

EAST AYRSHIRE COUNCIL

HOUSING COMMITTEE – 21 MARCH 2002

MODERNISED RIGHT TO BUY

Report by Director of Homes and Technical Services

1. PURPOSE OF THE REPORT

- 1.1 The purpose of the report is to provide members with information on the draft guidance and orders issued by the Scottish Executive for the implementation of the Modernised Right to Buy provisions (MRTB) contained within part 2 of the Housing (Scotland) Act 2001.

2. BACKGROUND

- 2.1 The Housing (Scotland) Act 2001 received Royal Assent on 18th July 2001. The Act makes significant changes to many areas of housing law and in particular within part 2 of the Act makes changes to the existing Right to Buy provisions contained within the Housing (Scotland) Act 1987. Whilst a commencement order has not yet been issued in respect of part 2 of the Act it is anticipated that the relevant provisions of the Act will become effective in September 2002. The main changes to the existing right to buy provisions are summarised in Paragraph 3 of this report.
- 2.2 In addition it should be noted that Section 108 of the Housing (Scotland) Act 2001 implemented on 1 October 2001 has a limited application to the rights of existing secure tenants both in relation to their rights to succession and the discount entitlement which they enjoy should they determine to exercise their right to buy. The introduction of this Interpretation /Definition Section means that at the time of an application for succession to tenancy or an application to purchase being received, it is necessary not only to consider a Spouse's right to succeed or to discount but also the rights of a partner

3. CHANGES

- 3.1 The proposals by the Scottish Executive are for a modernised right to buy. However secure tenants of local authorities and those tenants of registered social landlords including housing associations who enjoy a preserved right to buy at the date of implementation of the relevant provisions within the Housing (Scotland) Act 2001 will retain all existing rights enjoyed by them in terms of the Housing (Scotland) Act 1987 in relation to their right to buy the house which they currently occupy.

However assured tenants, predominately tenants of registered social landlords including housing association tenants at the date of implementation of the relevant provisions of the Housing (Scotland) Act 2001 and with certain limited exceptions detailed below any tenants of local authorities granted a new tenancy including new tenancies created as a result of transfers, exchanges or assignments after the date of implementation of the relevant provisions of the Housing (Scotland) Act 2001 will only have entitlement to the new modernised right to buy.

The exceptions to the general rule in respect of new local authority tenancies are tenancies created following succession to tenancy between spouses /partners, or joint tenants, tenancies created where the landlord has sought to recover possession of the existing tenancy on any of the management grounds specified in sections 9 to 15 of Schedule 2 of the Housing (Scotland) Act 2001 and tenancies created by agreement following a decision by the landlord to demolish the property currently tenanted even if formal recovery proceedings have not been instigated. In these circumstances the tenants will continue to enjoy in respect of their new tenancies the benefit of the existing right to buy provisions.

3.2 The main changes to the right to buy provisions can be summarised as follows:

- All tenants of all registered social landlords including housing associations, with the exception of those with charitable status who do not presently enjoy the right to buy will acquire the modernised right to buy. The right to buy for tenants of registered social landlords who presently do not have the right to buy will not take effect for a period of up to 10 years.
- The minimum length of occupation to qualify for the modernised right to buy will increase from 2 years to 5 years and must be continuous occupation
- The maximum discount available to tenants will be greatly restricted. The modernised right to buy will contain a maximum discount of 35% of the market value of the house or £15,000 whichever is the lower. Accordingly there will be a financial limit on the discount. That maximum amount can be varied by order made by the Scottish Ministers. It is not indexed linked.
- The minimum discount available to tenants following the 5 year qualifying period will be reduced from 30% for a house (or 40% in the case of a flat) to only 20% for both types of property, increasing by 1% for every year of continuous occupation up to a maximum of 35%.
- The right to buy can be suspended in pressured areas. Pressured areas are defined in Section 45 of the Housing (Scotland) Act 2001 which will insert a new Section 61B into the Housing (Scotland) Act 1987 This will allow the Scottish Ministers to designate any part of a local authority's area to be a "pressured area" if the need for registered social rented accommodation substantially exceeds the amount which is likely to be available and the exercise of the right to buy is likely to increase the extent by which those needs exceed the amount of such housing accommodation. Pressured areas will be designated for periods of up to 5 years and so long as an area is designated the right to buy will be suspended except for those Tenants living in the area whose tenancies were created before the introduction of the Scottish Secure Tenancy provided that such Tenants had an existing Right to Buy and have not succeeded to their tenancy after the introduction of the Scottish Secure Tenancy. Discussions on how "pressured areas" will be designated continue, between East Ayrshire and the Scottish Executive.
- A right to buy application can be refused by the Landlord where the tenant has rent arrears, council tax arrears or water and sewerage charge arrears. It should be noted that , unlike the provisions in respect of pressured areas, this provision applies to all tenants including those entitled to purchase under the existing right to buy provisions In addition the Act introduces a provision that when a tenant applies to buy from a

registered social landlord i.e. Housing Association the association tenant must obtain a certificate from the local authority confirming that they are up to-date with council tax and water and sewerage charges. When the local authority receives such a request from the tenant of a housing association they must issue a certificate, free of charge, within 21 days.

- The right to buy can be suspended if eviction proceedings on any of the conduct grounds specified in sections 1 to 7 of Schedule 2 of the Housing (Scotland) Act 2001 have commenced at the date of application to purchase. This provision again equally applies to all tenants including those entitled to buy in terms of the existing right to buy provisions This will mean that the right to buy is suspended if the landlord has commenced eviction proceedings by the service of an appropriate notice of intention to raise proceedings prior to the date of application to purchase. The right to buy will be reinstated if the notice has ceased to be in force or has been withdrawn or the proceedings have been raised and finally determined. However if the tenant has applied to exercise the right to buy before the service of the notice of intention to raise proceedings then their right to buy still applies.
- The right to buy can be suspended where the house is subject to a demolition order.
- Landlords will be able to offer financial incentives to tenants to purchase houses in the private sector, commonly known as "portable discounts". This is provided for in Section 50 of the 2001 Act and amends Section 66 of the Housing (Scotland) Act 1988.
- The rent to loan scheme is abolished.
- The duty on landlords to offer mortgages to tenants exercising the right to buy, where the Tenant has been unable to obtain a Building Society or Bank loan, is also abolished.

4. FINANCIAL AND LEGAL IMPLICATIONS

- 4.1 In view of the changes to the qualifying periods of occupation and the reduction in the discounts available to tenants wishing to apply, it is anticipated that number of Council tenants applying to buy their house may fall resulting in a possible reduction in the levels of the Capital Receipts to the Housing Revenue Account in future financial years from the sales of Council Houses.
- 4.2 The Council requires to comply with its statutory obligations in terms of the Housing (Scotland) Act 2001 in connection with the introduction of the Modernised Right to Buy provisions as set out in Paragraph 3 of this Report.

5. RECOMMENDATIONS

- 5.1 It is recommended that Members note the content of this report.

James Lavery
Director of Homes and Technical Services
5 March 2002

LIST OF BACKGROUND PAPERS

NIL

For further information please contact Joseph Cassidy, Policy Manager on 01563 576617

AGENDA