

The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003

2003 No. 3096

LANDLORD AND TENANT, ENGLAND AND WALES REGULATORY REFORM

The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003

Approved by both Houses of Parliament

Made: 1st December 2003

Coming into force: 1st June 2004

Whereas

(a) the First Secretary of State has consulted^[1] -

- (i) such organisations as appear to him to be representative of interests substantially affected by his proposals for this Order,
- (ii) the National Assembly for Wales,
- (iii) the Law Commission, and
- (iv) such other persons as he considered appropriate;

(b) as a result of that consultation it appeared to the First Secretary of State that it was appropriate to vary part of his proposals, and he undertook such further consultation with respect to the variations as appeared to him appropriate;

(c) following the consultation mentioned in recitals (a) and (b) the First Secretary of State considered it appropriate to proceed with the making of this Order;

(d) a document containing the First Secretary of State's proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001^[2] and the period for Parliamentary consideration under section 8 of that Act expired;

(e) the First Secretary of State had regard to the representations made during that period and, in particular, to the reports of the House of Commons Regulatory Reform Committee (Second Report, Session 2002-03, HC182) and the House of Lords Select Committee on Delegated Powers and Regulatory Reform (Fourth Report, Session 2002-03), HL Paper 22);

(f) a draft of this Order was laid before Parliament with a statement giving details of those representations and the changes to the First Secretary of State's proposals in the light of them;

(g) the draft was approved by a resolution of each House of Parliament;

(h) this Order modifies a function of the National Assembly for Wales and the Assembly has agreed that it be made;

(i) the First Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise; and

(j) this Order creates burdens affecting persons in the carrying on of certain activities, and the First Secretary of State is of the opinion that -

(i) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created, and

(ii) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made;

Now therefore the First Secretary of State, in exercise of the powers conferred by sections 1 and 4 of the Regulatory Reform Act 2001, hereby makes the following Order: -

Introduction

Citation, commencement and interpretation

1. - (1) This Order may be cited as the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

(2) This Order extends to England and Wales only.

(3) This Order shall come into force at the end of the period of 6 months beginning with the day on which it is made.

(4) In this Order, "the Act" means the Landlord and Tenant Act 1954^[3].

Amendment of the Landlord and Tenant Act 1954

2. The Act shall be amended as follows.

Applications to court by landlord or tenant

Amendments to section 24

3. - (1) In section 24(1)[4] (continuation of business tenancies), for the words "provisions of section twenty-nine of this Act, the tenant under such a tenancy may apply to the court for" substitute the words "following provisions of this Act either the tenant or the landlord under such a tenancy may apply to the court for an order for the grant of".

(2) Insert the following subsections after section 24(2) -

" (2A) Neither the tenant nor the landlord may make an application under subsection (1) above if the other has made such an application and the application has been served.

(2B) Neither the tenant nor the landlord may make such an application if the landlord has made an application under section 29(2) of this Act and the application has been served.

(2C) The landlord may not withdraw an application under subsection (1) above unless the tenant consents to its withdrawal."

Amendments to section 25

4. - (1) Omit section 25(5) (requirement for tenant to notify landlord whether he is willing to give up possession).

(2) For section 25(6) substitute -

" (6) A notice under this section shall not have effect unless it states whether the landlord is opposed to the grant of a new tenancy to the tenant.

(7) A notice under this section which states that the landlord is opposed to the grant of a new tenancy to the tenant shall not have effect unless it also specifies one or more of the grounds specified in section 30(1) of this Act as the ground or grounds for his opposition.

(8) A notice under this section which states that the landlord is not opposed to the grant of a new tenancy to the tenant shall not have effect unless it sets out the landlord's proposals as to -

(a) the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy);

(b) the rent to be payable under the new tenancy; and

(c) the other terms of the new tenancy."

Landlord's application to terminate tenancy

5. For section 29 (order by court for grant of a new tenancy) and the cross-heading immediately preceding it substitute -

Applications to court

Order by court for grant of new tenancy or termination of current tenancy

29. - (1) Subject to the provisions of this Act, on an application under section 24(1) of this Act, the court shall make an order for the grant of a new tenancy and accordingly for the termination of the current tenancy immediately before the commencement of the new tenancy.

(2) Subject to the following provisions of this Act, a landlord may apply to the court for an order for the termination of a tenancy to which this Part of this Act applies without the grant of a new tenancy -

(a) if he has given notice under section 25 of this Act that he is opposed to the grant of a new tenancy to the tenant; or

(b) if the tenant has made a request for a new tenancy in accordance with section 26 of this Act and the landlord has given notice under subsection (6) of that section.

(3) The landlord may not make an application under subsection (2) above if either the tenant or the landlord has made an application under section 24(1) of this Act.

(4) Subject to the provisions of this Act, where the landlord makes an application under subsection (2) above -

(a) if he establishes, to the satisfaction of the court, any of the grounds on which he is entitled to make the application in accordance with section 30 of this Act, the court shall make an order for the termination of the current tenancy in accordance with section 64 of this Act without the grant of a new tenancy; and

(b) if not, it shall make an order for the grant of a new tenancy and accordingly for the termination of the current tenancy immediately before the commencement of the new tenancy.

