



# Housing Act 1988

## 1988 CHAPTER 50

### PART I

#### RENTED ACCOMMODATION

#### CHAPTER V

##### PHASING OUT OF RENT ACTS AND OTHER TRANSITIONAL PROVISIONS

#### **34 New protected tenancies and agricultural occupancies restricted to special cases**

- (1) A tenancy which is entered into on or after the commencement of this Act cannot be a protected tenancy, unless—
- (a) it is entered into in pursuance of a contract made before the commencement of this Act; or
  - (b) it is granted to a person (alone or jointly with others) who, immediately before the tenancy was granted, was a protected or statutory tenant and is so granted by the person who at that time was the landlord (or one of the joint landlords) under the protected or statutory tenancy; or
  - (c) it is granted to a person (alone or jointly with others) in the following circumstances—
    - (i) prior to the grant of the tenancy, an order for possession of a dwelling-house was made against him (alone or jointly with others) on the court being satisfied as mentioned in section 98(1)(a) of, or Case 1 in Schedule 16 to, the Rent Act 1977 or Case 1 in Schedule 4 to the Rent (Agriculture) Act 1976 (suitable alternative accommodation available); and
    - (ii) the tenancy is of the premises which constitute the suitable alternative accommodation as to which the court was so satisfied; and
    - (iii) in the proceedings for possession the court considered that, in the circumstances, the grant of an assured tenancy would not afford the

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required security and, accordingly, directed that the tenancy would be a protected tenancy; or

- (d) it is a tenancy in relation to which subsections (1) and (3) of section 38 below have effect in accordance with subsection (4) of that section.

(2) In subsection (1)(b) above “protected tenant” and “statutory tenant” do not include—

- (a) a tenant under a protected shorthold tenancy;  
 (b) a protected or statutory tenant of a dwelling-house which was let under a protected shorthold tenancy which ended before the commencement of this Act and in respect of which at that commencement either there has been no grant of a further tenancy or any grant of a further tenancy has been to the person who, immediately before the grant, was in possession of the dwelling-house as a protected or statutory tenant;

and in this subsection “protected shorthold tenancy” includes a tenancy which, in proceedings for possession under Case 19 in Schedule 15 to the Rent Act 1977, is treated as a protected shorthold tenancy.

(3) In any case where—

- (a) by virtue of subsections (1) and (2) above, a tenancy entered into on or after the commencement of this Act is an assured tenancy, but  
 (b) apart from subsection (2) above, the effect of subsection (1)(b) above would be that the tenancy would be a protected tenancy, and  
 (c) the landlord and the tenant under the tenancy are the same as at the coming to an end of the protected or statutory tenancy which, apart from subsection (2) above, would fall within subsection (1)(b) above,

the tenancy shall be an assured shorthold tenancy (whether or not it fulfils the conditions in section 20(1) above) unless, before the tenancy is entered into, the landlord serves notice on the tenant that it is not to be a shorthold tenancy.

(4) A licence or tenancy which is entered into on or after the commencement of this Act cannot be a relevant licence or relevant tenancy for the purposes of the Rent (Agriculture) Act 1976 (in this subsection referred to as “the 1976 Act”) unless—

- (a) it is entered into in pursuance of a contract made before the commencement of this Act; or  
 (b) it is granted to a person (alone or jointly with others) who, immediately before the licence or tenancy was granted, was a protected occupier or statutory tenant, within the meaning of the 1976 Act, and is so granted by the person who at that time was the landlord or licensor (or one of the joint landlords or licensors) under the protected occupancy or statutory tenancy in question.

(5) Except as provided in subsection (4) above, expressions used in this section have the same meaning as in the Rent Act 1977.

### **35 Removal of special regimes for tenancies of housing associations etc**

(1) In this section “housing association tenancy” has the same meaning as in Part VI of the Rent Act 1977.

