

# Housing Law

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### **Suggested modus operandi for dealing with tenancies**

1. What form of tenancy is it? (i.e. which legal code covers it.)
2. Does it satisfy the appropriate statutory definition?
3. What security of tenure is there for that type of tenancy?
4. What rules govern the payment of rent for that type of tenancy?
5. How is that form of tenancy terminated?
6. What principles of the general law relating to leases may apply?

### **Important Note**

These materials do not purport to be a complete textbook on housing law nor anything like it. The statutory materials are a selection intended for a half-day workshop on the basics of housing law: they do not reproduce all of the provisions which you may require (including statutory instruments). Familiarity with the contents of these materials does not replace the need for you to research any issue in full. No reliance should be placed solely on these materials in giving client advice, and no responsibility is accepted for any inclusion or omission in these materials and any loss or harm caused thereby.

## **What is housing law?**

Housing law, as the term is generally understood, relates to the leasing of homes (as opposed to the acquisition of freehold interests in the home). Housing law divides between private sector leases and public sector leases. Public sector leases relate primarily to property rented from local authorities, although the term is also used to cover property leased from housing associations, housing action trusts and similar bodies by some commentators. The Housing Act 1985 deals primarily with local authority lets, although later legislation has not drawn this distinction between public sector and private sector lets in the way that housing law once did.

Given that housing law is concerned with leases, the underpinnings of much of housing law relates to the general law of leases (as studied in land law courses). Therefore, these materials begin with an overview of the general law of leases. In considering whether or not a lease has been created, one should begin with fundamental questions as to whether or not a lease has been created, and if so what type of lease.

For our purposes we will focus primarily on the Housing Act 1988 and the “assured shorthold tenancy” and the “assured tenancy” which are the two models of lease created under that Act. The general law of leases tells us whether or not a lease has been properly created at all, and then if such a lease falls within one of the Housing Act 1988 regimes then that Act governs the manner in which that lease can be terminated, how its rent can be altered and so forth.

The purpose of housing legislation, therefore, is to amend the ordinary law of leases as it applies to particular forms of statutory lease which were created for macroeconomic goals involving encouraging landlords to make more rental property available and to provide for an identified level of security of tenure for the tenant.

There were other housing acts – the Rent Act 1977 creating protected tenancies and the Housing Act 1985 creating secure tenancies – which created different statutory codes offering greater security of tenure. We will consider these Acts in outline also.

The general law of leases is also important in relation to the sorts of covenant which be implied in leases – for example as to quiet enjoyment – and as to how express leases will be interpreted. Leases which fall outside the statutory codes will be governed entirely by the general law of leases. Therefore, it is important to consider whether or not any given lease falls within the statutory definitions of the various forms of statutory tenancy. The statutory provisions for any given statutory lease will however override the principals of the general law of leases (e.g. as to the mechanism for termination of a lease); but the general law of leases will govern leases which do not fall within the statutory codes.

Finally, there is legislation which imposes criminal liability on people who interfere with the rights of occupants under leases and under licences without first obtaining a court order – primarily the Protection from Eviction Act 1977, and also some provisions in the Housing Act 1988.

# The General Law of Leases

# The General Law of Leases

## A. The distinction between leases and licences

### 1. The nature of a lease

s.205 (1)(ii), Law of Property Act 1925

s.1 (1), Law of Property Act 1925 - “term of years absolute”

### 2. The distinction between a lease and a licence

#### 2.1 The leading cases

##### **2.1.1 The core test:-**

*Street v. Mountford* [1985] A.C. 809 (exclusive possession for a term at a rent)

##### **2.1.2 Co-habitants & exclusive possession:-**

*A.G. Securities v. Vaughan* [1990] 1 A.C. 417 per Lord Oliver of Aylmerton

*Antoniades v. Villiers* [1990] 1 A.C. 417 (H.L.)

*Mikeover v. Brady* [1989] 3 All E.R. 618

##### **2.1.3 What is the “true bargain”?**

*Aslan v. Murphy; Duke v. Wynne* [1989] 3 All E.R. 130

#### 2.2 Specific cases

##### 2.2.1 Lodgings

*Street v. Mountford* [1985] 2 A.C. 809 (H.L.)

*Bradley v. Bayliss* (1881) 8 Q.B.D. 195 (C.A.)

*Crancour v. De Silvaesa* (1987) 18 H.L.R. 47 (C.A.)

*Aslan v. Murphy* [1989] 3 All E.R. 130, 133

*Vandersteen v. Agius* (1992) 65 P. & C.R. 26 (C.A.)

*Westminster City Council v. Clarke* [1992] 2 W.L.R. 229.)

##### 2.2.2 Employees

*Street v. Mountford* [1985] A.C. 805

*Norris v. Checksfield* [1991] 1 W.L.R. 1241

*Hughes v. Greenwich L.B.C.* (1992) 65 P. & C.R. 12, CA, affd [1994] 1 A.C. 170 HL

*Elvidge v. Coventry City Council* [1994] Q.B. 241 (C.A.)

## B. The various types of lease

### 3. Types of lease

#### 3.1 Fixed term tenancies

3.2 Periodic tenancy  
*Hammersmith v. Monk* [1992] 1 A.C. 478

3.3 Tenancy at Will  
*Heslop v. Burns* [1974] 1 W.L.R. 1241

3.4 Tenancy at Sufferance

#### **4. Formation of a Legal Lease**

##### 4.1 formalities

ss. 52, 54(2) LPA 1925

s.2, Law of Property (Miscellaneous Provisions) Act 1989

s.52(1) LPA 1925

All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.

s.54(2) LPA 1925

Nothing in the foregoing ... shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years ...

s.2(1) LP(MP)A 1989

A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each.

##### 4.2 doctrine of maximum certain duration

*Lace v. Chantler* [1944] K.B. 368

*Prudential Assurance Co. Ltd v. London Residuary Body* [1992] 2 A.C. 386

### **C. Leasehold Covenants**

#### **5. Express leasehold covenants**

##### 5.1 To Pay Rent

*Redmond v. Dainton* [1920] 2 K.B. 256 – loss of premises

*National Carriers Ltd. v. Panalpina (Northern) Ltd.* [1981] A.C. 675 – frustration, not 20 months out of 10 year lease

##### 5.2 Not to Assign

s.19, Landlord and Tenant Act 1927

s.1, Landlord and Tenant Act 1988

*Houlder Bros. v. Gibbs* [1925] Ch. 575

*International Drilling Fluids v. Louisville Investments* [1986] Ch 513 CA – general guidance on reasonableness

1. If the lease is silent, T may sub-let, etc.

2. Where there is an absolute prohibition on assignment L can enforce it strictly but retains the discretion to waive the covenant.
3. Where the prohibition on assignment is dependent upon the permission or consent of L, s.19 Landlord and Tenant Act 1985 implicates in any such clause a standard of reasonableness.

*s.19 Landlord and Tenant Act 1927*

19(1) In all leases ... containing a covenant condition or agreement against assigning, under-letting, charging or parting with the possession of demised premises or any part thereof without licence or consent, such covenant condition or agreement shall ... be deemed to be subject -

(a) to a proviso to the effect that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent

*s.1 Landlord and Tenant Act 1988*

1(3) Where there is served on the person who may consent to a proposed transaction a written application by the tenant for consent to the transaction, he owes a duty to the tenant within a reasonable time -

(a) to give consent, except in a case where it is reasonable not to give consent,

(b) to serve on the tenant written notice of his decision whether or not to give consent specifying in addition -

(i) if the consent is given subject to conditions, the conditions,

(ii) if the consent is withheld, the reasons for withholding it.

(4) Giving consent subject to any condition that is not a reasonable condition does not satisfy the duty ...

## **6. Covenants in relation to condition of the premises**

### **6.1 Obligations to maintain repair**

Landlord and Tenant Act 1985, ss.8, 11-13, leases less than 7 years  
Defective Premises Act 1972, s.4, tortious liability

#### **6.1.1 What is meant by the term “repair”?**

*Lister v. Lane* [1893] 2 QB 212

“However large the words of the covenant may be, a covenant to repair a house is not a covenant to give a different thing from that which the tenant took when he entered into the covenant. He has to repair the thing which he took; he is not obliged to make a new and different thing ... [it depends on the] nature and condition of the house itself ...”

*Holding Management v. Property Holdings* [1990] 1 All ER 938 - *per* Nicholls LJ

- nature of the building
- terms of the lease
- nature and extent of defect
- value and expected lifespan of building
- likelihood of recurrence
- impact of works on use and enjoyment
- circumstances vary from case to case

*Post Office v. Aquarius Properties* [1987] 1 All E.R. 1055 – flooded basement, only repair to original condition



### 6.1.2 When does a duty to repair arise?

\**Quick v. Taff Ely* [1985] 3 All ER 321

"The evidence shows that there was considerable condensation on the walls, windows and metal surfaces in all rooms of the house. Water had frequently to be wiped off the walls; paper peeled off walls and ceilings, woodwork rotted, particularly inside and behind the fitted cupboards in the kitchen. Fungus or mould growth appeared in places and particularly in the two back bedrooms, and some of these have become rotten. Additionally in the bedrooms condensation caused the nails used for fixing the ceiling plasterboard to sweat and there was some perishing of the plaster due to excessive moisture." - per Dillon LJ.

*O'Brien v. Robinson* [1973] A.C. 912 – inform landlord

*Hafton Properties v. Camp* [1994] 1 E.G.L.R. 67, difference between public sector lets and private sector lets

## **6.2 Public sector lets**

\**Liverpool City Council -v- Irwin* [1977] AC 239, H of L – reasonable care to keep in reasonable repair.

*Duke of Westminster v. Guild (CA)* [1985] QB 688 – different for commercial lettings

*O'Leary -v- Islington LB* (1983) 9 HLR 81 – limitation on local authority obligations

*Collins -v- Northern Ireland Housing Executive* [1984] 17 NIJB, Transcript, p.21 – mere inconvenience or real impossibility

## **6.3 Fitness for Human Habitation**

At common law:-

*Smith -v- Marable* (1843) 11 M & W 5 – common law rule, bug infestation

*Collins v. Hopkins* [1923] 2 KB 617 - infectious disease

Under statute:-

Landlord and Tenant Act 1985, ss.8, 10

*The general duty:-*

s.8(1) In a contract to which this section applies for the letting of a house for human habitation there is implied, notwithstanding any stipulation to the contrary -

(a) a condition that the house is fit for human habitation at the commencement of the tenancy, and

(b) an undertaking that the house will be kept by the landlord fit for human habitation during the tenancy.

*What counts towards fitness for habitation:-*

s.10 "... repair, stability, freedom from damp, internal arrangement, natural lighting, ventilation, water supply, drainage and sanitary conveniences, facilities for preparation and cooking of food and for the disposal of waste water; and the house shall be regarded as unfit for human habitation if, and only if, it is so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition."

## **7.4 Liability for tortious loss under statute**

\*s.4 Defective Premises Act 1972

#### 7.4.1 The general liability:-

s.4(1) Where premises are let under a tenancy which puts on the landlord an obligation to the tenant for the maintenance or repair of the premises, the landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect.

#### 7.4.2 Knowledge of the landlord:-

s.4(2) The said duty is owed if the landlord knows (whether as the result of being notified by the tenant or otherwise) or if he ought in all the circumstances to have known of the relevant defect.

#### 7.4.3 Relevant defect:-

“(3) In this section "relevant defect" means a defect in the state of the premises existing at or after the material time and arising from, or continuing because of, an act or omission by the landlord which constitutes or would if he had had notice of the defect, have constituted a failure by him to carry out his obligation to the tenant for the maintenance or repair of the premises ...”