(5) The court shall dismiss an application by the landlord under section 24(1) of this Act if the tenant informs the court that he does not want a new tenancy.

(6) The landlord may not withdraw an application under subsection (2) above unless the tenant consents to its withdrawal."

Amendments to section 30

6. - (1) In section 30(1) (grounds of opposition by landlord to renewal of tenancy), for the words "subsection (1) of section twenty-four of this Act" substitute "section 24(1) of this Act, or make an application under section 29(2) of this Act,".

(2) In section 30(2), after the words "oppose an application" insert "under section 24(1) of this Act, or make an application under section 29(2) of this Act,".

Amendment to section 31

7. In section 31(2) (declaration and order of the court in certain cases where landlord opposes renewal) for the words from the beginning to "any of those grounds" substitute "Where the landlord opposes an application under section 24(1) of this Act, or makes an application under

section 29(2) of this Act, on one or more of the grounds specified in section 30(1)(d) to (f) of this Act but establishes none of those grounds, and none of the other grounds specified in section 30(1) of this Act, to the satisfaction of the court, then if the court would have been satisfied on any of the grounds specified in section 30(1)(d) to (f) of this Act".

Amendment to section 31A

8. In section 31A(1)[5] (grant of new tenancy in some cases where section 30(1)(f) applies), after the words "30(1) of this Act" insert ", or makes an application under section 29(2) of this Act on that ground,".

Amendment to section 34

9. In section 34(2)(a) [6] (rent under new tenancy), for the words "for the new tenancy" substitute the words "to the court".

Time limits for applications to court

10. After section 29 insert the following sections -

" Time limits for applications to court

29A. - (1) Subject to section 29B of this Act, the court shall not entertain an application -

- (a) by the tenant or the landlord under section 24(1) of this Act; or
- (b) by the landlord under section 29(2) of this Act,

if it is made after the end of the statutory period.

(2) In this section and section 29B of this Act "the statutory period" means a period ending -

- (a) where the landlord gave a notice under section 25 of this Act, on the date specified in his notice; and
- (b) where the tenant made a request for a new tenancy under section 26 of this Act, immediately before the date specified in his request.

(3) Where the tenant has made a request for a new tenancy under section 26 of this Act, the court shall not entertain an application under section 24(1) of this Act which is made before the end of the period of two months beginning with the date of the making of the request, unless the application is made after the landlord has given a notice under section 26(6) of this Act.

Agreements extending time limits

29B. - (1) After the landlord has given a notice under section 25 of this Act, or the tenant has made a request under section 26 of this Act, but before the end of the statutory period, the landlord and tenant may agree that an application such as is mentioned in section 29A(1) of this Act, may be made before the end of a period specified in the agreement which will expire after the end of the statutory period.

(2) The landlord and tenant may from time to time by agreement further extend the period for making such an application, but any such agreement must be made before the end of the period specified in the current agreement.

(3) Where an agreement is made under this section, the court may entertain an application such as is mentioned in section 29A(1) of this Act if it is made before the end of the period specified in the agreement.

(4) Where an agreement is made under this section, or two or more agreements are made under this section, the landlord's notice under section 25 of this Act or tenant's request under section 26 of this Act shall be treated as terminating the tenancy at the end of the period specified in the agreement or, as the case may be, at the end of the period specified in the last of those agreements."

Amendment to section 25

11. In section 25(1) (termination of tenancy subject to provisions of Part 4) after "subject to" insert "the provisions of section 29B(4) of this Act and".

Amendment to section 26

12. In section 26(5) (termination of tenancy subject to section 36(2) and Part 4) for "subsection (2) of section thirty-six" substitute "sections 29B(4) and 36(2)".

Companies and their controlling shareholders

Amendment to section 23

13. After section 23(1) (tenancies to which Part 2 applies) insert -

" (1A) Occupation or the carrying on of a business -

- (a) by a company in which the tenant has a controlling interest; or
- (b) where the tenant is a company, by a person with a controlling interest in the company,

shall be treated for the purposes of this section as equivalent to occupation or, as the case may be, the carrying on of a business by the tenant.

(1B) Accordingly references (however expressed) in this Part of this Act to the business of, or to use, occupation or enjoyment by, the tenant shall be construed as including references to the business of, or to use, occupation or enjoyment by, a company falling within subsection (1A)(a) above or a person falling within subsection (1A)(b) above."

Amendments to section 30

14. - (1) After section 30(1) (opposition by landlord to renewal of tenancy) insert -

" (1A) Where the landlord has a controlling interest in a company, the reference in subsection (1)(g) above to the landlord shall be construed as a reference to the landlord or that company.

(1B) Subject to subsection (2A) below, where the landlord is a company and a person has a controlling interest in the company, the reference in subsection (1)(g) above to the landlord shall be construed as a reference to the landlord or that person."

(2) After section 30(2) insert -

" (2A) Subsection (1B) above shall not apply if the controlling interest was acquired after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the acquisition of the controlling interest the holding has been comprised in a tenancy or successive tenancies of the description specified in section 23(1) of this Act."