(2) A tenancy which is entered into on or after the commencement of this Act cannot be a housing association tenancy unless—

- (a) it is entered into in pursuance of a contract made before the commencement of this Act; or

- (b) it is granted to a person (alone or jointly with others) who, immediately before the tenancy was granted, was a tenant under a housing association tenancy and is so granted by the person who at that time was the landlord under that housing association tenancy; or
  - (c) it is granted to a person (alone or jointly with others) in the following circumstances—
    - (i) prior to the grant of the tenancy, an order for possession of a dwelling-house was made against him (alone or jointly with others) on the court being satisfied as mentioned in paragraph (b) or paragraph (c) of subsection (2) of section 84 of the Housing Act 1985; and
    - (ii) the tenancy is of the premises which constitute the suitable accommodation as to which the court was so satisfied; and
    - (iii) in the proceedings for possession the court directed that the tenancy would be a housing association tenancy; or
  - (d) it is a tenancy in relation to which subsections (1) and (3) of section 38 below have effect in accordance with subsection (4) of that section.
- (3) Where, on or after the commencement of this Act, a registered housing association, within the meaning of the Housing Associations Act 1985, grants a secure tenancy pursuant to an obligation under section 554(2A) of the Housing Act 1985 (as set out in Schedule 17 to this Act) then, in determining whether that tenancy is a housing association tenancy, it shall be assumed for the purposes only of section 86(2)(b) of the Rent Act 1977 (tenancy would be a protected tenancy but for section 15 or 16 of that Act) that the tenancy was granted before the commencement of this Act.
- (4) A tenancy or licence which is entered into on or after the commencement of this Act cannot be a secure tenancy unless—
- (a) the interest of the landlord belongs to a local authority, a new town corporation or an urban development corporation, all within the meaning of section 80 of the Housing Act 1985, a housing action trust established under Part III of this Act or the Development Board for Rural Wales; or
  - (b) the interest of the landlord belongs to a housing co-operative within the meaning of section 27B of the Housing Act 1985 (agreements between local housing authorities and housing co-operatives) and the tenancy or licence is of a dwelling-house comprised in a housing co-operative agreement falling within that section; or
  - (c) it is entered into in pursuance of a contract made before the commencement of this Act; or
  - (d) it is granted to a person (alone or jointly with others) who, immediately before it was entered into, was a secure tenant and is so granted by the body which at that time was the landlord or licensor under the secure tenancy; or
  - (e) it is granted to a person (alone or jointly with others) in the following circumstances—
    - (i) prior to the grant of the tenancy or licence, an order for possession of a dwelling-house was made against him (alone or jointly with others) on the court being satisfied as mentioned in paragraph (b) or paragraph (c) of subsection (2) of section 84 of the Housing Act 1985; and
    - (ii) the tenancy or licence is of the premises which constitute the suitable accommodation as to which the court was so satisfied; and

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- (iii) in the proceedings for possession the court considered that, in the circumstances, the grant of an assured tenancy would not afford the required security and, accordingly, directed that the tenancy or licence would be a secure tenancy; or
  - (f) it is granted pursuant to an obligation under section 554(2A) of the Housing Act 1985 (as set out in Schedule 17 to this Act).
- (5) If, on or after the commencement of this Act, the interest of the landlord under a protected or statutory tenancy becomes held by a housing association, a housing trust, the Housing Corporation or Housing for Wales, nothing in the preceding provisions of this section shall prevent the tenancy from being a housing association tenancy or a secure tenancy and, accordingly, in such a case section 80 of the Housing Act 1985 (and any enactment which refers to that section) shall have effect without regard to the repeal of provisions of that section effected by this Act.
- (6) In subsection (5) above “housing association” and “housing trust” have the same meaning as in the Housing Act 1985.

### **36 New restricted contracts limited to transitional cases**

- (1) A tenancy or other contract entered into after the commencement of this Act cannot be a restricted contract for the purposes of the Rent Act 1977 unless it is entered into in pursuance of a contract made before the commencement of this Act.
- (2) If the terms of a restricted contract are varied after this Act comes into force then, subject to subsection (3) below,—
- (a) if the variation affects the amount of the rent which, under the contract, is payable for the dwelling in question, the contract shall be treated as a new contract entered into at the time of the variation (and subsection (1) above shall have effect accordingly); and
  - (b) if the variation does not affect the amount of the rent which, under the contract, is so payable, nothing in this section shall affect the determination of the question whether the variation is such as to give rise to a new contract.
- (3) Any reference in subsection (2) above to a variation affecting the amount of the rent which, under a contract, is payable for a dwelling does not include a reference to—
- (a) a reduction or increase effected under section 78 of the Rent Act 1977 (power of rent tribunal); or
  - (b) a variation which is made by the parties and has the effect of making the rent expressed to be payable under the contract the same as the rent for the dwelling which is entered in the register under section 79 of the Rent Act 1977.
- (4) In subsection (1) of section 81A of the Rent Act 1977 (cancellation of registration of rent relating to a restricted contract) paragraph (a) (no cancellation until two years have elapsed since the date of the entry) shall cease to have effect.
- (5) In this section “rent” has the same meaning as in Part V of the Rent Act 1977.