### **8. Implied leasehold covenants**

#### **8.1 Covenant for quiet enjoyment**

‘A covenant for quiet enjoyment is a covenant for freedom from disturbance by adverse claimants to the property’ - *Hudson v. Cripps* [1896] 1 Ch. 265, *per* North J.

##### 8.1.1 Need for physical interference

*Matania v. National Provincial Bank* [1936] 2 All ER 633, CA – noise and dirt, dirt = physical, but not noise.

*Kelly v. Battershell* [1949] 2 All ER 830, CA noise not physical enough

*Kenny v. Preen* [1963] 1 QB 499, CA – threats & intimidation = physical interference

##### 8.1.2 Examples

*Lavender v. Betts* [1942] 2 All ER 72 – removing doors and windows

*Drane v. Evangelou* [1978] 1 WLR 455 – changing locks

##### 8.1.3 Availability of damages

*Tagro v. Cafane* [1991] 2 All ER 235 – damages for reduction in value of tenancy

*Branchett v. Beaney* [1992] 3 All ER 910 – little old lady and the property developer – no mental distress damages available

##### 8.1.4 Criminal offences

*s.1 Protection from Eviction Act 1977, criminal offence*

**s.1(2)** If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

**s.1(3)** If any person with intent to cause the residential occupier of any premises -

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts [likely] to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

## **2. Restriction on re-entry without due process of law**

Where any premises are let as a dwelling on a lease which is subject to a right of re-entry or forfeiture it shall not be lawful to enforce that right otherwise than by proceedings in the court while any person is lawfully residing in the premises or part of them.

## **8.2 Covenant against derogation from grant**

*Browne v. Flower* [1911] 1 Ch. 219

*Harmer v. Jumbil* [1921] 1 Ch. 200

*Liverpool City Council v. Irwin* [1977] AC 239

## **8.3 against sub-letting or assignment**

## **8.4 to behave in a tenant-like manner**

*Warren v. Keen* [1954] 1 Q.B. 15, per Denning LJ

"The tenant must take proper care ... if going away he must turn off the water and empty the boiler ... must clean the chimneys and the windows ... mend the electric light when it fuses ... unstop the sink when it is blocked ... he must do the little jobs about the place which a reasonable tenant would do ..."

## **9. Tenants' remedies**

### **9.1 Damages**

### **9.2 Specific Performance**

s.17, Landlord and Tenant Act 1985

### **9.3 Set-off against rent**

*Lee Parker v. Izzett* [1971] 1 W.L.R. 1688

*British Anzani v. International Marine Management* [1979] 2 All E.R. 1063

## **10. Landlord's remedies**

### **10.1 Action for arrears of rent**

### **10.2 Damages**

### **10.3 Distress**

### **10.4 Re-entry and forfeiture**

## **11. Re-entry and forfeiture**

### **11.1 Criminal sanctions**

ss.1 & 2, Protection from Eviction Act 1977

s.6(1), Criminal Law Act 1977 - violent re-entry

### **11.2 Civil sanctions**

ss.27 & 28, Housing Act 1988  
*Tagro v. Cafane* [1991] 1 W.L.R. 378

11.3 Forfeiture for non-payment of rent  
ss.210, 212 Common Law Procedure act 1852  
s.138, County Court Act 1984  
*Di Palma v. Victoria Square Properties* [1986] Ch. 150

11.4 Forfeiture otherwise than in respect of rent

11.4.1 statutory mechanism for forfeiture  
\*s.146 LPA - notice requirements

11.4.2 capability of remedy  
*Rugby School v. Tannahill* [1935] 1 K.B. 87  
*Scala House v. Forbes* [1974] 1 Q.B. 575  
*Expert Clothing v. Hillgate House* [1986] Ch. 340

11.4.3 relief against forfeiture  
s.146(2) LPA  
*Billson v. Residential Apartments* [1992] 1 A.C. 495

11.4.4 waiver by landlord  
*Central Estates (Belgravia) v. Woolgar (No. 2)* [1972] 1 W.L.R. 1048

Rent Act 1977

Protected Tenancies

# Rent Act 1977 - Protected Tenancies

## Introduction to Rent Act 1977 “protected tenancies”

Protected tenancies are rarely found now due to the passage of the Housing Act 1988. A protected tenancy is a tenancy which falls within the definition set out in the next section and which was created before 1<sup>st</sup> January 1989. The Rent Act 1977 now looks like the high-water mark of security of tenure for lessees. The purpose of the protected tenancy legislation (enacted as part of a raft of legislation in 1977 relating to housing) was to set out in statutory terms the extent of the tenant’s rights to remain in property, or (strictly put) the limited circumstances in which the landlord may recover possession of the property and evict the tenant.

## The definition of a “protected tenancy”

The definition of a protected tenancy relates to a lease over any dwelling-house, as opposed for example to business premises and agricultural leases. The term “dwelling-house” is to be given a natural meaning, but the cases have nevertheless given a gloss for that term. The case law suggests that the definition of a dwelling house is satisfied even in relation to a lease over a single room if that room is genuinely the entire space in which the tenant does her living (such as a studio flat, for example), as opposed merely to an agreement to occupy a bedroom with a shared kitchen which would not establish the bedroom as a dwelling-house in itself.

### 1 Protected tenants and tenancies

Subject to this Part of this Act, a tenancy under which a dwelling-house (which may be a house or part of a house) is let as a separate dwelling is a protected tenancy for the purposes of this Act.

## Disqualifications from protected tenancy status

RA 1977 provided for a number of circumstances in which there would not be a protected tenancy – primarily the legislation identified circumstances in which it would be inconvenient to grant the occupant rights to remain, for example in relation to student halls of residence, when otherwise the context would require that the occupant be required to leave, such as a student being required to vacate her room in halls at the end of the academic year.

### 8 Lettings to students

(1) A tenancy is not a protected tenancy if it is granted to a person who is pursuing, or intends to pursue, a course of study provided by a specified educational institution and is so granted either by that institution or by another specified institution or body of persons.

### 9 Holiday lettings

A tenancy is not a protected tenancy if the purpose of the tenancy is to confer on the tenant the right to occupy the dwelling-house for a holiday.

## **12 Resident landlords**

(1) Subject to subsection (2) below, a tenancy of a dwelling-house granted on or after 14th August 1974 shall not be a protected tenancy at any time if -

- (a) the dwelling-house forms part only of a building and, except in a case where the dwelling-house also forms part of a flat, the building is not a purpose-built block of flats; and
- (b) the tenancy was granted by a person who, at the time when he granted it, occupied as his residence another dwelling-house...

## **14 Landlord's interest belonging to local authority, etc**

A tenancy shall not be a protected tenancy at any time when the interest of the landlord under that tenancy belongs to- (a) the council of a county [or county borough]; (b) the council of a district ...

## **15 Landlord's interest belonging to housing association, etc**

(1) A tenancy . . . shall not be a protected tenancy at any time when the interest of the landlord under that tenancy belongs to a housing association falling within subsection (3) below; nor shall a person at any time be a statutory tenant of a dwelling-house if the interest of his immediate landlord would belong at that time to such a housing association.

# **Security of tenure**

## **(A) Rent assessment and security of tenure**

Tenants have security of tenure under the RA 1977 by dint of s.51 and in that termination of a tenancy can only be effected if one of the grounds set out in Sch 15 can be made out. The RA 1977 provided for the calculation of fair rents and the registration of that rent – with the effect that the landlord could not charge more than a fair rent. The parties had the right to appeal the fair rent calculated.

### **51 Protection of tenants with security of tenure**

- (1) In this Part of this Act a "rent agreement with a tenant having security of tenure" means-
- (a) an agreement increasing the rent payable under a protected tenancy which is a regulated tenancy, or
  - (b) the grant to the tenant under a regulated tenancy, or to any person who might succeed him as a statutory tenant, of another regulated tenancy of the dwelling-house at a rent exceeding the rent under the previous tenancy.

(2)...

(3) If--

- (a) a rent agreement with a tenant having security of tenure takes effect on or after the commencement of this Act, and was made at a time when no rent was registered for the dwelling-house under Part IV of this Act, . . .

(b) . . .

the requirements of subsection (4) below shall be observed as respects the agreement.

(4) The requirements are that--

- (a) the agreement is in writing signed by the landlord and the tenant, and
- (b) the document containing the agreement contains a statement, in characters not less conspicuous than those used in any other part of the agreement--
  - (i) that the tenant's security of tenure under this Act will not be affected if he refuses to enter into the agreement, and
  - [(ia) . . . ]
  - (ii) that entry into the agreement will not deprive the tenant or landlord of the right to apply at any time to the rent officer for the registration of a fair rent under Part IV of this Act,
 or words to that effect, and
- (c) the statement mentioned in paragraph (b) above is set out at the head of the document containing the agreement.

**(B) Limitations on recovery of possession of dwelling-houses let on protected tenancies or subject to statutory tenancies**

Possession can only be acquired by the landlord (i.e. by evicting the tenant) in the circumstances set out in the statute.

**98 Grounds for possession of certain dwelling-houses**

(1) Subject to this Part of this Act, a court shall not make an order for possession of a dwelling-house which is for the time being let on a protected tenancy or subject to a statutory tenancy unless the court considers it reasonable to make such an order and either--

- (a) the court is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order in question takes effect, or
- (b) the circumstances are as specified in any of the Cases in Part I of Schedule 15 to this Act.

(2) If, apart from subsection (1) above, the landlord would be entitled to recover possession of a dwelling-house which is for the time being let on or subject to a regulated tenancy, the court shall make an order for possession if the circumstances of the case are as specified in any of the Cases in Part II of Schedule 15.

**(C) Cases in Which Court May Order Possession**

The grounds for terminating a tenancy (by means of making an order for possession) *if the court chooses to do so* are as follows:-

**Part I**

**Cases in Which Court May Order Possession**

**Case 1**

Where any rent lawfully due from the tenant has not been paid, or any obligation of the protected or statutory tenancy which arises under this Act, or--

- (a) in the case of a protected tenancy, any other obligation of the tenancy, in so far as is consistent with the provisions of Part VII of this Act, or
- (b) in the case of a statutory tenancy, any other obligation of the previous protected tenancy which is applicable to the statutory tenancy,

has been broken or not performed.



**Case 2**

Where the tenant or any person residing or lodging with him or any sub-tenant of his has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the dwelling-house or allowing the dwelling-house to be used for immoral or illegal purposes.

**Case 3**

Where the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any person residing or lodging with him or any sub-tenant of his and, in the case of any act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, where the court is satisfied that the tenant has not, before the making of the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant, as the case may be.

**Case 4**

Where the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any person residing or lodging with him or any sub-tenant of his and, in the case of any ill-treatment by a person lodging with the tenant or a sub-tenant of his, where the court is satisfied that the tenant has not, before the making of the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant, as the case may be.

**Case 5**

Where the tenant has given notice to quit and, in consequence of that notice, the landlord has contracted to sell or let the dwelling-house or has taken any other steps as the result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession.

**Case 6**

Where, without the consent of the landlord, the tenant has ... assigned or sublet the whole of the dwelling-house or sublet part of the dwelling- house, the remainder being already sublet.

**Case 7**

...

**Case 8**

Where the dwelling-house is reasonably required by the landlord for occupation as a residence for some person engaged in his whole-time employment, or in the whole-time employment of some tenant from him or with whom, conditional on housing being provided, a contract for such employment has been entered into, and the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment.