Amendment to section 34

15. After section 34(2) (improvements to which subsection (1)(c) applies) insert -

" (2A) If this Part of this Act applies by virtue of section 23(1A) of this Act, the reference in subsection (1)(d) above to the tenant shall be construed as including -

- (a) a company in which the tenant has a controlling interest, or
- (b) where the tenant is a company, a person with a controlling interest in the company."

Amendment to section 42

16. At the end of the first paragraph of section 42(1)[7] (groups of companies) add "or the same person has a controlling interest in both".

Amendments to section 46

17. - (1) Section 46 (interpretation of Part 2) shall become section 46(1).

(2) After that subsection add -

" (2) For the purposes of this Part of this Act, a person has a controlling interest in a company, if, had he been a company, the other company would have been its subsidiary; and in this Part -

"company" has the meaning given by section 735 of the Companies Act 1985; and

"subsidiary" has the meaning given by section 736 of that Act."

Interim rent

Rent while tenancy continues by virtue of section 24

18. For section 24A[8] (interim rent) substitute -

" Applications for determination of interim rent while tenancy continues

24A - (1) Subject to subsection (2) below, if -

- (a) the landlord of a tenancy to which this Part of this Act applies has given notice under section 25 of this Act to terminate the tenancy; or
- (b) the tenant of such a tenancy has made a request for a new tenancy in accordance with section 26 of this Act,

either of them may make an application to the court to determine a rent (an "interim rent") which the tenant is to pay while the tenancy ("the relevant tenancy") continues by virtue of section 24 of this Act and the court may order payment of an interim rent in accordance with section 24C or 24D of this Act.

(2) Neither the tenant nor the landlord may make an application under subsection (1) above if the other has made such an application and has not withdrawn it.

(3) No application shall be entertained under subsection (1) above if it is made more than six months after the termination of the relevant tenancy.

Date from which interim rent is payable

24B - (1) The interim rent determined on an application under section 24A(1) of this Act shall be payable from the appropriate date.

(2) If an application under section 24A(1) of this Act is made in a case where the landlord has given a notice under section 25 of this Act, the appropriate date is the earliest date of termination that could have been specified in the landlord's notice.

(3) If an application under section 24A(1) of this Act is made in a case where the tenant has made a request for a new tenancy under section 26 of this Act, the appropriate date is the earliest date that could have been specified in the tenant's request as the date from which the new tenancy is to begin.

Amount of interim rent where new tenancy of whole premises granted and landlord not opposed

24C - (1) This section applies where -

- (a) the landlord gave a notice under section 25 of this Act at a time when the tenant was in occupation of the whole of the property comprised in the relevant tenancy for purposes such as are mentioned in section 23(1) of this Act and stated in the notice that he was not opposed to the grant of a new tenancy; or
- (b) the tenant made a request for a new tenancy under section 26 of this Act at a time when he was in occupation of the whole of that property for such purposes and the landlord did not give notice under subsection (6) of that section,

and the landlord grants a new tenancy of the whole of the property comprised in the relevant tenancy to the tenant (whether as a result of an order for the grant of a new tenancy or otherwise).

(2) Subject to the following provisions of this section, the rent payable under and at the commencement of the new tenancy shall also be the interim rent.

(3) Subsection (2) above does not apply where -

(a) the landlord or the tenant shows to the satisfaction of the court that the interim rent under that subsection differs substantially from the relevant rent; or

(b) the landlord or the tenant shows to the satisfaction of the court that the terms of the new tenancy differ from the terms of the relevant tenancy to such an extent that the interim rent under that subsection is substantially different from the rent which (in default of such agreement) the court would have determined under section 34 of this Act to be payable under a tenancy which commenced on the same day as the new tenancy and whose other terms were the same as the relevant tenancy.

(4) In this section "the relevant rent" means the rent which (in default of agreement between the landlord and the tenant) the court would have determined under section 34 of this Act to be payable under the new tenancy if the new tenancy had commenced on the appropriate date (within the meaning of section 24B of this Act).

(5) The interim rent in a case where subsection (2) above does not apply by virtue only of subsection (3)(a) above is the relevant rent.

(6) The interim rent in a case where subsection (2) above does not apply by virtue only of subsection (3)(b) above, or by virtue of subsection (3)(a) and (b) above, is the rent which it is reasonable for the tenant to pay while the relevant tenancy continues by virtue of section 24 of this Act.

(7) In determining the interim rent under subsection (6) above the court shall have regard -

(a) to the rent payable under the terms of the relevant tenancy; and

(b) to the rent payable under any sub-tenancy of part of the property comprised in the relevant tenancy,

but otherwise subsections (1) and (2) of section 34 of this Act shall apply to the determination as they would apply to the determination of a rent under that section if a new tenancy of the whole of the property comprised in the relevant tenancy were granted to the tenant by order of the court and the duration of that new tenancy were the same as the duration of the new tenancy which is actually granted to the tenant.

(8) In this section and section 24D of this Act "the relevant tenancy" has the same meaning as in section 24A of this Act.

Amount of interim rent in any other case

24D - (1) The interim rent in a case where section 24C of this Act does not apply is the rent which it is reasonable for the tenant to pay while the relevant tenancy continues by virtue of section 24 of this Act.

