



SCOTTISH EXECUTIVE

Development Department
Housing Division 2

Victoria Quay
Edinburgh EH6 6QQ

Directors of Housing, Scottish Local Authorities
Directors of Registered Social Landlords
Chief Executive, Communities Scotland, CoSLA
Director of Scottish Federation of Housing Associations
Director, Chartered Institute of Housing in Scotland
Other interested bodies

Telephone: 0131-244 5579
Fax: 0131-244 0948
malcolm.clark@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

Your ref:
Our ref: HDK/2/10

29 August 2002

Dear Sir/Madam,

RIGHT TO BUY - CHANGES TO THE "COST FLOOR" RULES

1. We wrote to you on 25 February 2002 outlining proposals for some relatively minor changes to the right to buy 'cost floor' rules. By the deadline for replies in May, 18 organisations had responded. Of these, 13 responses came from local authorities, 3 from RSLs and one each from the SFHA and the CML.
2. All the respondents either supported the proposed changes or submitted a nil response: none indicated any opposition. As a result, the changes proposed in the letter of 25 February have been made to the determination. These allow for costs associated with all 'initial works' to be counted towards the cost floor calculation and update the determination in line with changes arising from the Housing (Scotland) Act 2001.
3. Five respondents also submitted additional proposals, primarily suggesting that the cost floor be extended. However, these responses came from a very small proportion of those consulted and went beyond the remit of the exercise. Therefore, no further action is being taken at this time on proposals to extend the cost floor. If any respondents would like to discuss their submissions, they should contact me.
4. In addition, one RSL sought confirmation that the cost of adaptations can be included in the cost floor. We believe that adaptations are covered by section 5(1)(e) of both the previous and new determination.
5. Unrelated to the consultation exercise, we were contacted by a local authority regarding circumstances concerning a tenant who had submitted an application to buy their home. The council raised the case of the RTB applicant because their home had previously burned down. Even though the repairs were covered by insurance, the expenditure was included in the cost floor, leading to the council recouping the monies twice (at least partially), whilst the applicant had to pay costs which had already been recovered. We believe this position is unfair and goes beyond the purpose of the cost floor rules. Consequently, a new section 5(2) has been introduced into the rules to deal with work which is, or would normally be, covered by an insurance policy in the name of the landlord.

6. As well as considering responses from social housing providers and related interest organisations, a Scottish Executive solicitor indicated that the wording of paragraph 5(3) of the determination should be tightened to avoid misunderstandings. Consequently, the wording of the new determination has been changed to make it absolutely clear that only repair or maintenance costs in excess of £5,500 should be counted towards the cost floor calculation.

Changes to the Determination

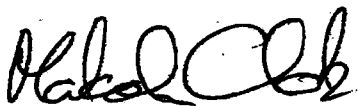
7. A copy of the new cost floor determination is attached. The changes made are as follows:

- section 5(1)(c) has been amended to allow for costs associated with 'initial works' following acquisition from any other landlord to be included in the cost floor calculation;
- the list of relevant landlords has been moved from section 5(2) to section 6(6);
- a new section 5(2) introduces provisions to ensure that costs which are or would normally be covered by an insurance policy in the name of the landlord are not counted towards the cost floor;
- a slight change of wording in section 5(3) clarifies that only repair or maintenance costs in excess of £5,500 should be counted;
- a new section 6(4) has been introduced to recognise the use of registered social landlord as a term for relevant housing providers and some other references have been altered to update the determination in line with the Housing (Scotland) Act 2001.

8. You will note from the determination that these changes are due to take effect from 30 September 2002, the same date from which we anticipate that the other alterations to the right to buy will come into force. You may wish to take steps to inform tenants you believe could be affected by these changes.

9. If you want further information on the amendments to the cost floor rules or the wider changes to the right to buy, please get in touch.

Yours faithfully,



Malcolm Clark
Housing Policy Officer

The Housing (Scotland) Act 1987 (Right to buy) (Cost Floor) Determination 2002

The Scottish Ministers, in exercise of the powers conferred on them by section 62(6A) of the Housing (Scotland) Act 1987⁽¹⁾, and of all other powers enabling them in that behalf, hereby make the following determination:—

Citation, Commencement and Interpretation

1.—(1) This determination may be cited as the Housing (Scotland) Act 1987 (Right to Buy) (Cost Floor) Determination 2002 and shall come into operation on 30 September 2002.

(2) In this determination—

“the Act” means the Housing (Scotland) Act 1987;

“cost floor” means the amount mentioned in section 62(6A) of the Act;

“costs” do not include any internal accounting transfer between different accounts of the same landlord;

“officer of a registered social landlord” has the same meaning as in section 83(1) of the Housing (Scotland) Act 2001⁽²⁾;

“registered housing association” means a housing association registered under the Housing Associations Act 1985;

“registered social landlord” means a body registered in the register maintained under section 57 of the Housing (Scotland) Act 2001;

“relevant works” has the meaning given by paragraph 5 below.