**Case 9**

Where the dwelling-house is reasonably required by the landlord for occupation as a residence for--

- (a) himself, or
- (b) any son or daughter of his over 18 years of age, or
- (c) his father or mother, or
- (d) if the dwelling-house is let on or subject to a regulated tenancy, the father or mother of his [spouse or civil partner] ...

**Case 10**

Where the court is satisfied that the rent charged by the tenant--

- (a) for any sublet part of the dwelling-house which is a dwelling-house let on a protected tenancy or subject to a statutory tenancy is or was in excess of the maximum rent for the time being recoverable for that part, having regard to ... Part III of this Act, or
- (b) for any sublet part of the dwelling-house which is subject to a restricted contract is or was in excess of the maximum (if any) which it is lawful for the lessor, within the meaning of Part V of this Act to require or receive having regard to the provisions of that Part.

**(D) Cases in Which Court *Must* Order Possession**

The circumstances in which the court is obliged to order possession are as follows:-

**Part II**

**Cases in Which Court Must Order Possession Where Dwelling-House Subject to Regulated Tenancy**

**Case 11**

[Where a person (in this Case referred to as "the owner-occupier") who let the dwelling-house on a regulated tenancy had, at any time before the letting, occupied it as his residence] and--

- (a) not later than the relevant date the landlord gave notice in writing to the tenant that possession might be recovered under this Case, and
- (b) the dwelling-house has not, since--
  - (i) 22nd March 1973, in the case of a tenancy which became a regulated tenancy by virtue of section 14 of the Counter-Inflation Act 1973;
  - (ii) 14th August 1974, in the case of a regulated furnished tenancy; or
  - (iii) 8th December 1965, in the case of any other tenancy,

been let by the owner-occupier on a protected tenancy with respect to which the condition mentioned in paragraph (a) above was not satisfied, and

[(c) the court is of the opinion that of the conditions set out in Part V of this Schedule one of those in paragraphs (a) and (c) to (f) is satisfied.]

If the court is of the opinion that, notwithstanding that the condition in paragraph (a) or (b) above is not complied with, it is just and equitable to make an order for possession of the dwelling-house, the court may dispense with the requirements of either or both of those paragraphs, as the case may require.

...

**Case 12**

[Where the landlord (in this Case referred to as "the owner") intends to occupy the dwelling-house as his residence at such time as he might retire from regular employment and has let] it on a regulated tenancy before he has so retired ... If the court is of the opinion that ... it is just and equitable to make an order for possession of the dwelling-house, the court may dispense with the requirements of either or both of those paragraphs, as the case may require.

**Case 13**

Where the dwelling-house is let under a tenancy for a term of years certain not exceeding 8 months and--

- (a) not later than the relevant date the landlord gave notice in writing to the tenant that possession might be recovered under this Case; and

- (b) the dwelling-house was, at some time within the period of 12 months ending on the relevant date, occupied under a right to occupy it for a holiday.

For the purposes of this Case a tenancy shall be treated as being for a term of years certain notwithstanding that it is liable to determination by re-entry or on the happening of any event other than the giving of notice by the landlord to determine the term.

#### **Case 14**

Where the dwelling-house is let under a tenancy for a term of years certain not exceeding 12 months and--

- (a) not later than the relevant date the landlord gave notice in writing to the tenant that possession might be recovered under this Case; and
- (b) at some time within the period of 12 months ending on the relevant date, the dwelling-house was subject to such a tenancy as is referred to in section 8(1) of this Act.

For the purposes of this Case a tenancy shall be treated as being for a term of years certain notwithstanding that it is liable to determination by re-entry or on the happening of any event other than the giving of notice by the landlord to determine the term.

#### **Case 15**

Where the dwelling-house is held for the purpose of being available for occupation by a minister of religion as a residence from which to perform the duties of his office and--

- (a) not later than the relevant date the tenant was given notice in writing that possession might be recovered under this Case, and
- (b) the court is satisfied that the dwelling-house is required for occupation by a minister of religion as such a residence.

#### **Case 16**

Where the dwelling-house was at any time occupied by a person under the terms of his employment as a person employed in agriculture, and

- (a) the tenant neither is nor at any time was so employed by the landlord and is not the widow of a person who was so employed, and
- (b) not later than the relevant date, the tenant was given notice in writing that possession might be recovered under this Case, and
- (c) the court is satisfied that the dwelling-house is required for occupation by a person employed, or to be employed, by the landlord in agriculture.

#### **Case 17**

Where proposals for amalgamation, approved for the purposes of a scheme under section 26 of the Agriculture Act 1967, have been carried out and, at the time when the proposals were submitted, the dwelling-house was occupied by a person responsible (whether as owner, tenant, or servant or agent of another) for the control of the farming of any part of the land comprised in the amalgamation ...

#### **Case 18**

Where--

- (a) the last occupier of the dwelling-house before the relevant date was a person, or the widow of a person, who was at some time during his occupation responsible (whether as owner, tenant, or servant or agent of another) for the control of the farming of land which formed, together with the dwelling-house, an agricultural unit ...

#### **[Case 19**

Where the dwelling-house was let under a protected shorthold tenancy (or is treated under section 55 of the Housing Act 1980 as having been so let) and--

- (a) there either has been no grant of a further tenancy of the dwelling-house since the end of the protected shorthold tenancy or, if there was such a grant, it was to a person who immediately before the grant was in possession of the dwelling-house as a protected or statutory tenant; and
- (b) the proceedings for possession were commenced after appropriate notice by the landlord to the tenant and not later than 3 months after the expiry of the notice.

...

**[Case 20**

Where the dwelling-house was let by a person (in this Case referred to as "the owner") at any time after the commencement of section 67 of the Housing Act 1980 and--

- (a) at the time when the owner acquired the dwelling-house he was a member of the regular armed forces of the Crown;
- (b) at the relevant date the owner was a member of the regular armed forces of the Crown;
- (c) not later than the relevant date the owner gave notice in writing to the tenant that possession might be recovered under this Case;
- (d) the dwelling-house has not, since the commencement of section 67 of the Act of 1980 been let by the owner on a protected tenancy with respect to which the condition mentioned in paragraph (c) above was not satisfied; and
- (e) the court is of the opinion that--
  - (i) the dwelling-house is required as a residence for the owner; or
  - (ii) of the conditions set out in Part V of this Schedule one of those in paragraphs (c) to (f) is satisfied.

...

**Rent**

Further to s.65 et seq. RA 1977 rent is fixed by rent assessment committee and then registered.

**70 Determination of fair rent**

(1) In determining, for the purposes of this Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to--

- (a) the age, character, locality and state of repair of the dwelling-house, . . .
- (b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture[, and
- (c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.]

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms.

(3) There shall be disregarded--

- (a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;

(b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his;

(c), (d) . . .

(e) if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of his or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.

## **Termination**

Protected tenancies may only be terminated in accordance with the grounds for possession considered above, as set out in the following provisions. These impediments to a landlord simply choosing to terminate a lease effect security of tenure of a negative kind (in that the landlord is prevented from terminating the lease otherwise than in a manner permitted by the statute).

### **2 Statutory tenants and tenancies**

(1) Subject to this Part of this Act--

(a) after the termination of a protected tenancy of a dwelling-house the person who, immediately before that termination, was the protected tenant of the dwelling-house shall, if and so long as he occupies the dwelling-house as his residence, be the statutory tenant of it ...

### **3 Terms and conditions of statutory tenancies**

(1) So long as he retains possession, a statutory tenant shall observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as they are consistent with the provisions of this Act.

Housing Act 1985

Secure Tenancies

# Housing Act 1985 - Secure Tenancies

## The definition of a “secure tenancy”

A “secure tenancy” is one which is created further to the Housing Act 1985 (“HA 1985”) and which satisfies both “the landlord condition” and “the tenant condition”, as set out below.

### 79 Secure tenancies

(1) A tenancy under which a dwelling-house is let as a separate dwelling is a secure tenancy at any time when the conditions described in sections 80 and 81 as the landlord condition and the tenant condition are satisfied.

(2) Subsection (1) has effect subject to--

- (a) the exceptions in Schedule 1 (tenancies which are not secure tenancies),
- (b) sections 89(3) and (4) and 90(3) and (4) (tenancies ceasing to be secure after death of tenant), and
- (c) sections 91(2) and 93(2) (tenancies ceasing to be secure in consequence of assignment or subletting).

(3) The provisions of this Part apply in relation to a licence to occupy a dwelling-house (whether or not granted for a consideration) as they apply in relation to a tenancy.

(4) Subsection (3) does not apply to a licence granted as a temporary expedient to a person who entered the dwelling-house or any other land as a trespasser (whether or not, before the grant of that licence, another licence to occupy that or another dwelling-house had been granted to him).

### 80 The landlord condition

(1) The landlord condition is that the interest of the landlord belongs to one of the following authorities or bodies--

- a local authority,
- a new town corporation,
- [a housing action trust]
- an urban development corporation ...
- a housing cooperative

### 81 The tenant condition

The tenant condition is that the tenant is an individual and occupies the dwelling-house as his only or principal home; or, where the tenancy is a joint tenancy, that each of the joint tenants is an individual and at least one of them occupies the dwelling-house as his only or principal home.

## Security of tenure

The HA 1985 provides security of tenure for “secure tenancies” and also, it should be noted, for licences under s.79(3) HA 1985.

### 82 Security of tenure

- (1) A secure tenancy which is either--
  - (a) a weekly or other periodic tenancy, or
  - (b) a tenancy for a term certain but subject to termination by the landlord,

cannot be brought to an end by the landlord except by obtaining an order [of the court as set out in subsection (1A)].

## Rent

S.24 HA 1985 provides the parameters for local housing authority rent levels:

### 24 Rents

- (1) A local housing authority may make such reasonable charges as they may determine for the tenancy or occupation of their houses.
- (2) The authority shall from time to time review rents and make such changes, either of rents generally or of particular rents, as circumstances may require.
- [(3) In exercising their functions under this section, a local housing authority [in Wales] shall have regard in particular to the principle that the rents of houses of any class or description should bear broadly the same proportion to private sector rents as the rents of houses of any other class or description.
- (4) In subsection (3) "private sector rents", in relation to houses of any class or description, means the rents which would be recoverable if they were let on assured tenancies within the meaning of the Housing Act 1988 by a person other than the authority.]

### 25 Increase of rent where tenancy not secure

- (1) This section applies where a house is let by a local housing authority on a weekly or other periodic tenancy which is not a secure tenancy [or an introductory tenancy].
- (2) The rent payable under the tenancy may, without the tenancy being terminated, be increased with effect from the beginning of a rental period by a written notice of increase given by the authority to the tenant.
- (3) The notice is not effective unless--
  - (a) it is given at least four weeks before the beginning of the rental period, or any earlier day on which the payment of rent in respect of that period falls to be made,
  - (b) it tells the tenant of his right to terminate the tenancy and of the steps to be taken by him if he wishes to do so, and
  - (c) it gives him the dates by which, if in accordance with subsection (4) the increase is not to be effective, a notice to quit must be received by the authority and the tenancy be made to terminate.
- (4) Where the notice is given for the beginning of a rental period and the tenancy continues into that period, the notice shall not have effect if--
  - (a) the tenancy is terminated by notice to quit given by the tenant in accordance with the provisions (express or implied) of the tenancy,
  - (b) the notice to quit is given before the end of the period of two weeks following the date on which the notice of increase is given, or such longer period as may be allowed by the notice of increase, and



(c) the date on which the tenancy is made to terminate is not later than the earliest day on which the tenancy could be terminated by a notice to quit given by the tenant on the last day of that period.

(5) In this section "rental period" means a period in respect of which a payment of rent falls to be made.