(2) In determining the interim rent under subsection (1) above the court shall have regard -

(a) to the rent payable under the terms of the relevant tenancy; and

(b) to the rent payable under any sub-tenancy of part of the property comprised in the relevant tenancy,

but otherwise subsections (1) and (2) of section 34 of this Act shall apply to the determination as they would apply to the determination of a rent under that section if a new tenancy from year to year of the whole of the property comprised in the relevant tenancy were granted to the tenant by order of the court.

(3) If the court -

(a) has made an order for the grant of a new tenancy and has ordered payment of interim rent in accordance with section 24C of this Act, but

(b) either -

(i) it subsequently revokes under section 36(2) of this Act the order for the grant of a new tenancy; or

(ii) the landlord and tenant agree not to act on the order,

the court on the application of the landlord or the tenant shall determine a new interim rent in accordance with subsections (1) and (2) above without a further application under section 24A(1) of this Act."

Compensation

Compensation for refusal of new tenancy

19. - (1) For section 37(1)[9] (compensation where new tenancy precluded on certain grounds) substitute -

" (1) Subject to the provisions of this Act, in a case specified in subsection (1A), (1B) or (1C) below (a "compensation case") the tenant shall be entitled on quitting the holding to recover from the landlord by way of compensation an amount determined in accordance with this section.

(1A) The first compensation case is where on the making of an application by the tenant under section 24(1) of this Act the court is precluded (whether by subsection (1) or subsection (2) of section 31 of this Act) from making an order for the grant of a new tenancy by reason of any of the grounds specified in paragraphs (e), (f) and (g) of section 30(1) of this Act (the "compensation grounds") and not of any grounds specified in any other paragraph of section 30(1).

(1B) The second compensation case is where on the making of an application under section 29(2) of this Act the court is precluded (whether by section 29(4)(a) or section 31(2) of this Act) from making an order for the grant of a new tenancy by reason of any of the compensation grounds and not of any other grounds specified in section 30(1) of this Act.

(1C) The third compensation case is where -

(a) the landlord's notice under section 25 of this Act or, as the case may be, under section 26(6) of this Act, states his opposition to the grant of a new tenancy on any of the compensation grounds and not on any other grounds specified in section 30(1) of this Act; and

(b) either -

(i) no application is made by the tenant under section 24(1) of this Act or by the landlord under section 29(2) of this Act; or

(ii) such an application is made but is subsequently withdrawn."

(2) In section 37(2)[10] -

(a) for the words "subsections (5A) to (5E) of this section the said amount" substitute "the following provisions of this section, compensation under this section"; and

(b) in paragraph (a), after the word "satisfied" insert "in relation to the whole of the holding".

(3) After section 37(3) insert -

" (3A) If the conditions specified in subsection (3) above are satisfied in relation to part of the holding but not in relation to the other part, the amount of compensation shall be the aggregate of sums calculated separately as compensation in respect of each part, and accordingly, for the purpose of calculating compensation in respect of a part any reference in this section to the holding shall be construed as a reference to that part.

(3B) Where section 44(1A) of this Act applies, the compensation shall be determined separately for each part and compensation determined for any part shall be recoverable only from the person who is the owner of an interest in that part which fulfils the conditions specified in section 44(1) of this Act."

(4) In section 37(4), for the words "the circumstances mentioned in subsection (1) of this section" substitute "a compensation case".

Compensation for misrepresentation

20. After section 37 insert -

" Compensation for possession obtained by misrepresentation

37A. - (1) Where the court -

(a) makes an order for the termination of the current tenancy but does not make an order for the grant of a new tenancy, or

(b) refuses an order for the grant of a new tenancy,

and it subsequently made to appear to the court that the order was obtained, or the court was induced to refuse the grant, by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order or refusal.

(2) Where -

(a) the tenant has quit the holding -

(i) after making but withdrawing an application under section 24(1) of this Act; or

(ii) without making such an application; and

(b) it is made to appear to the court that he did so by reason of misrepresentation or the concealment of material facts,

the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of quitting the holding."

Agreements to exclude security of tenure

Amendments to section 38

21. - (1) In section 38(1) (restrictions on agreements excluding provisions of Part 2)[11] for "subsection (4) of this section" substitute "section 38A of this Act".

(2) Omit section 38(4).

Agreements to exclude sections 24 to 28

22. - (1) After section 38 insert -

" Agreements to exclude provisions of Part 2

38A. - (1) The persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain which will be a tenancy to which this Part of this Act applies may agree that the provisions of sections 24 to 28 of this Act shall be excluded in relation to that tenancy.

(2) The persons who are the landlord and the tenant in relation to a tenancy to which this Part of this Act applies may agree that the tenancy shall be surrendered on such date or in such circumstances as may be specified in the agreement and on such terms (if any) as may be so specified.

(3) An agreement under subsection (1) above shall be void unless -

(a) the landlord has served on the tenant a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the 2003 Order"); and

(b) the requirements specified in Schedule 2 to that Order are met.

(4) An agreement under subsection (2) above shall be void unless -

(a) the landlord has served on the tenant a notice in the form, or substantially in the form, set out in Schedule 3 to the 2003 Order; and

(b) the requirements specified in Schedule 4 to that Order are met."

(2) Schedules 1 to 4 to this Order shall have effect.

