

them about the local housing authority's wishes and the consequences of the proposed disposal and notify them that they may make representations to the Secretary of State. HATs must consider the results of the consultation process and inform the minister about them when they apply for consent. The minister is not obliged to follow the wishes of the local authority or the tenants (s84).

It is anticipated that most disposals after estates have been regenerated will be to housing associations or to private sector landlords who have received Housing Corporation approval. The Secretary of State's consent may be given generally or only in respect of particular land and may be subject to conditions. Any disposal made without consent is void unless only one house is transferred to an individual (s80).

If property disposed of is rented under a secure tenancy, the Secretary of State's consent is needed for any further disposals. The Secretary of State must consult with the tenants and consider their responses before giving such approval (s81). However, there is no tenants' veto. The Housing Corporation may provide legal assistance to tenants after properties have been transferred (s82).

Where it appears to HATs that they have achieved their objects, they are to dispose of their remaining property and submit proposals to the Secretary of State for the dissolution of the trust. The Secretary of State may dissolve HATs by statutory instrument and at the same time provide for the transfer of any remaining property or functions. The minister does not have to follow the HAT's proposals.

OTHER PROVISIONS

Right to buy

The Act makes various amendments to the right to buy scheme (HA 1985 Pt V);

- s122 amends HA 1985 s131 which sets a limit to the total amount of discount which can be given to a tenant exercising the right to buy ("the cost floor provision"). The amendment provides that the purchase price shall not be reduced below the amount of costs incurred by the landlord over the preceding eight years. It was brought into force on 10 March 1989 by Housing Act 1988 (Commencement No 3) Order 1989 SI No 203;

- s123 deletes HA 1985 Sch 5, paras 6 and 8. Accordingly, the right to buy is extended to apply to premises designed or adapted to make them suitable for disabled people, unless the property is one of a group which it is the landlord's practice to let to physically disabled persons. This section was not in force at 6 March 1989;

- s124 provides a new sanction for tenants who consider that a landlord is delaying in processing a right to buy application. Two new sections are inserted in HA 1985. Section 135A enables a tenant to serve "an initial notice of delay", claiming that a landlord has failed to comply with a prescribed time limit or that the landlord's delay is preventing the tenant from exercising the right to buy expeditiously. The notice must specify a period of not less than a month in which the landlord must serve a counter-notice. If the landlord fails to serve a counter-notice stating that it has complied with the missed time limit or completing the outstanding action within the specified period, the tenant may serve "an operative notice of delay" which brings s153B into effect. This means that any rent payments (but not payments in respect of rates or service charges) made between the date of the notice and such time as the landlord serves a counter-notice are treated as payments on account of the purchase price, which is reduced accordingly. If delay continues for more than a year after the date of the notice, each £1 paid in respect of rent is treated as £1.50 towards the purchase price. Section 124 came into force on 10 March 1989 (see Housing Act 1988 (Commencement No 3) Order 1989);

- ss125 and 126 amend the restrictions on letting houses in national parks and modify restrictions on the right to buy such houses (see HA 1985 ss37 and 157);

- ss127 and 128 make alterations to the preservation of the right to buy on disposal to a private sector landlord (see HA 1985 ss171A, 171B and 171C, to be inserted by Housing and Planning Act 1986 s8, which was not in force on 6 March 1989).

Grants to obtain accommodation

Section 129 enables local housing authorities to set up schemes, with the approval of the Secretary of State, to make grants to "qualifying tenants or licensees" to assist them in buying accommodation or carrying out works to a dwelling-house to provide additional accommodation. Individual local authority schemes can specify the definition of "qualifying tenants", the circumstances in which grants can be made and the amount of such grants.

Correction

"The Housing Act 1988: 1 The private sector" (January 1989 *Legal Action* 14) was written before the Act itself was available, using versions of the Bill from its latter stages in Parliament. Unfortunately this meant that two errors crept into the article. First, it was wrongly stated that in view of the levels of damages recoverable under ss27 and 28 (damages for unlawful eviction) proceedings would often have to be brought in the High Court. That is not correct. Section 40 provides that county courts have jurisdiction whatever the level of damages and that court costs are not recoverable if proceedings are brought in the High Court. Second, it was stated that there could be only one succession to a statutory tenancy after the Act came into force. That is incorrect - there can still be two such successions - see Sch 4 para 6.

HOUSING

CASE NOTE: Requirement that secure tenant occupies dwelling as only or principal home

Notting Hill Housing Trust v Etoria (1988) 18 November, Bloomsbury County Court, HHJ Dobry QC

Facts: In January 1983 the plaintiff housing trust granted the defendant a weekly secure tenancy of a small flat. The defendant resided there until 28 October 1986, when he was convicted of murder and sentenced to life imprisonment, with no recommendation as to term. The defendant's brother continued in occupation of the flat. The plaintiff served a notice to quit, and claimed possession on the ground that the defendant had ceased to occupy the flat as his home, so that the tenant condition under Housing Act 1985 s81 was not fulfilled and the tenancy accordingly was not a secure tenancy under the Act. The judge accepted the defendant's evidence that he continued to regard the flat as his home; that his brother lived there as a caretaker, and that in 1995 the defendant's case would be reviewed by a parole board with the possible result that he would then be released on licence.

Held: (applying *Brickfield Properties Ltd v Hughes* (1987) 20 HLR 108):

- (1) The defendant's prolonged absence placed an evidential burden on him to establish an intention to return.
- (2) That burden had been discharged to the extent that it was not disputed that the defendant did intend to return to the flat as and when released from prison, and there were outward and visible signs of that intention, by reason of the continued occupation of his brother and the presence of the defendant's furniture.
- (3) Although the case was borderline, the defendant's evidence established a real, or practicable, possibility of his intention to return being realised in 1995. A period of eight years from the service of the notice to quit, although a very long time, was, in the circumstances, reasonable.
- (4) Accordingly, the defendant continued to enjoy a secure tenancy under the Housing Act 1985, and the plaintiff's claim for possession would be dismissed.

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