## **Termination**

### **The procedure for bringing possession proceedings**

#### **[83 Proceedings for possession or termination: notice requirements]**

- (1) The court shall not entertain proceedings for [an order mentioned in section 82(1A)] unless--
- (a) the landlord has served a notice on the tenant complying with the provisions of this section, or
  - (b) the court considers it just and equitable to dispense with the requirement of such a notice.
- (2) A notice under this section shall--
- (a) be in a form prescribed by regulations made by the Secretary of State,
  - (b) specify the ground on which the court will be asked to make [the order], and
  - (c) give particulars of that ground.
- (3) Where the tenancy is a periodic tenancy and the ground or one of the grounds specified in the notice is Ground 2 in Schedule 2 (nuisance or other anti-social behaviour), the notice--
- (a) shall also--
    - (i) state that proceedings for the possession of the dwelling-house may be begun immediately, and
    - (ii) specify the date sought by the landlord as the date on which the tenant is to give up possession of the dwelling-house, and
  - (b) ceases to be in force twelve months after the date so specified.

...

#### **84 Grounds and orders for possession**

- (1) The court shall not make an order for the possession of a dwelling-house let under a secure tenancy except on one or more of the grounds set out in Schedule 2.
- (2) The court shall not make an order for possession--
- (a) on the grounds set out in Part I of that Schedule (grounds 1 to 8), unless it considers it reasonable to make the order,
  - (b) on the grounds set out in Part II of that Schedule (grounds 9 to 11), unless it is satisfied that suitable accommodation will be available for the tenant when the order takes effect,
  - (c) on the grounds set out in Part III of that Schedule (grounds 12 to 16), unless it both considers it reasonable to make the order and is satisfied that suitable accommodation will be available for the tenant when the order takes effect ...

#### **85 Extended discretion of court in certain proceedings for possession**

(1) Where proceedings are brought for possession of a dwelling-house let under a secure tenancy on any of the grounds set out in Part I or Part III of Schedule 2 (grounds 1 to 8 and 12 to 16: cases in which the court must be satisfied that it is reasonable to make a possession order), the court may adjourn the proceedings for such period or periods as it thinks fit.

(2) On the making of an order for possession of such a dwelling-house on any of those grounds, or at any time before the execution of the order, the court may--

- (a) stay or suspend the execution of the order, or
- (b) postpone the date of possession,

for such period or periods as the court thinks fit.

## **Anti-social behaviour and possession**

### **[85A Proceedings for possession: anti-social behaviour]**

(1) This section applies if the court is considering under section 84(2)(a) whether it is reasonable to make an order for possession on ground 2 set out in Part 1 of Schedule 2 (conduct of tenant or other person).

(2) The court must consider, in particular--

- (a) the effect that the nuisance or annoyance has had on persons other than the person against whom the order is sought;
- (b) any continuing effect the nuisance or annoyance is likely to have on such persons;
- (c) the effect that the nuisance or annoyance would be likely to have on such persons if the conduct is repeated.]

## **Right-to-buy**

### **The nature of the right-to-buy**

An important part of the Conservative policies in relation to housing in the 1980's was the introduction of a right-to-buy scheme whereby local authority tenants were given the right to buy their homes from the local authority. The tenant is required to have a secure tenancy for a requisite period of time. The legislation then set out the formulae by reference to which the (low) price asked of the tenant was to be calculated – see, for example, the couple in *Springette v Dafoe*. The effect of this legislation was to turn tenants into freeholders and also to reduce markedly the publicly-available housing stock.

#### **118 The right to buy**

(1) A secure tenant has the right to buy, that is to say, the right, in the circumstances and subject to the conditions and exceptions stated in the following provisions of this Part--

- (a) if the dwelling-house is a house and the landlord owns the freehold, to acquire the freehold of the dwelling-house;
- (b) if the landlord does not own the freehold or if the dwelling-house is a flat (whether or not the landlord owns the freehold), to be granted a lease of the dwelling-house.

(2) Where a secure tenancy is a joint tenancy then, whether or not each of the joint tenants occupies the dwelling-house as his only or principal home, the right to buy belongs jointly to all of them or to such

one or more of them as may be agreed between them; but such an agreement is not valid unless the person or at least one of the persons to whom the right to buy is to belong occupies the dwelling-house as his only or principal home.

### **121 Circumstances in which the right to buy cannot be exercised**

- (1) The right to buy cannot be exercised if the tenant is obliged to give up possession of the dwelling-house in pursuance of an order of the court or will be so obliged at a date specified in the order.
- (2) The right to buy cannot be exercised if the person, or one of the persons, to whom the right to buy belongs--
  - (a) has a bankruptcy petition pending against him,
  - (b) . . .
  - (c) is an undischarged bankrupt, or
  - (d) has made a composition or arrangement with his creditors the terms of which remain to be fulfilled.

## **Anti-social behaviour**

### **[121A Order suspending right to buy because of anti-social behaviour]**

[(1) The court may, on the application of the landlord under a secure tenancy, make a suspension order in respect of the tenancy.

...

- (3) The court must not make a suspension order unless it is satisfied--
  - (a) that the tenant, or a person residing in or visiting the dwelling-house, has engaged or threatened to [engage in--
    - (i) housing-related anti-social conduct, or
    - (ii) conduct to which section 153B of the Housing Act 1996 (use of premises for unlawful purposes) applies, and]
  - (b) that it is reasonable to make the order.
- (4) When deciding whether it is reasonable to make the order, the court must consider, in particular--
  - (a) whether it is desirable for the dwelling-house to be managed by the landlord during the suspension period; and
  - (b) where the conduct mentioned in subsection (3)(a) consists of conduct by a person which is capable of causing nuisance or annoyance, the effect that the conduct (or the threat of it) has had on other persons, or would have if repeated.

# Housing Act 1988

## Assured Shorthold Tenancies

# **Housing Act 1988 - Assured Shorthold Tenancies**

## **The policy underpinning the “assured shorthold tenancy”**

### **The AST as a default setting**

When the Housing Act 1988 (“HA 1988”) was originally enacted, the assured shorthold tenancy (“AST”) was one of two possible forms of tenancy, requiring the parties to specify that their lease was an assured shorthold tenancy. Significantly, since the Housing Act 1996 was enacted the assured shorthold tenancy has become the default setting for all tenancies effected since 28 February 1997. It is still possible for tenancies to be assured tenancies, as opposed to AST’s by choosing to be so – this is in practice the case in relation to “registered social landlords”, whereas private sector lets are more likely to be AST’s because private sector landlords are more likely to want the security of knowing that the tenant can be removed. If a tenancy falls within the statutory exclusions then it will be neither an AST or an assured tenancy.

### **The effective six month period of security of tenure for an AST**

As from 28 February 1997, an AST grants the tenant security of tenure for only six months in that the landlord may not seek an order for possession of the demised premises within six months of the commencement of the lease. The landlord is therefore able to recover possession of the property after six months, or else the lease may be renewed or extended (as considered below).

The purpose of the AST regime was to encourage new landlords to let property so as to increase the volume of property available to rent without requiring government to build new houses. The new landlords would be encouraged to do this because the lease need only last for six months.

The details of security of tenure and of the termination of an AST are considered below.

### **The nature of an AST may be either fixed term or periodic**

The Housing Act 1996 provided that AST’s may be fixed term or periodic as from 28 February 1997; whereas AST’s granted before that date needed to be granted for “a term certain”. The tenant may require that the landlord provide the tenant with written terms of the AST.

### **The advantages of an AST for a landlord**

The principal advantages of an AST for a landlord are as follows:

- The landlord is entitled to charge a market rent.

- The landlord can recover possession after six months by means of a s.21 HA 1988 notice, without the procedural requirements for other sorts of statutory lease under RA 1977, etc..
- The landlord can recover possession on the effluxion of a fixed term lease after six months has elapsed – a landlord is therefore well-advised to specify a fixed term of six months.

Unlike the now defunct RA 1977 shorthold tenancies, the tenant’s rights are limited in the following ways:

- The tenant has no right to a renewal of the lease.
- The tenant has no right to terminate a fixed term lease early by notice.
- The tenant will face a rent review under s.13 HA 1988 once a fixed term AST is converted to a periodic AST.

### **Succession**

On the death of an assured tenant, the assured tenant’s spouse or civil partner can succeed to the tenancy (including people who have been living together as if they were husband and wife).

### **The definition of an “assured shorthold tenancy”**

It is assumed that a tenancy created after 28 February 1997 will be an AST unless either it is excluded from being an AST under Sch 1 of HA 1988 or it falls within Sch 2A of the HA 1988 – (the principal exclusion from AST status is a tenancy in relation to which a notice is served on the tenant that the tenancy will be an assured tenancy as opposed to an AST).

### **Post-Housing Act 1996 tenancies**

#### **[19A Assured shorthold tenancies: post-Housing Act 1996 tenancies]**

[An assured tenancy which--

- (a) is entered into on or after the day on which section 96 of the Housing Act 1996 comes into force (otherwise than pursuant to a contract made before that day), or
- (b) comes into being by virtue of section 5 above on the coming to an end of an assured tenancy within paragraph (a) above,

is an assured shorthold tenancy unless it falls within any paragraph in Schedule 2A to this Act.]

(Inserted by the Housing Act 1996, s 96(1)).

#### **[20A Post-Housing Act 1996 tenancies: duty of landlord to provide statement as to terms of tenancy]**

[(1) Subject to subsection (3) below, a tenant under an assured shorthold tenancy to which section 19A above applies may, by notice in writing, require the landlord under that tenancy to provide him with a written statement of any term of the tenancy which--

- (a) falls within subsection (2) below, and
  - (b) is not evidenced in writing.
- (2) The following terms of a tenancy fall within this subsection, namely--
- (a) the date on which the tenancy began or, if it is a statutory periodic tenancy or a tenancy to which section 39(7) below applies, the date on which the tenancy came into being,
  - (b) the rent payable under the tenancy and the dates on which that rent is payable,
  - (c) any term providing for a review of the rent payable under the tenancy, and
  - (d) in the case of a fixed term tenancy, the length of the fixed term.
- (3) No notice may be given under subsection (1) above in relation to a term of the tenancy if--
- (a) the landlord under the tenancy has provided a statement of that term in response to an earlier notice under that subsection given by the tenant under the tenancy, and
  - (b) the term has not been varied since the provision of the statement referred to in paragraph (a) above.
- (4) A landlord who fails, without reasonable excuse, to comply with a notice under subsection (1) above within the period of 28 days beginning with the date on which he received the notice is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) A statement provided for the purposes of subsection (1) above shall not be regarded as conclusive evidence of what was agreed by the parties to the tenancy in question.

...

## **Pre-Housing Act 1996 tenancies**

### **20 [Assured shorthold tenancies: pre-Housing Act 1996 tenancies]**

- [(1) Subject to subsection (3) below, an assured tenancy which is not one to which section 19A above applies is an assured shorthold tenancy if--
- (a) it is a fixed term tenancy granted for a term certain of not less than six months,
  - (b) there is no power for the landlord to determine the tenancy at any time earlier than six months from the beginning of the tenancy, and
  - (c) a notice in respect of it is served as mentioned in subsection (2) below.]
- (2) The notice referred to in subsection (1)(c) above is one which--
- (a) is in such form as may be prescribed;
  - (b) is served before the assured tenancy is entered into;
  - (c) is served by the person who is to be the landlord under the assured tenancy on the person who is to be the tenant under that tenancy; and
  - (d) states that the assured tenancy to which it relates is to be a shorthold tenancy.
- (3) Notwithstanding anything in subsection (1) above, where--
- (a) immediately before a tenancy (in this subsection referred to as "the new tenancy") is granted, the person to whom it is granted or, as the case may be, at least one of the persons to whom it is granted was a tenant under an assured tenancy which was not a shorthold tenancy, and
  - (b) the new tenancy is granted by the person who, immediately before the beginning of the tenancy, was the landlord under the assured tenancy referred to in paragraph (a) above,

the new tenancy cannot be an assured shorthold tenancy.