Duties to give information

Provision of information

23. For section 40 substitute -

“ Duties of tenants and landlords of business premises to give information to each other

40. - (1) Where a person who is an owner of an interest in reversion expectant (whether immediately or not) on a tenancy of any business premises has served on the tenant a notice in the prescribed form requiring him to do so, it shall be the duty of the tenant to give the appropriate person in writing the information specified in subsection (2) below.

(2) That information is -

(a) whether the tenant occupies the premises or any part of them wholly or partly for the purposes of a business carried on by him;

(b) whether his tenancy has effect subject to any sub-tenancy on which his tenancy is immediately expectant and, if so -

(i) what premises are comprised in the sub-tenancy;

(ii) for what term it has effect (or, if it is terminable by notice, by what notice it can be terminated);

(iii) what is the rent payable under it;

(iv) who is the sub-tenant;

(v) (to the best of his knowledge and belief) whether the sub-tenant is in occupation of the premises or of part of the premises comprised in the sub-tenancy and, if not, what is the sub-tenant's address;

(vi) whether an agreement is in force excluding in relation to the sub-tenancy the provisions of sections 24 to 28 of this Act; and

(vii) whether a notice has been given under section 25 or 26(6) of this Act, or a request has been made under section 26 of this Act, in relation to the sub-tenancy and, if so, details of the notice or request; and

(c) (to the best of his knowledge and belief) the name and address of any other person who owns an interest in reversion in any part of the premises.

(3) Where the tenant of any business premises who is a tenant under such a tenancy as is mentioned in section 26(1) of this Act has served on a reversioner or a reversioner's mortgagee in possession a notice in the prescribed form requiring him to do so, it shall be the duty of the person on whom the notice is served to give the appropriate person in writing the information specified in subsection (4) below.

(4) That information is -

(a) whether he is the owner of the fee simple in respect of the premises or any part of them or the mortgagee in possession of such an owner,

(b) if he is not, then (to the best of his knowledge and belief) -

(i) the name and address of the person who is his or, as the case may be, his mortgagor's immediate landlord in respect of those premises or of the part in respect of which he or his mortgagor is not the owner in fee simple;

(ii) for what term his or his mortgagor's tenancy has effect and what is the earliest date (if any) at which that tenancy is terminable by notice to quit given by the landlord; and

(iii) whether a notice has been given under section 25 or 26(6) of this Act, or a request has been made under section 26 of this Act, in relation to the tenancy and, if so, details of the notice or request;

(c) (to the best of his knowledge and belief) the name and address of any other person who owns an interest in reversion in any part of the premises; and

(d) if he is a reversioner, whether there is a mortgagee in possession of his interest in the premises and, if so, (to the best of his knowledge and belief) what is the name and address of the mortgagee.

(5) A duty imposed on a person by this section is a duty -

(a) to give the information concerned within the period of one month beginning with the date of service of the notice; and

(b) if within the period of six months beginning with the date of service of the notice that person becomes aware that any information which has been given in pursuance of the notice is not, or is no longer, correct, to give the appropriate person correct information within the period of one month beginning with the date on which he becomes aware.

(6) This section shall not apply to a notice served by or on the tenant more than two years before the date on which apart from this Act his tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the landlord.

(7) Except as provided by section 40A of this Act, the appropriate person for the purposes of this section and section 40A(1) of this Act is the person who served the notice under subsection (1) or (3) above.

(8) In this section -

“business premises” means premises used wholly or partly for the purposes of a business;

“mortgagee in possession” includes a receiver appointed by the mortgagee or by the court who is in receipt of the rents and profits, and “his mortgagor” shall be construed accordingly;

“reversioner” means any person having an interest in the premises, being an interest in reversion expectant (whether immediately or not) on the tenancy;

“reversioner's mortgagee in possession” means any person being a mortgagee in possession in respect of such an interest; and

“sub-tenant” includes a person retaining possession of any premises by virtue of the Rent (Agriculture) Act 1976 or the Rent Act 1977 after the coming to an end of a sub-tenancy, and “sub-tenancy” includes a right so to retain possession.”.

Section 40 duties in transfer cases

24. After section 40 insert the following sections -

Duties in transfer cases

40A. - (1) If a person on whom a notice under section 40(1) or (3) of this Act has been served has transferred his interest in the premises or any part of them to some other person and gives the appropriate person notice in writing -

- (a) of the transfer of his interest; and
- (b) of the name and address of the person to whom he transferred it,

on giving the notice he ceases in relation to the premises or (as the case may be) to that part to be under any duty imposed by section 40 of this Act.

(2) If -

(a) the person who served the notice under section 40(1) or (3) of this Act (“the transferor”) has transferred his interest in the premises to some other person (“the transferee”); and

(b) the transferor or the transferee has given the person required to give the information notice in writing -

- (i) of the transfer; and
- (ii) of the transferee’s name and address,

the appropriate person for the purposes of section 40 of this Act and subsection (1) above is the transferee.

(3) If -

(a) a transfer such as is mentioned in paragraph (a) of subsection (2) above has taken place; but

(b) neither the transferor nor the transferee has given a notice such as is mentioned in paragraph (b) of that subsection,

any duty imposed by section 40 of this Act may be performed by giving the information either to the transferor or to the transferee.