The cost floor

2. Subject to paragraph 9 below, the cost floor for any house in respect of which the right to buy is exercised shall be an amount equal to the aggregate of the costs attributable to the house which are to be treated in accordance with the following provisions of this determination as relevant costs incurred in the period commencing with the beginning of the financial year of the landlord which was current ten years prior to the date of service of the application to purchase the house.

Costs to be treated as incurred in the period specified in paragraph 2

3. Costs shall be treated as incurred in the period specified in paragraph 2 if payment for them was made during that period.

4. Costs incurred on any relevant works shall not be treated as relevant costs if payment for them is made on or after the date of service of the tenant’s application to purchase under section 63(1) of the Act unless—

⁽¹⁾ 1987 c.26. Section 62 was amended and subsection (6A) added by the Housing (Scotland) Act 1988 c.43, section 65. The period specified in subsection (6A) was amended by the Housing (Right to Buy) (Cost Floor) (Scotland) Order 1999 (S.I. 1999 No. 611 (S.35)).

⁽²⁾ 2001 asp 10.

- (a) the landlord has before that date entered into a written contract for the carrying out of the works; or
- (b) the tenant has agreed in writing to the carrying out of the works and either the works have been carried out not later than the date of service of the landlord's offer to sell under section 63(2) of the Act or the works will be carried out under the terms of the contract of sale.

Relevant costs

5.—(1) Subject to the following provisions of this determination, costs shall be treated as relevant costs if they have been incurred by the landlord on relevant works, namely—

- (a) the construction, erection or acquisition of the house;
- (b) acquisition of the site of the house;
- (c) works initially required following the acquisition of the house by the landlord to put it into good repair or to deal with any defect affecting it (“initial works”), unless the house was acquired under Part XIV of the Act (Assistance for Owners of Defective Housing);
- (d) subject to sub-paragraph (2) below, works of repair or maintenance, except initial works (as described in sub-paragraph (c) above);
- (e) other works to the house, except initial works (as described in sub-paragraph (c) above) or works of repair or maintenance;
- (f) administrative costs attributable to the matters mentioned in sub-paragraphs (a) to (e).

(2) For the purposes of this determination relevant costs do not include all or any part of the costs incurred on relevant works where such works consist of reinstatement which have been carried out as a result of damage to the house and where –

- (a) the landlord has recovered the cost of these works under an insurance policy; or
- (b) such damage is an insurable risk and the cost of these works would be covered in the terms of a standard buildings insurance policy in the name of a landlord.

(3) For the purposes of sub-paragraph (1)(d) above, the costs of repairs or maintenance to be included in the calculation of the cost floor are the cumulative costs incurred in the relevant period, but only the amount in excess of £5,500.

Houses acquired from certain other public sector landlords

6.—(1) Costs (if any) incurred by the landlord on the acquisition of the house shall not be treated as relevant costs if the house was acquired from any of the landlords mentioned in sub-paragraph (6) below.

(2) Costs which are attributable to the house and which were incurred by the landlord from whom the house was acquired shall be treated as relevant costs incurred during the

period specified in paragraph 2 if they would have been so treated had that landlord remained the landlord of the house.

(3) Where the previous landlord is a registered housing association falling within section 61(4)(b) to (f) of the Act (as those provisions applied before the commencement of the Housing (Scotland) Act 2001), the provisions of this determination shall apply for the purposes of sub-paragraph (2) above notwithstanding the exclusions from the right to buy in section 61(4)(b) to (f) of the Act.

(4) Where the previous landlord is a registered social landlord falling within section 61(4)(c) to (e) of the Act as amended by the Housing (Scotland) Act 2001, the provisions of this determination shall apply for the purposes of sub-paragraph (2) above notwithstanding the exclusions from the right to buy in section 61(4)(c) to (e) of the Act.

(5) This paragraph shall apply with necessary modifications in relation to any previous acquisition of the house from a landlord mentioned in sub-paragraph (6) below.

(6) The landlords referred to in sub-paragraphs (1) and (5) above are—

- (a) a local authority, or a joint board or committee of 2 or more local authorities;
- (b) a water or sewerage authority in Scotland;
- (c) a new town development corporation (including an urban development corporation);
- (d) Scottish Homes;
- (e) a registered housing association;
- (f) a registered social landlord;
- (g) a housing co-operative;
- (h) a police authority in Scotland;
- (i) a fire authority in Scotland.

(7) In this paragraph—

“acquisition” includes any transfer by or under any enactment; and

“house” includes a partly completed house.

Re-acquisition of houses previously sold at a discount

7.—(1) Where the house was previously disposed of by the landlord (or a predecessor of his) and subsequently re-acquired in circumstances in which discount was recovered in whole or in part, only the net costs of the re-acquisition shall be taken into account in arriving at the cost floor in accordance with the provisions of this determination.

(2) In this paragraph “net costs” means costs net of any discount recovered.