(4) Subject to subsection (5) below, if, on the coming to an end of an assured shorthold tenancy (including a tenancy which was an assured shorthold but ceased to be assured before it came to an end), a new tenancy of the same or substantially the same premises comes into being under which the landlord and the tenant are the same as at the coming to an end of the earlier tenancy, then, if and so long as the new tenancy is an assured tenancy, it shall be an assured shorthold tenancy, whether or not it fulfils the conditions in paragraphs (a) to (c) of subsection (1) above.

(5) Subsection (4) above does not apply if, before the new tenancy is entered into (or, in the case of a statutory periodic tenancy, takes effect in possession), the landlord serves notice on the tenant that the new tenancy is not to be a shorthold tenancy.

...

## **Tenancies which are excluded from being an AST**

### **The statutory exclusions**

The following types of lease are not assured tenancies nor assured shorthold tenancies, further to Sch 1 of HA 1988.

- Dwelling houses with a high rental (i.e. more than £25,000 pa)
- Tenancies at a low rent (i.e. less than £1,000 pa)
- Tenancies of agricultural land
- Holiday lettings
- Resident landlords

These exclusions operate even if otherwise the tenancy would fall within the definition of an AST.

### **Anti-social behaviour**

In relation to “public” sector lets – where there is a registered social landlord – the tenancy may be “demoted” on the basis of the tenant’s anti-social behaviour.

#### **[20B Demoted assured shorthold tenancies]**

[(1) An assured tenancy is an assured shorthold tenancy to which this section applies (a demoted assured shorthold tenancy) if--

- (a) the tenancy is created by virtue of an order of the court under section 82A of the Housing Act 1985 or section 6A of this Act (a demotion order), and
- (b) the landlord is a registered social landlord.

(2) At the end of the period of one year starting with the day when the demotion order takes effect a demoted assured shorthold tenancy ceases to be an assured shorthold tenancy unless subsection (3) applies.

(3) This subsection applies if before the end of the period mentioned in subsection (2) the landlord gives notice of proceedings for possession of the dwelling house.

...

(Inserted by the Anti-social Behaviour Act 2003, s 15(1))



## Security of tenure

The first aspect of security of tenure associated with an AST is linked to the necessary requirement that an AST does not guarantee the tenant a right to remain in possession of premises for more than six months.

The second aspect of security of tenure in relation to a fixed term AST with a term providing for forfeiture relates to the landlord being prevented from terminating the tenancy automatically on the effluxion of the leasehold period or on the landlord's right of forfeiture coming into effect. Instead, the landlord is required, regardless of the forfeiture clause, to obtain a court order terminating the lease (as though it was a periodic tenancy).

The procedure for termination is considered below under "Termination".

## Rent

A tenant under an AST may apply to a rent assessment committee for a determination of a fair rent in relation to the property. The landlord is however permitted to grant a market rent. The purpose of the assured tenancy regime generally under HA 1988 was to de-regulate rent control and so to move away from the RA 1977 scheme.

### 22 Reference of excessive rents to rent assessment committee

- (1) Subject to section 23 and subsection (2) below, the tenant under an assured shorthold tenancy . . . may make an application in the prescribed form to a rent assessment committee for a determination of the rent which, in the committee's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy.
- (2) No application may be made under this section if--
  - (a) the rent payable under the tenancy is a rent previously determined under this section; ...  
[(aa) the tenancy is one to which section 19A above applies and more than six months have elapsed since the beginning of the tenancy or, in the case of a replacement tenancy, since the beginning of the original tenancy; or]
  - (b) the tenancy is an assured shorthold tenancy falling within subsection (4) of section 20 above (and, accordingly, is one in respect of which notice need not have been served as mentioned in subsection (2) of that section).
- (3) Where an application is made to a rent assessment committee under subsection (1) above with respect to the rent under an assured shorthold tenancy, the committee shall not make such a determination as is referred to in that subsection unless they consider--
  - (a) that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not); and
  - (b) that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.

- (4) Where, on an application under this section, a rent assessment committee make a determination of a rent for an assured shorthold tenancy--
- (a) the determination shall have effect from such date as the committee may direct, not being earlier than the date of the application;
  - (b) if, at any time on or after the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the tenant; and
  - (c) no notice may be served under section 13(2) above with respect to a tenancy of the dwelling-house in question until after the first anniversary of the date on which the determination takes effect.

## **Termination**

### **Termination of a periodic AST**

A periodic AST may be terminated once it has run for six months (s.21(5) HA 1988), where s.21(5) provides that the landlord must acquire a court order and that that court order must not take effect before six months have elapsed from the commencement of the tenancy.

### **Termination of a fixed term AST**

A fixed term AST may be terminated in one of the following circumstances:

- When the fixed term has expired, the s.21 HA 1988 mandatory termination procedure grants possession.
- Where there are rent arrears, a fixed term AST will be terminated before the end of the term under Ground 8 in HA 1988.
- Where a mortgagee has rights to repossess the property, a fixed term AST will be terminated before the end of the term under Ground 2 in HA 1988.

The landlord is required to give the tenant at least two month's notice that she requires possession of the property.

#### **Recovery of possession on expiry or termination of assured shorthold tenancy**

21(1) ... on or after the coming to an end of an assured shorthold tenancy which was a fixed term tenancy, a court shall make an order for possession of the dwelling-house if it is satisfied

—

- (a) that the assured shorthold tenancy has come to an end ... and
- (b) the landlord ... has given to the tenant not less than two months' notice stating that he requires possession of the dwelling-house.

#### **Schedule 2**

##### **Part I**

##### **Grounds on which Court must order possession**

##### **Ground 2**

The dwelling-house is subject to a mortgage granted before the beginning of the tenancy and--

- (a) the mortgagee is entitled to exercise a power of sale conferred on him by the mortgage or by section 101 of the Law of Property Act 1925; and
- (b) the mortgagee requires possession of the dwelling-house for the purpose of disposing of it with vacant possession in exercise of that power; and
- (c) either notice was given as mentioned in Ground 1 above or the court is satisfied that it is just and equitable to dispense with the requirement of notice;

and for the purposes of this ground "mortgage" includes a charge and "mortgagee" shall be construed accordingly.

#### **Ground 8**

Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing--

- (a) if rent is payable weekly or fortnightly, at least [eight weeks]' rent is unpaid;
- (b) if rent is payable monthly, at least [two months]' rent is unpaid;
- (c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and
- (d) if rent is payable yearly, at least three months' rent is more than three months in arrears;

and for the purpose of this ground "rent" means rent lawfully due from the tenant.

### **Termination of a statutory periodic tenancy**

A statutory periodic tenancy, coming into effect once a fixed term AST has terminated but before that AST has been formally terminated, may be terminated in one of three ways:

- Once the landlord has obtained an order for possession further to s.21 HA 1988.
- Once the landlord has obtained an order for possession based on one of the statutory grounds for possession.
- Once a new AST or assured tenancy has been granted to the tenant over the same premises (s.5(4) HA 1988).

### **Recovery of possession of an AST**

#### **21 Recovery of possession on expiry or termination of assured shorthold tenancy**

(1) Without prejudice to any right of the landlord under an assured shorthold tenancy to recover possession of the dwelling-house let on the tenancy in accordance with Chapter I above, on or after the coming to an end of an assured shorthold tenancy which was a fixed term tenancy, a court shall make an order for possession of the dwelling-house if it is satisfied-

- (a) that the assured shorthold tenancy has come to an end and no further assured tenancy (whether shorthold or not) is for the time being in existence, other than [an assured shorthold periodic tenancy (whether statutory or not)]; and
- (b) the landlord or, in the case of joint landlords, at least one of them has given to the tenant not less than two months' notice [in writing] stating that he requires possession of the dwelling-house.

- (2) A notice under paragraph (b) of subsection (1) above may be given before or on the day on which the tenancy comes to an end; and that subsection shall have effect notwithstanding that on the coming to an end of the fixed term tenancy a statutory periodic tenancy arises.
- (3) Where a court makes an order for possession of a dwelling-house by virtue of subsection (1) above, any statutory periodic tenancy which has arisen on the coming to an end of the assured shorthold tenancy shall end (without further notice and regardless of the period) on the day on which the order takes effect.
- (4) Without prejudice to any such right as is referred to in subsection (1) above, a court shall make an order for possession of a dwelling-house let on an assured shorthold tenancy which is a periodic tenancy if the court is satisfied--
- (a) that the landlord or, in the case of joint landlords, at least one of them has given to the tenant a notice [in writing] stating that, after a date specified in the notice, being the last day of a period of the tenancy and not earlier than two months after the date the notice was given, possession of the dwelling-house is required by virtue of this section; and
  - (b) that the date specified in the notice under paragraph (a) above is not earlier than the earliest day on which, apart from section 5(1) above, the tenancy could be brought to an end by a notice to quit given by the landlord on the same date as the notice under paragraph (a) above.
- (5) Where an order for possession under subsection (1) or (4) above is made in relation to a dwelling-house let on a tenancy to which section 19A above applies, the order may not be made so as to take effect earlier than--
- (a) in the case of a tenancy which is not a replacement tenancy, six months after the beginning of the tenancy, and
  - (b) in the case of a replacement tenancy, six months after the beginning of the original tenancy.

## **Damages for unlawful eviction under HA 1988**

### **27 Damages for unlawful eviction**

- (1) This section applies if, at any time after 9th June 1988, a landlord (in this section referred to as "the landlord in default") or any person acting on behalf of the landlord in default unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.
- (2) This section also applies if, at any time after 9th June 1988, a landlord (in this section referred to as "the landlord in default") or any person acting on behalf of the landlord in default--
- (a) attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises, or
  - (b) knowing or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises--
    - (i) to give up his occupation of the premises or any part thereof, or
    - (ii) to refrain from exercising any right or pursuing any remedy in respect of the premises or any part thereof,
 does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence,
- and, as a result, the residential occupier gives up his occupation of the premises as a residence.
- (3) Subject to the following provisions of this section, where this section applies, the landlord in default shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 28 below.
- (4) Any liability arising by virtue of subsection (3) above--

- (a) shall be in the nature of a liability in tort; and
- (b) subject to subsection (5) below, shall be in addition to any liability arising apart from this section (whether in tort, contract or otherwise).

...

(7) If, in proceedings to enforce a liability arising by virtue of subsection (3) above, it appears to the court--

- (a) that, prior to the event which gave rise to the liability, the conduct of the former residential occupier or any person living with him in the premises concerned was such that it is reasonable to mitigate the damages for which the landlord in default would otherwise be liable, or
- (b) that, before the proceedings were begun, the landlord in default offered to reinstate the former residential occupier in the premises in question and either it was unreasonable of the former residential occupier to refuse that offer or, if he had obtained alternative accommodation before the offer was made, it would have been unreasonable of him to refuse that offer if he had not obtained that accommodation,

the court may reduce the amount of damages which would otherwise be payable to such amount as it thinks appropriate.