Proceedings for breach of duties to give information

40B. A claim that a person has broken any duty imposed by section 40 of this Act may be made the subject of civil proceedings for breach of statutory duty; and in any such proceedings a court may order that person to comply with that duty and may make an award of damages.”.

Miscellaneous amendments

Termination by tenant of tenancy

25. - (1) After section 27(1) (termination by tenant of fixed term tenancy at end of term)[12] insert -

“ (1A) Section 24 of this Act shall not have effect in relation to a tenancy for a term of years certain where the tenant is not in occupation of the property comprised in the tenancy at the time when, apart from this Act, the tenancy would come to an end by effluxion of time.”.

(2) In section 27(2) (termination by tenant of fixed term tenancy continuing by virtue of section 24) -

(a) after “of this Act” insert “shall not come to an end by reason only of the tenant ceasing to occupy the property comprised in the tenancy but”; and

(b) omit the word “quarter”.

(3) After that subsection insert -

“ (3) Where a tenancy is terminated under subsection (2) above, any rent payable in respect of a period which begins before, and ends after, the tenancy is terminated shall be apportioned, and any rent paid by the tenant in excess of the amount apportioned to the period before termination shall be recoverable by him.”.

Maximum duration of new tenancy

26. In section 33 (duration of new tenancy) for the word “fourteen” substitute the word “fifteen”.

Divided reversions

27. - (1) In section 44(1)[13] (meaning of “landlord”), for “the next following subsection,” substitute “subsections (1A) and (2) below,”.

(2) After section 44(1) insert -

“ (1A) The reference in subsection (1) above to a person who is the owner of an interest such as is mentioned in that subsection is to be construed, where different persons own such interests in different parts of the property, as a reference to all those persons collectively.”.

(3) In section 35(1)[14] (other terms of new tenancy), after the word “thereunder” insert “, including, where different persons own interests which fulfil the conditions specified in section 44(1) of this Act in different parts of it, terms as to the apportionment of the rent,”.

Final provisions

Consequential amendments, repeals and subordinate provisions

28. - (1) Schedule 5 to this Order, which contains amendments consequential on the provisions of this Order, shall have effect.

(2) The enactments specified in Schedule 6 to this Order are repealed to the extent mentioned in the third column of that Schedule.

(3) Schedules 1 to 4 to this Order are designated as subordinate provisions for the purposes of section 4 of the Regulatory Reform Act 2001.

(4) A subordinate provisions order relating to the subordinate provisions designated by paragraph (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) The power to make a subordinate provisions order relating to those provisions is to be exercisable in relation to Wales by the National Assembly for Wales concurrently with a Minister of the Crown.

(6) Paragraph (4) above does not apply to a subordinate provisions order made by the National Assembly for Wales.

(7) The notices and statutory declarations set out in Schedules 1 to 4 to this Order shall be treated for the purposes of section 26 of the Welsh Language Act 1993[15] (power to prescribe Welsh forms) as if they were specified by an Act of Parliament; and accordingly the power conferred by section 26(2) of that Act may be exercised in relation to those notices and declarations.

Transitional provisions

29. - (1) Where, before this Order came into force -

(a) the landlord gave the tenant notice under section 25 of the Act; or

(b) the tenant made a request for a new tenancy in accordance with section 26 of the Act,

nothing in this Order has effect in relation to the notice or request or anything done in consequence of it.

(2) Nothing in this Order has effect in relation -

(a) to an agreement -

(i) for the surrender of a tenancy which was made before this Order came into force and which fell within section 24(2)(b) of the Act; or

(ii) which was authorised by the court under section 38(4) of the Act before this Order came into force; or

(b) to a notice under section 27(2) of the Act which was given by the tenant to the immediate landlord before this Order came into force.

(3) Any provision in a tenancy which requires an order under section 38(4) of the Act to be obtained in respect of any subtenancy shall, so far as is necessary after the coming into force of this Order, be construed as if it required the procedure mentioned in section 38A of the Act to be followed, and any related requirement shall be construed accordingly.

(4) If a person has, before the coming into force of this Order, entered into an agreement to take a tenancy, any provision in that agreement which requires an order under section 38(4) of the Act to be obtained in respect of the tenancy shall continue to be effective, notwithstanding the repeal of that provision by Article 21(2) of this Order, and the court shall retain jurisdiction to make such an order.

(5) Article 20 above does not have effect where the tenant quit the holding before this Order came into force.

(6) Nothing in Articles 23 and 24 above applies to a notice under section 40 of the Act served before this Order came into force.

