

**2011 Fixed-Term Tenant Purchase Scheme –
Outline of General Terms and Guidance Notes for local authorities.**

These notes are for general guidance only and do not purport to be a legal interpretation. The primary legislation and Regulations which apply to this Scheme are listed at note 22 below.

1. Who is eligible?

This scheme only applies to local authority tenants of more than 10 years standing.

2. What about tenants with 10 years or less than 10 years standing?

If a tenant does not qualify for the 2011 scheme, they may qualify for the 1995 scheme which has a maximum of 30% discount. The 1995 scheme remains in place for now and applications under it should continue to be accepted and processed. It is the intention to terminate this (1995) scheme in 2012, when planned legislation is enacted providing for the introduction of a discount scheme based on the incremental purchase model.

3. How is length of tenancy calculated?

The length of tenancy is calculated in accordance with Regulation 6 of the 2011 Regulations. These provisions are similar to those of the 1995 scheme, including provisions allowing a widow/widower/civil partner to benefit from the tenancy of deceased spouse/civil partner and a successor to a tenancy to benefit from the tenancy of the previous tenant in certain circumstances. Once the reckonable period goes over any number of years plus 6 months, it is rounded up to the next number of years. The length of tenancy is calculated to the date of the completion of the sale, or to 31 December 2011, whichever is *earlier*. If the sale closes in 2012, the length of tenancy may only be calculated to 31 December 2011.

4. When is the closing date for applications?

This is a fixed-term scheme under which applications may only be accepted up to 31 December 2011. This date is fixed in the Regulations.

5. When is the last date for finalising the sale?

Provided an application is received by the closing date (see Note 4 above) the sale must be completed by 31 December **2012** at the latest. This date is fixed in the Regulations.

6. What discount is available under the 2011 scheme?

The maximum discount on market value is 45% - at a rate of 3% per year of tenancy up to 15 years maximum. Market value is explained at note 14.

7. What other allowances are there to reduce the price?

After the discount for length of tenancy, a further allowance will be made in respect of the amount of any capital paid by the purchaser or his or her spouse or civil partner to the authority under the terms of any previous purchase of the dwelling, provided the capital has not already been repaid to the purchaser.

8. Is the €3,810 grant available under this scheme?

No. The €3,810 discount (equivalent of the now-terminated £3,000 new house grant) given under the 1995 scheme is not allowed for under the 2011 scheme.

9. Is Shared Ownership an option in this scheme?

No. There is no provision for sale by Shared Ownership under this scheme. Sales will be effected in fee simple, by Transfer Order. The form of Transfer Order which should be used for sales under this Scheme is prescribed in the Schedule to the 2011 Regulations.

10. To which houses does the scheme apply?

Exclusions

Dwellings which are excluded from sale under the 2011 scheme by the Regulations are as follows -

- houses provided for elderly persons,
- apartments
- houses that, in the opinion of the housing authority, should not be sold for reasons of housing stock management, or on account of their structural condition, or proposed improvement works (eg remedial works, regeneration areas or similar),
- caravans and mobile homes etc, and
- traveller group housing.

In addition to the general exclusions provided for in the Regulations, an individual housing authority may, also, by making provision in its Purchase Scheme, specifically exclude a class or classes of dwellings from sale under the 2011 scheme.

Inclusions

As a general rule, housing specially adapted for use by persons with a disability should be included in the scheme – as under the 1995 scheme. Local authorities may still exclude particular houses for reasons of housing stock management – see above.

11. Can an authority refuse to sell a particular dwelling or refuse to sell to a particular tenant?

A housing authority may not sell a dwelling which is of a class excluded under the Regulations or a class excluded under its own purchase scheme. (See note 10 above). A housing authority may refuse to sell a dwelling to a tenant in a case of anti-social behaviour. The provisions of the Housing (Miscellaneous Provisions) Act, 1997 are relevant. Section 14(2) of that Act provides that a housing authority may refuse to sell a dwelling to a tenant in a case of anti-social behaviour or where a sale to that tenant would not be in the interest of good estate management.

12. What special conditions apply to the house once it has been purchased?

The purchaser and/or his/her family must live in the house for 20 years, unless the local authority gives consent to relax this condition. If the purchaser wishes to sell the house within 20 years, the consent of the local authority must be obtained. This consent may be refused in certain circumstances. These conditions are similar to those applied in the 1995 scheme.

13. Houses are sold in their existing condition

Houses will be sold in their existing condition and there is no warranty as to the state of repair or condition or fitness for human habitation of any house sold under the scheme. A local authority is not obliged to bring a house up to a certain standard before sale. All responsibility for the repair and maintenance of the house shall rest with the purchaser after the sale.