(8) In proceedings to enforce a liability arising by virtue of subsection (3) above, it shall be a defence for the defendant to prove that he believed, and had reasonable cause to believe--

- (a) that the residential occupier had ceased to reside in the premises in question at the time when he was deprived of occupation as mentioned in subsection (1) above or, as the case may be, when the attempt was made or the acts were done as a result of which he gave up his occupation of those premises; or
- (b) that, where the liability would otherwise arise by virtue only of the doing of acts or the withdrawal or withholding of services, he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(9) In this section--

- (a) "residential occupier", in relation to any premises, has the same meaning as in section 1 of the 1977 Act;
- (b) "the right to occupy", in relation to a residential occupier, includes any restriction on the right of another person to recover possession of the premises in question;
- (c) "landlord", in relation to a residential occupier, means the person who, but for the occupier's right to occupy, would be entitled to occupation of the premises and any superior landlord under whom that person derives title;
- (d) "former residential occupier", in relation to any premises, means the person who was the residential occupier until he was deprived of or gave up his occupation as mentioned in subsection (1) or subsection (2) above (and, in relation to a former residential occupier, "the right to occupy" and "landlord" shall be construed accordingly).

## **28 The measure of damages**

(1) The basis for the assessment of damages referred to in section 27(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between--

- (a) the value of the interest of the landlord in default determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and
- (b) the value of that interest determined on the assumption that the residential occupier has ceased to have that right.

...

Housing Act 1988

Assured Tenancies

# Housing Act 1988 - Assured Tenancies

## The definition of an “assured tenancy”

### 1 Assured tenancies

(1) A tenancy under which a dwelling-house is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as--

- (a) the tenant or, as the case may be, each of the joint tenants is an individual; and
- (b) the tenant or, as the case may be, at least one of the joint tenants occupies the dwelling-house as his only or principal home; and
- (c) the tenancy is not one which, by virtue of subsection (2) or subsection (6) below, cannot be an assured tenancy.

(2) Subject to subsection (3) below, if and so long as a tenancy falls within any paragraph in Part I of Schedule 1 to this Act, it cannot be an assured tenancy; and in that Schedule--

- (a) "tenancy" means a tenancy under which a dwelling-house is let as a separate dwelling;

...

## Tenancies which are not AST's

### [SCHEDULE 2A

#### ASSURED TENANCIES: NON-SHORTHOLDS]

(Inserted by the Housing Act 1996, s 96(2), Sch 7.)

#### Section 19A

##### *Tenancies excluded by notice*

1(1) An assured tenancy in respect of which a notice is served as mentioned in sub-paragraph (2) below.

(2) The notice referred to in sub-paragraph (1) above is one which--

- (a) is served before the assured tenancy is entered into,
- (b) is served by the person who is to be the landlord under the assured tenancy on the person who is to be the tenant under that tenancy, and
- (c) states that the assured tenancy to which it relates is not to be an assured shorthold tenancy.

2(1) An assured tenancy in respect of which a notice is served as mentioned in sub-paragraph (2) below.

(2) The notice referred to in sub-paragraph (1) above is one which--

- (a) is served after the assured tenancy has been entered into,
- (b) is served by the landlord under the assured tenancy on the tenant under that tenancy, and

(c) states that the assured tenancy to which it relates is no longer an assured shorthold tenancy.

#### ***Tenancies containing exclusionary provision***

3 An assured tenancy which contains a provision to the effect that the tenancy is not an assured shorthold tenancy.

#### ***Tenancies under section 39***

4 An assured tenancy arising by virtue of section 39 above, other than one to which subsection (7) of that section applies.

#### ***Former secure tenancies***

5 An assured tenancy which became an assured tenancy on ceasing to be a secure tenancy.

#### ***[Former demoted tenancies***

5A An assured tenancy which ceases to be an assured shorthold tenancy by virtue of section 20B(2) or (4).]

#### ***Tenancies under Schedule 10 to the Local Government and Housing Act 1989***

6 An assured tenancy arising by virtue of Schedule 10 to the Local Government and Housing Act 1989 (security of tenure on ending of long residential tenancies).

#### ***Tenancies replacing non-shortholds***

7(1) An assured tenancy which--

- (a) is granted to a person (alone or jointly with others) who, immediately before the tenancy was granted, was the tenant (or, in the case of joint tenants, one of the tenants) under an assured tenancy other than a shorthold tenancy ("the old tenancy"),
- (b) is granted (alone or jointly with others) by a person who was at that time the landlord (or one of the joint landlords) under the old tenancy, and
- (c) is not one in respect of which a notice is served as mentioned in sub-paragraph (2) below.

(2) The notice referred to in sub-paragraph (1)(c) above is one which--

- (a) is in such form as may be prescribed,
- (b) is served before the assured tenancy is entered into,
- (c) is served by the person who is to be the tenant under the assured tenancy on the person who is to be the landlord under that tenancy (or, in the case of joint landlords, on at least one of the persons who are to be joint landlords), and
- (d) states that the assured tenancy to which it relates is to be a shorthold tenancy.

8 An assured tenancy which comes into being by virtue of section 5 above on the coming to an end of an assured tenancy which is not a shorthold tenancy.

## **Security of tenure**

### **The restricted security of tenure under the Housing Act 1988**

It was a significant part of the policy underpinning the HA 1988 that tenants should receive reduced security of tenure in an effort to encourage more



landlords to lease property and so increase the available housing stock without the need for greater house-building by the state. Consequently, the assured tenancy acquires reduced rights of security for the tenant. It is still a prerequisite of the termination of a lease that the landlord acquire a court order terminating the lease under the prescribed grounds for termination in the legislation – in that sense the HA 1988 appears similar in form to the RA 1977. However, the effect of the nature of those grounds is that the tenant in fact acquires less security and the landlord acquires an enhanced protection for her capital asset, viz. the land.

## **The rights of the tenant on the termination of a tenancy**

### **5 Security of tenure**

(1) An assured tenancy cannot be brought to an end by the landlord except by obtaining an order of the court in accordance with the following provisions of this Chapter or Chapter II below or, in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power and, accordingly, the service by the landlord of a notice to quit shall be of no effect in relation to a periodic assured tenancy.

(2) If an assured tenancy which is a fixed term tenancy comes to an end otherwise than by virtue of--

- (a) an order of the court, or
- (b) a surrender or other action on the part of the tenant,

then, subject to section 7 and Chapter II below, the tenant shall be entitled to remain in possession of the dwelling-house let under that tenancy and, subject to subsection (4) below, his right to possession shall depend upon a periodic tenancy arising by virtue of this section.

(3) The periodic tenancy referred to in subsection (2) above is one--

- (a) taking effect in possession immediately on the coming to an end of the fixed term tenancy;
- (b) deemed to have been granted by the person who was the landlord under the fixed term tenancy immediately before it came to an end to the person who was then the tenant under that tenancy;
- (c) under which the premises which are let are the same dwelling-house as was let under the fixed term tenancy;
- (d) under which the periods of the tenancy are the same as those for which rent was last payable under the fixed term tenancy; and
- (e) under which, subject to the following provisions of this Part of this Act, the other terms are the same as those of the fixed term tenancy immediately before it came to an end, except that any term which makes provision for determination by the landlord or the tenant shall not have effect while the tenancy remains an assured tenancy.

(4) The periodic tenancy referred to in subsection (2) above shall not arise if, on the coming to an end of the fixed term tenancy, the tenant is entitled, by virtue of the grant of another tenancy, to possession of the same or substantially the same dwelling-house as was let to him under the fixed term tenancy.

(5) If, on or before the date on which a tenancy is entered into or is deemed to have been granted as mentioned in subsection (3)(b) above, the person who is to be the tenant under that tenancy--

- (a) enters into an obligation to do any act which (apart from this subsection) will cause the tenancy to come to an end at a time when it is an assured tenancy, or

(b) executes, signs or gives any surrender, notice to quit or other document which (apart from this subsection) has the effect of bringing the tenancy to an end at a time when it is an assured tenancy,

the obligation referred to in paragraph (a) above shall not be enforceable or, as the case may be, the surrender, notice to quit or other document referred to in paragraph (b) above shall be of no effect.

## **Anti-social behaviour**

The rules on assured tenancies have been altered in relation to tenants who have committed acts of anti-social behaviour.

### **[6A Demotion because of anti-social behaviour]**

- (1) This section applies to an assured tenancy if the landlord is a registered social landlord.
- (2) The landlord may apply to a county court for a demotion order.
- (3) A demotion order has the following effect--
  - (a) the assured tenancy is terminated with effect from the date specified in the order;
  - (b) if the tenant remains in occupation of the dwelling-house after that date a demoted tenancy is created with effect from that date;
  - (c) it is a term of the demoted tenancy that any arrears of rent payable at the termination of the assured tenancy become payable under the demoted tenancy;
  - (d) it is also a term of the demoted tenancy that any rent paid in advance or overpaid at the termination of the assured tenancy is credited to the tenant's liability to pay rent under the demoted tenancy.
- (4) The court must not make a demotion order unless it is satisfied--
  - (a) that the tenant or a person residing in or visiting the dwelling-house has engaged or has threatened to engage in--
    - (i) housing-related anti-social conduct, or
    - (ii) conduct to which section 153B of the Housing Act 1996 (use of premises for unlawful purposes) applies, and]
  - (b) that it is reasonable to make the order.
- (5) The court must not entertain proceedings for a demotion order unless--
  - (a) the landlord has served on the tenant a notice under subsection (6), or
  - (b) the court thinks it is just and equitable to dispense with the requirement of the notice.
- (6) The notice must--
  - (a) give particulars of the conduct in respect of which the order is sought;
  - (b) state that the proceedings will not begin before the date specified in the notice;
  - (c) state that the proceedings will not begin after the end of the period of twelve months beginning with the date of service of the notice.

...

### 13 Increases of rent under assured periodic tenancies

- (1) This section applies to--
  - (a) a statutory periodic tenancy other than one which, by virtue of paragraph 11 or paragraph 12 in Part I of Schedule 1 to this Act, cannot for the time being be an assured tenancy; and
  - (b) any other periodic tenancy which is an assured tenancy, other than one in relation to which there is a provision, for the time being binding on the tenant, under which the rent for a particular period of the tenancy will or may be greater than the rent for an earlier period.
  
- (2) For the purpose of securing an increase in the rent under a tenancy to which this section applies, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect at the beginning of a new period of the tenancy specified in the notice, being a period beginning not earlier than--
  - (a) the minimum period after the date of the service of the notice; and
  - (b) except in the case of a statutory periodic [tenancy--
    - (i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the first period of the tenancy began;
    - (ii) in any other case, on the date that falls 52 weeks after the date on which the first period of the tenancy began; and]
  - (c) if the rent under the tenancy has previously been increased by virtue of a notice under this subsection or a determination under section 14 [below--
    - (i) in the case of an assured agricultural occupancy, the first anniversary of the date on which the increased rent took effect;
    - (ii) in any other case, the appropriate date].
  
- (3) The minimum period referred to in subsection (2) above is--
  - (a) in the case of a yearly tenancy, six months;
  - (b) in the case of a tenancy where the period is less than a month, one month; and
  - (c) in any other case, a period equal to the period of the tenancy.

...
  
- (4) Where a notice is served under subsection (2) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the new period specified in the notice,--
  - (a) the tenant by an application in the prescribed form refers the notice to a rent assessment committee; or
  - (b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.
  
- (5) Nothing in this section (or in section 14 below) affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

### 14 Determination of rent by rent assessment committee

(1) Where, under subsection (4)(a) of section 13 above, a tenant refers to a rent assessment committee a notice under subsection (2) of that section, the committee shall determine the rent at which, subject to subsections (2) and (4) below, the committee consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy--

- (a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;
- (b) which begins at the beginning of the new period specified in the notice;
- (c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and
- (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(2) In making a determination under this section, there shall be disregarded--

- (a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;
- (b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement--
  - (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or
  - (ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and
- (c) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.