Signed by authority of the First Secretary of State

Keith Hill

Minister of State, Office of the Deputy Prime Minister

1st December 2003

SCHEDULE 1

Article 22(2)

FORM OF NOTICE THAT SECTIONS 24 TO 28 OF THE LANDLORD AND TENANT ACT 1954 ARE NOT TO APPLY TO A BUSINESS TENANCY

To:

[Name and address of tenant]

From:

[Name and address of landlord]

SCHEDULE 2

Article 22(2)

REQUIREMENTS FOR A VALID AGREEMENT THAT SECTIONS 24 TO 28 OF THE LANDLORD AND TENANT ACT 1954 ARE NOT TO APPLY TO A BUSINESS TENANCY

1. The following are the requirements referred to in section 38A(3)(b) of the Act.
2. Subject to paragraph 4, the notice referred to in section 38A(3)(a) of the Act must be served on the tenant not less than 14 days before the tenant enters into the tenancy to which it applies, or (if earlier) becomes contractually bound to do so.
3. If the requirement in paragraph 2 is met, the tenant, or a person duly authorised by him to do so, must, before the tenant enters into the tenancy to which the notice applies, or (if earlier) becomes contractually bound to do so, make a declaration in the form, or substantially in the form, set out in paragraph 7.
4. If the requirement in paragraph 2 is not met, the notice referred to in section 38A(3)(a) of the Act must be served on the tenant before the tenant enters into the tenancy to which it applies, or (if earlier) becomes contractually bound to do so, and the tenant, or a person duly authorised by him to do so, must before that time make a statutory declaration in the form, or substantially in the form, set out in paragraph 8.
5. A reference to the notice and, where paragraph 3 applies, the declaration or, where paragraph 4 applies, the statutory declaration must be contained in or endorsed on the instrument creating the tenancy.
6. The agreement under section 38A(1) of the Act, or a reference to the agreement, must be contained in or endorsed upon the instrument creating the tenancy.
7. The form of declaration referred to in paragraph 3 is as follows: -

(name of declarant) of _____

(address) declare that -

1. I/ _____

(name of tenant) propose(s) to enter into a tenancy of premises at _____

(address of premises) for a term commencing on _____

2. I/The tenant propose(s) to enter into an agreement with _____

(*name of landlord*) that the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 (security of tenure) shall be excluded in relation to the tenancy.

3. The landlord has, not less than 14 days before I/the tenant enter(s) into the tenancy, or (if earlier) become(s) contractually bound to do so served on me/the tenant a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.

4. I have/The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.

5. (as appropriate) I am duly authorised by the tenant to make this declaration.

DECLARED this _____

day of _____

To: _____

 [Name and address of tenant]

From: _____

 [name and address of landlord]

8. The form of statutory declaration referred to in paragraph 4 is as follows: -

I _____

(*name of declarant*) of _____

(*address*) do solemnly and sincerely declare that -

1. I _____

(*name of tenant*) propose(s) to enter into a tenancy of premises at _____

(*address of premises*) for a term commencing on _____

2. I/The tenant propose(s) to enter into an agreement with (name of landlord) that the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 (security of tenure) shall be excluded in relation to the tenancy.

3. The landlord has served on me/the tenant a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.

4. I have/The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.

5. (*as appropriate*) I am duly authorised by the tenant to make this declaration.

To: _____

 [Name and address of tenant]

From: _____

 [name and address of landlord]

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declaration Act 1835.

DECLARED at _____

this _____

day of _____

Before me

(signature of person before whom declaration is made)

A commissioner for oaths or A solicitor empowered to administer oaths or *(as appropriate)*

SCHEDULE 3

Article 22(2)

FORM OF NOTICE THAT AN AGREEMENT TO SURRENDER A BUSINESS TENANCY IS TO BE MADE

To:

[Name and address of tenant]

From:

[name and address of landlord]

SCHEDULE 4

Article 22(2)

REQUIREMENTS FOR A VALID AGREEMENT TO SURRENDER A BUSINESS TENANCY

1. The following are the requirements referred to in section 38A(4)(b) of the Act.
2. Subject to paragraph 4, the notice referred to in section 38A(4)(a) of the Act must be served on the tenant not less than 14 days before the tenant enters into the agreement under section 38A(2) of the Act, or (if earlier) becomes contractually bound to do so.
3. If the requirement in paragraph 2 is met, the tenant or a person duly authorised by him to do so, must, before the tenant enters into the agreement under section 38A(2) of the Act, or (if earlier) becomes contractually bound to do so, make a declaration in the form, or substantially in the form, set out in paragraph 6.
4. If the requirement in paragraph 2 is not met, the notice referred to in section 38A(4)(a) of the Act must be served on the tenant before the tenant enters into the agreement under section 38A(2) of the Act, or (if earlier) becomes contractually bound to do so, and the tenant, or a person duly authorised by him to do so, must before that time make a statutory declaration in the form, or substantially in the form, set out in paragraph 7.
5. A reference to the notice and, where paragraph 3 applies, the declaration or, where paragraph 4 applies, the statutory declaration must be contained in or endorsed on the instrument creating the agreement under section 38A(2).

6. The form of declaration referred to in paragraph 3 is as follows:

I _____

(*name of declarant*) of _____

(*address*) declare that -

1. I have/ _____

(*name of tenant*) has a tenancy of premises at _____

(*address of premises*) for a term commencing on _____

2. I/The tenant propose(s) to enter into an agreement with _____

(*name of landlord*) to surrender the tenancy on a date or in circumstances specified in the agreement.

3. The landlord has not less than 14 days before I/the tenant enter(s) into the agreement referred to in paragraph 2 above, or (if earlier) become(s) contractually bound to do so, served on me/the tenant a notice in the form, or substantially in the form, set out in Schedule 3 to Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.