### **37 No further assured tenancies under Housing Act 1980**

- (1) A tenancy which is entered into on or after the commencement of this Act cannot be an assured tenancy for the purposes of sections 56 to 58 of the Housing Act 1980 (in this section referred to as a “1980 Act tenancy”).

- (2) In any case where—
  - (a) before the commencement of this Act, a tenant under a 1980 Act tenancy made an application to the court under section 24 of the Landlord and Tenant Act 1954 (for the grant of a new tenancy), and
  - (b) at the commencement of this Act the 1980 Act tenancy is continuing by virtue of that section or of any provision of Part IV of the said Act of 1954,section 1(3) of this Act shall not apply to the 1980 Act tenancy.
- (3) If, in a case falling within subsection (2) above, the court makes an order for the grant of a new tenancy under section 29 of the Landlord and Tenant Act 1954, that tenancy shall be an assured tenancy for the purposes of this Act.
- (4) In any case where—
  - (a) before the commencement of this Act a contract was entered into for the grant of a 1980 Act tenancy, but
  - (b) at the commencement of this Act the tenancy had not been granted,the contract shall have effect as a contract for the grant of an assured tenancy (within the meaning of this Act).
- (5) In relation to an assured tenancy falling within subsection (3) above or granted pursuant to a contract falling within subsection (4) above, Part I of Schedule 1 to this Act shall have effect as if it consisted only of paragraphs 11 and 12; and, if the landlord granting the tenancy is a fully mutual housing association, then, so long as that association remains the landlord under that tenancy (and under any statutory periodic tenancy which arises on the coming to an end of that tenancy), the said paragraph 12 shall have effect in relation to that tenancy with the omission of sub-paragraph (1)(h).
- (6) Any reference in this section to a provision of the Landlord and Tenant Act 1954 is a reference only to that provision as applied by section 58 of the Housing Act 1980.

### **38 Transfer of existing tenancies from public to private sector**

- (1) The provisions of subsection (3) below apply in relation to a tenancy which was entered into before, or pursuant to a contract made before, the commencement of this Act if,—
  - (a) at that commencement or, if it is later, at the time it is entered into, the interest of the landlord is held by a public body (within the meaning of subsection (5) below); and
  - (b) at some time after that commencement, the interest of the landlord ceases to be so held.
- (2) The provisions of subsection (3) below also apply in relation to a tenancy which was entered into before, or pursuant to a contract made before, the commencement of this Act if,—
  - (a) at the commencement of this Act or, if it is later, at the time it is entered into, it is a housing association tenancy; and
  - (b) at some time after that commencement, it ceases to be such a tenancy.
- (3) On and after the time referred to in subsection (1)(b) or, as the case may be, subsection (2)(b) above—
  - (a) the tenancy shall not be capable of being a protected tenancy, a protected occupancy or a housing association tenancy;

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- (b) the tenancy shall not be capable of being a secure tenancy unless (and only at a time when) the interest of the landlord under the tenancy is (or is again) held by a public body; and
  - (c) paragraph 1 of Schedule 1 to this Act shall not apply in relation to it, and the question whether at any time thereafter it becomes (or remains) an assured tenancy shall be determined accordingly.
- (4) In relation to a tenancy under which, at the commencement of this Act or, if it is later, at the time the tenancy is entered into, the interest of the landlord is held by a new town corporation, within the meaning of section 80 of the Housing Act 1985, subsections (1) and (3) above shall have effect as if any reference in subsection (1) above to the commencement of this Act were a reference to—
- (a) the date on which expires the period of two years beginning on the day this Act is passed; or
  - (b) if the Secretary of State by order made by statutory instrument within that period so provides, such other date (whether earlier or later) as may be specified by the order for the purposes of this subsection.
- (5) For the purposes of this section, the interest of a landlord under a tenancy is held by a public body at a time when—
- (a) it belongs to a local authority, a new town corporation or an urban development corporation, all within the meaning of section 80 of the Housing Act 1985; or
  - (b) it belongs to a housing action trust established under Part III of this Act; or
  - (c) it belongs to the Development Board for Rural Wales; or
  - (d) it belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department.
- (6) In this section—
- (a) “housing association tenancy” means a tenancy to which Part VI of the Rent Act 1977 applies;
  - (b) “protected tenancy” has the same meaning as in that Act; and
  - (c) “protected occupancy” has the same meaning as in the Rent (Agriculture) Act 1976.