...

## **Termination**

### **7 Orders for possession**

(1) The court shall not make an order for possession of a dwelling-house let on an assured tenancy except on one or more of the grounds set out in Schedule 2 to this Act; but nothing in this Part of this Act relates to proceedings for possession of such a dwelling-house which are brought by a mortgagee, within the meaning of the Law of Property Act 1925, who has lent money on the security of the assured tenancy.

...

(7) Subject to the preceding provisions of this section, the court may make an order for possession of a dwelling-house on grounds relating to a fixed term tenancy which has come to an end; and where an order is made in such circumstances, any statutory periodic tenancy which has arisen on the ending of the fixed term tenancy shall end (without any notice and regardless of the period) on the day on which the order takes effect.

### **8 Notice of proceedings for possession**

(1) The court shall not entertain proceedings for possession of a dwelling-house let on an assured tenancy unless--

- (a) the landlord or, in the case of joint landlords, at least one of them has served on the tenant a notice in accordance with this section and the proceedings are begun within the time limits stated in the notice in accordance with [subsections (3) to (4B)] below; or
  - (b) the court considers it just and equitable to dispense with the requirement of such a notice.
- (2) The court shall not make an order for possession on any of the grounds in Schedule 2 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the court.
- (3) A notice under this section is one in the prescribed form informing the tenant that--
- (a) the landlord intends to begin proceedings for possession of the dwelling-house on one or more of the grounds specified in the notice; and
  - (b) those proceedings will not begin earlier than a date specified in the notice [in accordance with subsections (4) to (4B) below]; and
  - (c) those proceedings will not begin later than twelve months from the date of service of the notice.

## **The grounds on which the court *must* order possession**

### **SCHEDULE 2**

#### **GROUND FOR POSSESSION OF DWELLING-HOUSES LET ON ASSURED TENANCIES**

##### **Part I**

##### **Grounds on which Court must order possession**

###### ***Ground 1***

Not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground or the court is of the opinion that it is just and equitable to dispense with the requirement of notice and (in either case)--

- (a) at some time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the dwelling-house as his only or principal home; or
- (b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the dwelling-house as [his, his spouse's or his civil partner's] only or principal home and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title under the landlord who gave the notice mentioned above acquired the reversion on the tenancy for money or money's worth.

###### ***Ground 2***

The dwelling-house is subject to a mortgage granted before the beginning of the tenancy and--

- (a) the mortgagee is entitled to exercise a power of sale conferred on him by the mortgage or by section 101 of the Law of Property Act 1925; and
- (b) the mortgagee requires possession of the dwelling-house for the purpose of disposing of it with vacant possession in exercise of that power; and
- (c) either notice was given as mentioned in Ground 1 above or the court is satisfied that it is just and equitable to dispense with the requirement of notice;

and for the purposes of this ground "mortgage" includes a charge and "mortgagee" shall be construed accordingly.

### **Ground 3**

The tenancy is a fixed term tenancy for a term not exceeding eight months and--

- (a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and
- (b) at some time within the period of twelve months ending with the beginning of the tenancy, the dwelling-house was occupied under a right to occupy it for a holiday.

### **Ground 4**

The tenancy is a fixed term tenancy for a term not exceeding twelve months and--

- (a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and
- (b) at some time within the period of twelve months ending with the beginning of the tenancy, the dwelling-house was let on a tenancy falling within paragraph 8 of Schedule 1 to this Act.

### **Ground 5**

The dwelling-house is held for the purpose of being available for occupation by a minister of religion as a residence from which to perform the duties of his office and--

- (a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and
- (b) the court is satisfied that the dwelling-house is required for occupation by a minister of religion as such a residence.

### **Ground 6**

The landlord who is seeking possession or, if that landlord is a [registered social landlord] or charitable housing trust, a superior landlord intends to demolish or reconstruct the whole or a substantial part of the dwelling-house or to carry out substantial works on the dwelling-house or any part thereof or any building of which it forms part and the following conditions are fulfilled--

- (a) the intended work cannot reasonably be carried out without the tenant giving up possession of the dwelling-house because--
  - (i) the tenant is not willing to agree to such a variation of the terms of the tenancy as would give such access and other facilities as would permit the intended work to be carried out, or
  - (ii) the nature of the intended work is such that no such variation is practicable, or
  - (iii) the tenant is not willing to accept an assured tenancy of such part only of the dwelling-house (in this sub-paragraph referred to as "the reduced part") as would leave in the possession of his landlord so much of the dwelling-house as would be reasonable to enable the intended work to be carried out and, where appropriate, as would give such access and other facilities over the reduced part as would permit the intended work to be carried out, or
  - (iv) the nature of the intended work is such that such a tenancy is not practicable; and

[. . .]

### **Ground 7**

The tenancy is a periodic tenancy (including a statutory periodic tenancy) which has devolved under the will or intestacy of the former tenant and the proceedings for the recovery of possession are begun not later than twelve months after the death of the former tenant or, if the court so directs, after the date on which, in the opinion of the court, the landlord or, in the case of joint landlords, any one of them became aware of the former tenant's death.

...

### **Ground 8**

Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing--

- (a) if rent is payable weekly or fortnightly, at least [eight weeks]' rent is unpaid;
- (b) if rent is payable monthly, at least [two months]' rent is unpaid;
- (c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears;  
and
- (d) if rent is payable yearly, at least three months' rent is more than three months in arrears;

and for the purpose of this ground "rent" means rent lawfully due from the tenant.

## **The grounds on which the court *may* order possession**

### **Part II**

#### **Grounds on which Court may Order Possession**

##### ***Ground 9***

Suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

##### ***Ground 10***

Some rent lawfully due from the tenant--

- (a) is unpaid on the date on which the proceedings for possession are begun; and
- (b) except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

##### ***Ground 11***

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

##### ***Ground 12***

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

##### ***Ground 13***

The condition of the dwelling-house or any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house and, in the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

For the purposes of this ground, "common parts" means any part of a building comprising the dwelling-house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other dwelling-houses in which the landlord has an estate or interest.

##### **[*Ground 14*]**

The tenant or a person residing in or visiting the dwelling-house--

- (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or
- (b) has been convicted of--

- (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
- (ii) an [indictable] offence committed in, or in the locality of, the dwelling-house.]

**[Ground 14A**

The dwelling-house was occupied (whether alone or with others) by [a married couple, a couple who are civil partners of each other,] a couple living together as husband and wife [or a couple living together as if they were civil partners] and--

- (a) one or both of the partners is a tenant of the dwelling-house,
- (b) the landlord who is seeking possession is a registered social landlord or a charitable housing trust,
- (c) one partner has left the dwelling-house because of violence or threats of violence by the other towards--
  - (i) that partner, or
  - (ii) a member of the family of that partner who was residing with that partner immediately before the partner left, and
- (d) the court is satisfied that the partner who has left is unlikely to return.

For the purposes of this ground "registered social landlord" and "member of the family" have the same meaning as in Part I of the Housing Act 1996 and "charitable housing trust" means a housing trust, within the meaning of the Housing Associations Act 1985, which is a charity within the meaning of the Charities Act 1993.]

**Ground 15**

The condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling-house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

**Ground 16**

The dwelling-house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.

**[Ground 17**

The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by--

- (a) the tenant, or
- (b) a person acting at the tenant's instigation.]



## Protection from Eviction

# Protection from Eviction

As part of the raft of housing legislation enacted in 1977, the Protection from Eviction Act 1977 created criminal offences in relation to people interfere with the occupation of tenants or of licensees of their homes. The concern was with landlords who sought to evict their tenants by violence or by anti-social behaviour which was calculated to make the tenant quit their occupation “voluntarily”. This was particularly the case in the 1960’s and 1970’s at times of high inflation when landlords realised that they could obtain higher rents for their properties than they had originally contracted for. The housing legislation at the time prevented landlords from arbitrarily raising their rents and from arbitrarily terminating leases. The sorts of tactics which these landlords used was straightforward intimidation, or switching off the electricity, or changing the locks to the property, or even demolishing the stairs to flats on the upper floors of properties, or shovelling ordure through the tenant’s letterbox.

## Protection from Eviction Act 1977

### Part I

#### Unlawful Eviction and Harassment

##### 1 Unlawful eviction and harassment of occupier

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises--

- (a) to give up the occupation of the premises or any part thereof; or
- (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts [likely] to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

[(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if--

- (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
- (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or

to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C) In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for--

- (a) the residential occupier's right to remain in occupation of the premises, or
- (b) a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.]

## **2 Restriction on re-entry without due process of law**

Where any premises are let as a dwelling on a lease which is subject to a right of re-entry or forfeiture it shall not be lawful to enforce that right otherwise than by proceedings in the court while any person is lawfully residing in the premises or part of them.

## **3 Prohibition of eviction without due process of law**

(1) Where any premises have been let as a dwelling under a tenancy which is [neither a statutorily protected tenancy nor an excluded tenancy] and--

- (a) the tenancy (in this section referred to as the former tenancy) has come to an end, but
- (b) the occupier continues to reside in the premises or part of them,

it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises.

(2) In this section "the occupier", in relation to any premises, means any person lawfully residing in the premises or part of them at the termination of the former tenancy.

## **5 Validity of notices to quit**

(1) ... no notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwelling shall be valid unless--

- (a) it is in writing and contains such information as may be prescribed, and
- (b) it is given not less than 4 weeks before the date on which it is to take effect.

[(1A) Subject to subsection (1B) below, no notice by a licensor or licensee to determine a periodic licence to occupy premises as a dwelling (whether the licence was granted before or after the passing of this Act) shall be valid unless--

- (a) it is in writing and contains such information as may be prescribed, and
- (b) it is given not less than 4 weeks before the date on which it is to take effect.

# Homelessness

# Homelessness

“Poor naked wretches, wheresoe’er you are,  
That bid the pelting of this pitiless storm,  
How shall your houseless heads and unfed sides,  
Your loop’d and window’d raggedness, defend you  
From seasons such as these? O, I have ta’en  
Too little care of this! Take physic pomp;  
Expose thyself to feel what wretches feel ...”

- King Lear  
Act III Scene IV

The homeless: “the people you step on when you leave the opera.”

- Sir George Young, Minister for Housing,  
Today, 29 June 1991

## The definition of what it means to be “homeless”

The starting point for the legislation is defining those persons who are and are not homeless. The definition goes beyond those who are sleeping on the street. The statutory definition encompasses those who live in accommodation which is not suitable for their accommodation such that they are considered not to have accommodation available for their occupation. Section 175 of the 1996 Act provides that:

A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he -  
is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,  
has an express or implied licence to occupy, or  
occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

The individual must then satisfy one of three requirements as to rights in the property concerned. First, the individual must be entitled to occupy the accommodation either because she has an interest in it or because there is a court order granting the individual a right in the property.<sup>1</sup> Second, the individual must have an express or implied licence to occupy the accommodation. This does not require a legal or equitable interest in the property: rather a permission to occupy is adequate. Third, the individual must occupy the property further to a statute or other rule of law which gives her the right either to occupy the accommodation or to be able to prevent others from occupying the property.

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<sup>1</sup> s.175(1)(a).

## **“Accommodation”**

The qualification to this definition of “homeless” is to the definition of “accommodation”. Under s.175(3) “a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy”. The issue is therefore what type of accommodation is not reasonable for an individual to occupy . This issue is considered in detail in Chapter 9.

