-section 5).

S.I. 1980 N° 1342 prescribes the sum of £25,000 as the maximum sum by which the price payable on a conveyance or grant may be reduced.

It will be observed that the time factor and other conditions governing the entitlement to discount are considerably tighter than those governing the 'right to buy'.

## 8. Repayment of discount

The covenant prescribed in Section 8(1) replaces the right of the pre-emption with which one is familiar under earlier enactments dealing with the sale of Council houses. Now, if there is a discount the purchaser will have to covenant to repay the whole amount of the discount less 20 per cent for each year which has elapsed after the conveyance or grant of a lease and before disposal. Thus in 5 years the amount repayable is reduced to NIL. Disposal is defined in Section 8(3). It does not include mortgage terms. There is exemption for disposals in pursuance of an order under the Matrimonial Causes Act 1973; or under Section 2 of the Inheritance (Provision for Family and Dependants) Act 1975; or a vesting in a person taking under a will or an intestacy.

The liability which may arise under this covenant shall be a charge on the dwelling-house (Section 8(4)). The liability arises only on the first disposal after the right to buy has been exercised.

## **9. Right to a mortgage**

Section 9 provides the amount which the tenant is entitled to leave outstanding, or have advanced, on a mortgage, is the aggregate of:

- (a) the purchase price, net of discount,
- (b) landlord's costs as defined in Section 21,
- (c) any costs incurred by the tenant and defrayed on his behalf by the landlord or the Housing Corporation.

But this aggregate must not exceed a figure arrived at by multiplying the tenant's income by a certain factor. Similar rules apply where there is more than one purchaser. The Secretary of State has power to determine the factor and to make other regulations for calculating the 'income' under this clause. Where this income rule reduces the amount which the tenant is entitled to leave outstanding, the landlord may treat the tenant as entitled to an advance above the limit but not exceeding the aggregate laid down in (a), (b) and (c) above.

## **10. Notice of purchase and right to a mortgage**

Where the tenant has claimed the right to buy, and it has been admitted or established, Section 10 provides that the landlord must, as soon as practicable, serve on the tenant a notice setting out the price at which, in the opinion of the landlord, the tenant is entitled to have the freehold conveyed or the long lease granted to him; and the provisions which, in the opinion of the landlord, should be contained in the conveyance or grant. The 'relevant' notice must state:

- (a) the value at the relevant time (see para 3 above);
- (b) the discount to which the tenant is entitled under Section 7(5) and how this is calculated in relation to sub-sections (2) and (4) of Section 7 and
- (c) any 'disregards' for tenants improvements or failure to keep the house in good internal repair

The notice must also inform the tenant of his right to have the value determined or re-determined by the district valuer; of his right to a mortgage; and of the effects of sections 12 and 16(4) of the Act.

## **11. Determinations by District Valuer**

As already stated the tenant has the right to have the value determined by the District Valuer. In certain circumstances the landlord also has a right to have the value re-determined by the

District Valuer. Section 11 sets out the procedures to be followed, ending with the service of the 'relevant notice' on the tenant. See sub-sections (5) and (6).

## **12. Claim to a mortgage**

A tenant wishing to exercise his right to a mortgage can only do so by serving written notice on his landlord (or, if the landlord is a housing association, on the Housing Corporation) under Section 12. This must be done within three months of the service by the landlord of the relevant notice under either Section 10 or 11(5) as above. The landlord may extend the period, on reasonable grounds, or the question may be referred to the county court.

The landlord (or the Housing Corporation) must then serve a notice on the tenant stating:

- (a) the amount which, in their opinion, the tenant is entitled to leave outstanding or have advanced on mortgage; and
- (b) how that amount has been arrived at; and
- (c) the provisions which they think should be contained in the mortgage deed.

The notice must also advise the tenant of his right to defer completion under Section 16, sub-sections (4) and (8). The necessary forms must be sent with the notice.

## **13. Change of secure tenant**

Section 13 deals with the position where there is a change in the person who is regarded as the secure tenant under the same tenancy during the progress of the steps towards a conveyance or a lease, for example, where the applicant has died and his widow has succeeded him, and wishes to continue the process of purchase.

## **14. Change of landlord**

Similarly, Section 14 deals with the situation which arises when there is a change of landlord during the process. The new landlord simply steps into the shoes of the old one.

## **15. Children succeeding parents**

Section 15 deals with the question of children succeeding a deceased secure tenant and how the qualifying periods for (1) the right to buy, and (2) for discount calculations, may be determined. This is related to the definition in Section 50(3).

If a child of a deceased tenant succeeds to the tenancy the landlord may recognise the whole or part of his period of residence with the parent, after the child has reached 16 years of age, for the

purpose of reckoning his right to buy or to have a discount, or both.

## 16. Completion

The duties of landlords and tenants to take the necessary steps to achieve completion are set out in Section 16. Of particular interest is the tenant's right to defer completion if (a) he has claimed the right to a mortgage, and (b) the amount which he is entitled to leave outstanding, or to have advanced on mortgage, is less than the aggregate purchase price plus costs under Section 9(1), and (c) he has served on the landlord due notice claiming his right to defer completion and has paid a deposit of £100.