14. What does "market value" mean?

The price payable is the market value, reduced by the discount (see note 6) and any allowances (see note 7). "Market value" is defined in Regulation 2, and means the amount which, in the opinion of the housing authority, the dwelling, if sold on the open market in its existing state of repair and condition and not subject to special conditions, might reasonably be expected to realise. The amount will be reduced by the market value of any material

improvements carried out by the tenant, at the tenant's expense. And, in a case where the site was provided for a nominal value to the authority by the tenant, the market value of the house will reflect the nominal value of the site only. This definition is similar to that applied under the existing 1995 tenant purchase scheme.

15. How are properties valued?

Authorities are responsible for obtaining initial valuation of properties. Whether the valuation is carried out by the authority's own professional valuation staff, or by private sector valuers with professional indemnity insurance, there is a clear obligation on the authority to ensure that proper valuations reflecting the real market value of the property are obtained for each house being sold. In the event that a valuation is disputed by a tenant, a second valuation (provided by a qualified person agreeable to both parties) may be obtained. The cost of getting the second valuation should be borne by the tenant. The extent to which an authority revises their original valuation is a matter entirely for the authority. The issue may be referred for arbitration if necessary and, in event of difficulty, can be referred to the Valuation Office for a definitive determination if needs be. In appropriate cases, consideration might be given to providing an indicative range of valuations for houses of a similar type in the same area as a guide for prospective purchasers. Any increase in the market value due to authorised improvement works carried out at the tenant's expense should be disregarded.

16. Who bears the costs of the sale?

The actual costs associated with the transfer of the house – valuation, legal, land registry – should be borne by the housing authority and may be deducted from the proceeds and retained as revenue before the proceeds are posted to the Capital Account. The costs associated with any mortgage loan must be borne by the purchaser.

Stamp Duty payable (after 1 April 2011) on the conveyance should be paid by the purchaser –the maximum is set at €100. See note 17 below.

17. Recent changes to Stamp Duty

Recent changes in the Finance Act, 2011, removed the general exemption from stamp duty for conveyance, transfer or lease of a house, building or land by a housing authority. However, any stamp duty chargeable is set at a maximum of €100. These provisions come into effect for instruments executed on or after 1 April 2011 (Section 64 of Finance Act, 2011 refers).

18. How may a purchase be funded?

Similar to the 1995 scheme, purchases may be funded by mortgage loan from a commercial institution, by local authority loan or from tenants' own resources. In cases where a cash or

lump sum is proposed to be provided as part or all of the purchase money, the usual checks as to the source of the funds should be carried out, similar to the checks carried out in relation to local authority loan applications.

19. Local authority loans and credit policy

If a prospective purchaser wishes to apply for a local authority loan, the usual procedure of application and credit checking applies, in line with the Housing (Local Authority Loans) Regulations, 2009 and associated Credit Policy. In the event that a local authority loan is used to purchase a property under this tenant purchase scheme, a proportion of the loan amount should be taken from the purchase money and held in reserve against possible bad debt liabilities. This proportion may be set by the authority, but should not be less than 10%.

20. Loans from a commercial lending agency

Where a tenant purchaser whose application to purchase has been approved in principle proposes to seek loan finance from a commercial agency, the housing authority should provide him or her with the usual detailed offer letter and any necessary information to produce to the lender when applying for the loan.

21. Adoption of a Purchase Scheme

Each housing authority must adopt a purchase scheme in accordance with the 2011 Regulations. A scheme should be adopted by 15 April 2011 at the latest. Adoption is a reserved function. A Model Scheme is attached at Appendix 2, which may be used as a guide. Individual sales under tenant purchase are not subject to individual resolutions under section 183 of Local Government Act, 2001 (see subsection 183 (2) of Local Government Act 2001).

22. What are the main legislative provisions relevant to this 2011 tenant purchase scheme?

- Sections 89 and 90 of the Housing Act, 1966, as amended. An informal, consolidated version of the updated text of these provisions is attached for ease of reference at Appendix 4 of this Circular.
- Housing (Miscellaneous Provisions) Act, 1997, in particular section 14.
- Housing (Sale of Houses to Long-Standing Tenants) Regulations, 2011 (SI No 82 of 2011) (attached at Appendix 3 to this Circular). These Regulations include a prescribed Form of Transfer Order.

Social Housing (Supply) Section,

Department of the Environment, Heritage and Local Government, February 2011.