### **39 Statutory tenants: succession**

- (1) In section 2(1)(b) of the Rent Act 1977 (which introduces the provisions of Part I of Schedule 1 to that Act relating to statutory tenants by succession) after the words “statutory tenant of a dwelling-house” there shall be inserted “or, as the case may be, is entitled to an assured tenancy of a dwelling-house by succession”.
- (2) Where the person who is the original tenant, within the meaning of Part I of Schedule 1 to the Rent Act 1977, dies after the commencement of this Act, that Part shall have effect subject to the amendments in Part I of Schedule 4 to this Act.
- (3) Where subsection (2) above does not apply but the person who is the first successor, within the meaning of Part I of Schedule 1 to the Rent Act 1977, dies after the commencement of this Act, that Part shall have effect subject to the amendments in paragraphs 5 to 9 of Part I of Schedule 4 to this Act.

- (4) In any case where the original occupier, within the meaning of section 4 of the Rent (Agriculture) Act 1976 (statutory tenants and tenancies) dies after the commencement of this Act, that section shall have effect subject to the amendments in Part II of Schedule 4 to this Act.
- (5) In any case where, by virtue of any provision of—
- (a) Part I of Schedule 1 to the Rent Act 1977, as amended in accordance with subsection (2) or subsection (3) above, or
  - (b) section 4 of the Rent (Agriculture) Act 1976, as amended in accordance with subsection (4) above,
- a person (in the following provisions of this section referred to as “the successor”) becomes entitled to an assured tenancy of a dwelling-house by succession, that tenancy shall be a periodic tenancy arising by virtue of this section.
- (6) Where, by virtue of subsection (5) above, the successor becomes entitled to an assured periodic tenancy, that tenancy is one—
- (a) taking effect in possession immediately after the death of the protected or statutory tenant or protected occupier (in the following provisions of this section referred to as “the predecessor”) on whose death the successor became so entitled;
  - (b) deemed to have been granted to the successor by the person who, immediately before the death of the predecessor, was the landlord of the predecessor under his tenancy;
  - (c) under which the premises which are let are the same dwelling-house as, immediately before his death, the predecessor occupied under his tenancy;
  - (d) under which the periods of the tenancy are the same as those for which rent was last payable by the predecessor under his tenancy;
  - (e) under which, subject to sections 13 to 15 above, the other terms are the same as those on which, under his tenancy, the predecessor occupied the dwelling-house immediately before his death; and
  - (f) which, for the purposes of section 13(2) above, is treated as a statutory periodic tenancy;
- and in paragraphs (b) to (e) above “under his tenancy”, in relation to the predecessor, means under his protected tenancy or protected occupancy or in his capacity as a statutory tenant.
- (7) If, immediately before the death of the predecessor, the landlord might have recovered possession of the dwelling-house under Case 19 in Schedule 15 to the Rent Act 1977, the assured periodic tenancy to which the successor becomes entitled shall be an assured shorthold tenancy (whether or not it fulfils the conditions in section 20(1) above).
- (8) If, immediately before his death, the predecessor was a protected occupier or statutory tenant within the meaning of the Rent (Agriculture) Act 1976, the assured periodic tenancy to which the successor becomes entitled shall be an assured agricultural occupancy (whether or not it fulfils the conditions in section 24(1) above).
- (9) Where, immediately before his death, the predecessor was a tenant under a fixed term tenancy, section 6 above shall apply in relation to the assured periodic tenancy to which the successor becomes entitled on the predecessor’s death subject to the following modifications—

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- (a) for any reference to a statutory periodic tenancy there shall be substituted a reference to the assured periodic tenancy to which the successor becomes so entitled;
  - (b) in subsection (1) of that section, paragraph (a) shall be omitted and the reference in paragraph (b) to section 5(3)(e) above shall be construed as a reference to subsection (6)(e) above; and
  - (c) for any reference to the coming to an end of the former tenancy there shall be substituted a reference to the date of the predecessor's death.
- (10) If and so long as a dwelling-house is subject to an assured tenancy to which the successor has become entitled by succession, section 7 above and Schedule 2 to this Act shall have effect subject to the modifications in Part III of Schedule 4 to this Act; and in that Part "the predecessor" and "the successor" have the same meaning as in this section.