Where these conditions are satisfied the completion may be deferred for two years. The landlord shall extend (or further extend) this period if there are reasonable grounds. If the landlord fails to do so the county court may by order do so for him. If the tenant does not then complete, the deposit will be refunded. If the tenant does complete the deposit will be treated as an instalment of the purchase price. There are many provisions for extensions of notices. The landlord is not bound to complete if the tenant is in arrears, but this right lapses if the arrears are paid or reduced below 4 weeks rent.

## 17. Conveyances and leases

Section 17 provides that the conveyance of the freehold or the grant of a lease must be carried out in conformity with Schedule 2 which deals with routine matters such as rights of support, rights of way, covenants, assignments in the case of leases, and so on. There are important provisions in paras 16 and 17 of the schedule as to liability for structural defects.

## 18. Terms of the mortgage deed

The mortgage deed must under Section 18 provide for the repayment of the loan by equal instalments of principal and interest. The term shall be 25 years unless the mortgagor opts for a shorter period. The mortgagee may extend the term if it so wishes. The deed may contain such other terms as may be agreed between the parties, or determined by the county court to be reasonable. There is a power for the Secretary of State to prescribe additional terms or to vary those laid down in Section 18, but only in relation to deeds executed after his order comes into force.

## **19. Dwellings in National Parks and areas of outstanding natural beauty**

Section 19 applies to a dwelling-house situated in a National Park; or an area designated under the National Parks and Access to the Countryside Act 1949 as an area of outstanding natural beauty; or an area designated by order of the Secretary of State as a rural area.

It provides that where a conveyance, or grant of a lease, relates to such a dwelling-house there may be a covenant limiting the freedom of the tenant and his successors in title to dispose of the dwelling-house.

S.I. 1980 N°1345 deals with certain National Parks and areas of outstanding natural beauty and extends the designated area to which Section 19 applies to cover not only the Park or area of natural beauty itself but also the rest of the county in which the dwelling-house is situated.

The general limitation is that, until such time, if any, as may be notified by the landlord, there will be no disposal (as defined in sub-section (8)) without the written consent of the landlord. However, such consent is not to be withheld if the disposal is to a person who has throughout a period of three years immediately preceding the application for consent (a) had his place of work in a designated region which forms part of the 'Park' or 'area of natural beauty etc.' OR (b) has his only or principal home in such a region. The period of three years may be made up partly of periods under (a) and partly periods under (b), and the region need not have been the same throughout.

Alternatively, if the Secretary of State (or, where the landlord is a housing association, the Housing Corporation) consents the general limitation may be replaced by a limitation as follows. That limitation is that, within a period of ten years from the conveyance or grant, there will be no disposal unless the tenant (or his successor in title) has offered to reconvey the property (or to surrender the lease) to the landlord for a consideration, and the landlord has refused the offer, or has failed to accept it within one month after it was made. The consideration is to be the value of the dwelling-house at the time the offer is made, and, in default of agreement between the parties, the amount is to be determined by the district valuer. The valuation is to be on the same 'assumptions' as those referred to in Section 6(3) or 6(4).

However, if the offer was made within five years of the conveyance or grant to the tenant, the consideration is to be reduced on the basis laid down in Section 8(3) for the recovery of discounts in whole or in part.



## **20. Registration of title**

Section 20 deals with formalities connected with the title. If the house is not already registered under the Land Registration Act 1925 it is to become so when the conveyance or grant is effected.

## **21. Costs**

Section 21 regulates the position with regard to costs as between landlord and tenant. It prohibits landlords charging their costs to tenants, except that costs in connection with mortgages may be so charged up to a limit to be prescribed by the Secretary of State.

## **22. Notices**

Section 22 gives the Secretary of State power to prescribe the form and content of any notice under this Chapter. A notice may be served by post, in the case of a housing association, may be served by the tenant at the principal office of the association or the office with which the tenant usually deals.

## **23. Secretary of State's power to intervene**

Where it appears to the Secretary of State that tenants generally, or a tenant or tenants of a particular landlord, or the tenants of a particular description of landlords have, or may have, difficulty in exercising the right to buy effectively and expeditiously, he may use his powers under Section 23 to intervene. He must first give the landlord, or landlords, notice in writing of his intention to use these powers, and it is to be assumed that any such notice shall be deemed to have been given 72 hours after it has been sent.

In effect the Secretary has power to step into the shoes of landlords and to take any action which they might have taken to enable secure tenants to exercise the right to buy and the right to a mortgage. However, he is not obliged to take all the steps which a landlord might be obliged to take under this part of the Act. The powers include a power to recover from the landlord authority any costs which the Secretary of State may incur in carrying out the landlord's duties under this Chapter of the Act. The powers also enable the Secretary of State to require any officer to produce any information or produce any document specified by the Secretary.

## **24. Vesting orders**

For the purpose of conveying a freehold or granting a lease under the powers referred to in Section 23, the Secretary of State may under Section 24 execute a document, to be known as a vesting