### **Reasonable accommodation**

Under s.177(2) the reasonableness of a person continuing to occupy the accommodation regard may be had to the general circumstances surrounding housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation. This reasonableness test applies on a retrospective basis to whether or not it would have been reasonable for the individual to occupy that accommodation.<sup>2</sup> There is provision<sup>3</sup> for the Secretary of State to create regulations for reasonableness in this circumstance.

### **Local connection**

The applicant is required to satisfy the local connection provisions before being found statutorily homeless. This is done by the applicant showing that she has a local connection with the area of the local authority. The definition of “local connection” is set out in s.199 of the 1996 Act: a person has a local connection with the district of a local housing authority if he has a connection with it:-

- because he is, or in the past was, normally resident there, and that residence is or was of his own choice,
- because he is employed there,
- because of family associations, or
- because of special circumstances.

First, the applicant must show normal residence in the area. Second, the applicant may show that residence in the area is of her own choice. Third, there may be some employment within the area. Fourth, the applicant may show some family associations with the district covered by the local authority. Alternatively, the applicant may seek to show some special circumstances for the connection between the authority’s area and herself.

### **Priority need**

It is a requirement of the 1996 Act, and also of its predecessor legislation, that the applicant establish she is in priority need before the obligations of the authority to provide accommodation for her use on ground of homelessness is satisfied. The precise obligations are considered below. The scope of the category “priority need” is

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<sup>2</sup> S.177(2).

<sup>3</sup> s.177(3).

set out in s.189 of the 1996 Act. The following have a priority need for accommodation -

- a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
- a person with whom dependent children reside or might reasonably be expected to reside;
- a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
- a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

### **Intentional Homelessness**

Where an applicant has left accommodation intentionally there is no duty to provide that applicant with permanent accommodation. Rather there are only limited duties to provide temporary accommodation and to provide advice and assistance. The definition of intentional homelessness is set out in s.191(1) of the 1996 Act:

“A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.”

The test is extended by s.191(3) to include further situations in which a person is to be treated as becoming homeless intentionally. The two situations are where (a) the applicant enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and (b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part VII. It is a further requirement that there is no other good reason why he is homeless.

### **Making inquiries**

There is an obligation on the local housing authority to make inquiries where they have reason to believe that an applicant may be homeless or threatened with homelessness.<sup>4</sup> The inquiries that the local housing authority is required to make are those which are necessary to satisfy themselves of the following-<sup>5</sup>

- whether the applicant is eligible for assistance,<sup>6</sup> and if so
- whether any duty, and if so what duty, is owed to him under the following provisions of this Part,<sup>7</sup> and if so
- what duty is owed to him.<sup>8</sup>

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<sup>4</sup> s.184(1).

<sup>5</sup> s.184(1).

<sup>6</sup> s.184(1)(a).

<sup>7</sup> s.184(1)(b).

<sup>8</sup> *ibid.*

## **Obligation to provide advice and assistance**

The applicant must be given advice and information, that is “advice and information about homelessness and the prevention of homelessness”. The local housing authority is empowered to give any person by whom such advice and information is provided on behalf of the authority assistance by way of grant or loan.<sup>9</sup> The local housing authority may also assist any such person in a number of ways set out in the statute:<sup>10</sup>

- by permitting him to use premises belonging to the authority,<sup>11</sup>
- by making available furniture or other goods, whether by way of gift, loan or otherwise,<sup>12</sup> and
- by making available the services of staff employed by the authority.<sup>13</sup>

The Secretary of State or a local housing authority may give assistance by way of grant or loan to voluntary organisations concerned with homelessness or matters relating to homelessness.<sup>14</sup> Powers are also given to local housing authorities to assist any such organisation.<sup>15</sup> The powers given are:-

- permitting them to use premises belonging to the authority,<sup>16</sup>
- making available furniture or other goods, whether by way of gift, loan or otherwise,<sup>17</sup> and
- making available the services of staff employed by the authority.<sup>18</sup>

## **Local authority obligation to provide temporary accommodation**

This obligation is to secure that accommodation is available pending a decision as to the duty (if any) owed to him under Part VII of the 1996 Act.<sup>19</sup> A local housing authority has an obligation to provide accommodation for the applicant if the local housing authority have reason to believe that the applicant may be homeless, is eligible for assistance and has a priority need.<sup>20</sup>

## **Duties to persons found to be homeless or threatened with homelessness**

If the local housing authority is satisfied that the applicant is in priority need but that she became homeless intentionally<sup>21</sup>, the authority is required to ensure that accommodation is available for the applicant’s occupation for a period of time that will give the applicant a reasonable opportunity of finding accommodation.<sup>22</sup> The

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<sup>9</sup> S.179(2).

<sup>10</sup> At s.179(3).

<sup>11</sup> S.179(3)(a).

<sup>12</sup> S.179(3)(b).

<sup>13</sup> S.179(3)(c).

<sup>14</sup> S.180(1).

<sup>15</sup> s.180(2).

<sup>16</sup> s.180(2)(a).

<sup>17</sup> s.180(2)(b).

<sup>18</sup> s.180(2)(c).

<sup>19</sup> s.188(1).

<sup>20</sup> s.188(1).

<sup>21</sup> The definition of becoming intentionally homeless is set out in section 191.

<sup>22</sup> s.190(2)(a).



authority is also required to provide the applicant with advice and such assistance as they think necessary in respect of the applicant's search for accommodation.<sup>23</sup>

If the local housing authority are not satisfied that the applicant has a priority need and became homeless intentionally, they are required to provide him with the advice and assistance which they consider appropriate in relation to any attempts the applicant may make to secure that accommodation becomes available for his occupation.<sup>24</sup> This obligation applies where the local housing authority are satisfied that an applicant is homeless and eligible for assistance, are not satisfied that he has become homeless intentionally, and are satisfied that he does not have a priority need.

### **The obligation where priority need but not homeless intentionally**

Unless the local housing authority refer the application to another local housing authority, they are required to secure that accommodation is available for occupation by the applicant. Where the local housing authority are satisfied that an applicant is:-

- homeless,
- eligible for assistance,
- has a priority need, and
- are not satisfied that he became homeless intentionally.<sup>25</sup>

Section 193 takes effect subject where there is no other suitable accommodation available. The local housing authority are subject to the duty under section 193 for a period of two years ("the minimum period"). After the end of that period, the authority is able to continue to secure that accommodation is available for occupation by the applicant, but are not obliged to do so.

The local housing authority ceases to be subject to the duty under s.193 if the applicant:-

- refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section<sup>26</sup>, provided that the applicant has been informed by the authority of the possible consequence of refusal.<sup>27</sup>
- ceases to be eligible for assistance,
- becomes homeless intentionally from the accommodation made available for his occupation,
- accepts an offer of accommodation under Part VI (allocation of housing), or
- otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.<sup>28</sup>

The local housing authority ceases to be subject to the duty under s.193 if:-

- the applicant refuses an offer of accommodation under Part VI, after being informed of the possible consequence of refusal, and

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<sup>23</sup> s.190(2).

<sup>24</sup> s.192(2).

<sup>25</sup> s.193(1).

<sup>26</sup> s.193(5).

<sup>27</sup> *ibid.*

<sup>28</sup> s.193(6).

- the authority are satisfied that the accommodation was suitable for the applicant and that it was reasonable for the applicant to accept it and notify the applicant accordingly within 21 days of the refusal.

A person who ceases to be owed the duty set out in section 193 may make a fresh application to the authority for accommodation or assistance in obtaining accommodation.

### **Discharge of Housing Functions**

The three ways in which the local authority can discharge its housing functions are set out in s.206(1) HA 2006:-

- where the authority secures that suitable accommodation provided by them is available,
- where the authority secures that she obtains suitable accommodation from some other person, or
- where the authority secures that she is given such advice and assistance as will secure that suitable accommodation is available from some other person.

### **Right to request review of decision**

Under s.202 of the 1996 Act (reproduced below) the applicant has the right to request a review of the local housing authority's. The policy behind this procedure being in the statute is to restrict the number of cases which need to go to court.

### **The development of the rights of the homeless in the case law**

The 1948 National Assistance Act was introduced to provide accommodation for those in urgent need where their need for housing was a result of unforeseen circumstances. The Act was the first piece of legislation to see homelessness as something other than a criminal issue rather than being a purely criminal matter, as with the Poor Laws and the Vagrancy Acts.

It was the 1977 Housing (Homeless Persons) Act ("the 1977 Act") which confronted the deeper significance of the problem of homelessness. The stated purpose of the legislation was to "change the outdated concept that homelessness was a social work problem and to place it clearly in the sphere of housing."<sup>29</sup>

The speech of Lord Brightman in *Pulhofer v. Hillingdon BC*<sup>30</sup> was central to the development of the law relating to homeless people. His lordship took the view that it was not a priority expressed within the legislation that local authorities be required to find accommodation for homeless people which reached a standard of reasonableness. He conceded that there would be situations in which some shelter could not be termed "accommodation". The example given was Diogenes' tub. This might afford basic shelter but it did not rise to the level of something which could be described as "accommodation". The applicants in *Pulhofer* were a married couple with two young

<sup>29</sup> Stephen Ross MP, *Hansard* 898-899, 18.2.77.

<sup>30</sup> [1986] AC 484.

children who were provided with accommodation in a bed-and-breakfast guest house by the respondent local authority. The authority had provided them with "... occupation of one room at the guest house containing a double and a single bed, a baby's cradle, dressing table, pram and steriliser unit. There were three bathrooms in the guest house, the total capacity of the guest house being 36 people or thereabouts. The applicants were in consequence compelled to eat out and to use a launderette for washing their own and the children's clothing. This expense absorbed most of their state benefit of £78 a week." Lord Brightman found, with the unanimous support of the House of Lords, that the concept of reasonableness was not to be read into the legislation in cases such as this to require the local authority to provide "suitable" accommodation. The Act was intended "to assist persons who are homeless, not an Act to provide them with homes." Lord Brightman was concerned, inter alia, that in the immediate wake of the introduction of the new legislation, the local authorities would not have had the time to increase the size of their housing stock to meet demand.

Significantly the purpose of the legislation, in Lord Brightman's opinion, is that it "is intended to provide for the homeless a lifeline of last resort; not to enable them to make inroads into the local authority's waiting lists for applicants." The local authority are required to "balance the priority needs of the homeless on the one hand, and the legitimate aspirations of those of their housing waiting list on the other hand". The homeless are therefore categorised by Lord Brightman as the "undeserving poor". There are not identified as having "legitimate aspirations" of their own to be housed.

The House of Lords decision in *Awua v. Brent LBC*<sup>31</sup>, in the speech of Lord Hoffmann, explicitly approved much of what was said in *Pulhofer*. Lord Hoffmann distinguished between the time for which accommodation was offered and the quality of the accommodation that was offered. With reference to the time for which accommodation was offered, he held that it need be neither permanent nor settled, provided that it was accommodation. Further, he conceded that even though the legislation introduced after *Pulhofer* had reversed the issue whether the authority was required to provide suitable accommodation but that the underlying approach of *Pulhofer* was nevertheless correct.

The decision of the Court of Appeal in *Ben-el-Mabrouk*<sup>32</sup> does suggest that the courts will take a broad view of what constitutes a rational decision in this area by an authority. Where the authority has great housing demands made of it, it appears that the courts are accepting that these general circumstances will govern the question whether or not accommodation is suitable. Therefore, the court is entitled to consider the broader housing requirements of the authority and its area in deciding whether or not accommodation is suitable.

ASH

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<sup>31</sup> [1995] 3 All ER 493.

<sup>32</sup> (1995) 27 HLR 564.