4. I have/The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.

5. (*as appropriate*) I am duly authorised by the tenant to make this declaration.

DECLARED this _____

day of _____

To:

[*Name and address of tenant*]

From:

[*name and address of landlord*]

7. The form of statutory declaration referred to in paragraph 4 is as follows: -

I _____

(*name of declarant*) of _____

(*address*) do solemnly and sincerely declare that -

1. I have/ _____

(*name of tenant*) has a tenancy of premises at _____

(*address of premises*) for a term commencing on _____

2. I/The tenant propose(s) to enter into an agreement with _____

(*name of landlord*) to surrender the tenancy on a date or in circumstances specified in the agreement.

3. The landlord has served on me/the tenant a notice in the form, or substantially in the form, set out in Schedule 3 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.

4. I have/The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.

5. (as appropriate) I am duly authorised by the tenant to make this declaration.

To:

[Name and address of tenant]

From:

[name and address of landlord]

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835

DECLARED at

this

day of

Before me (*signature of person before whom declaration is made*)

A commissioner for oaths or A solicitor empowered to administer oaths or (*as appropriate*)

SCHEDULE 5

Article 28(1)

CONSEQUENTIAL AMENDMENTS

Landlord and Tenant Act 1954

1. The Act shall be amended as follows.

2. After section 14 insert -

“ Compensation for possession obtained by misrepresentation

14A. Where an order is made for possession of the property comprised in a tenancy to which section 1 of this Act applies and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the tenant such a sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order.”

3. In section 26(1), for the words “tenancy under which he holds for the time being (hereinafter referred to as “the current tenancy”)” substitute “current tenancy”.

4. In section 38(2) and (3) for the words “the last foregoing section” substitute the words “section 37 of this Act”.

5. In section 41A(6) for the words from “section 29(1)” to “jointly” substitute “section 29 of this Act for the grant of a new tenancy it may order the grant to be made to the business tenants or to them jointly”.

6. In section 46 -

(a) for the definition of “current tenancy” substitute -

“ “current tenancy” means the tenancy under which the tenant holds for the time being;” and

(b) after the definition of “the holding” insert -

“interim rent” has the meaning given by section 24A(1) of this Act;”;

7. In sections 57(3)(a) and 58(1)(a) -

for the words “subsection (5) and” substitute the word “subsection”; and

after the word “under”, in the second place where it occurs, insert the words “subsection (1) of”.

8. In section 59(1), after “(3)” insert the words “to (3B)”.

9. In section 64(1)(b), for the words “the said part II” substitute the words “under section 24(1) or 29(2) of this Act”.

Leasehold Reform Act 1967

10. Schedule 3 to the Leasehold Reform Act 1967 [16] shall be amended as follows.

11. For paragraph 2(1) substitute -

“ (1) Sub-paragraphs (1A) to (1E) below apply where a landlord’s notice terminating the tenancy of any property has been given under section 4 or 25 of the Landlord and Tenant Act 1954 or served under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989 (whether or not that notice has effect to terminate the tenancy).

(1A) A claim to acquire the freehold or an extended lease of the property shall be of no effect if made after the relevant time, but this sub-paragraph is subject to sub-paragraphs (1D) and (1E) below.

(1B) In this paragraph (but subject to sub-paragraph (1C) below) “the relevant time” is the end of the period of two months beginning with the date on which the landlord’s notice terminating the tenancy has been given or served.

(1C) Where -

(a) a landlord’s notice terminating the tenancy has been given under section 25 of the Landlord and Tenant Act 1954, and

(b) the tenant applies to the court under section 24(1) of that Act for an order for the grant of a new tenancy before the end of the period of two months mentioned in sub-paragraph (1B) above, “the relevant time” is the time when the application is made.

(1D) Sub-paragraph (1A) above shall not apply where the landlord gives his written consent to the claim being made after the relevant time.

(1E) Where a tenant, having given notice of a desire to have the freehold, gives after the relevant time a further notice under section 9(3) of this Act of his inability or unwillingness to acquire the house and premises at the price he must pay, he may with the notice under section 9(3) give a notice of his desire to have an extended lease (if he then has a right to such a lease).”.

12. After paragraph 2 insert -

“ **2A** - (1) If -

(a) the landlord commences proceedings under Part 2 of the Landlord and Tenant Act 1954; and

(b) the tenant subsequently makes a claim to acquire the freehold or an extended lease of the property; and

(c) paragraph 2 above does not render the claim of no effect,

no further steps shall be taken in the proceedings under Part 2 otherwise than for their dismissal and for the making of any consequential order.

(2) Section 64 of the Landlord and Tenant Act 1954 shall have no effect in a case to which sub-paragraph (1) above applies.”.

13. After paragraph 10(2) insert -

“ (2A) If the landlord’s notice is under section 25 of the Landlord and Tenant Act 1954, sub-paragraph (2) above shall effect in relation to it as if in paragraph (b), after the word “operate” there were inserted the words “and no further proceedings may be taken by him under Part 2 of the Landlord and Tenant Act 1954.””.

SCHEDULE 6

Article 28(2)

ENACTMENTS REPEALED

CHAPTER	SHORT TITLE	EXTENT OF REPEAL
2 and 3 Eliz. 2 c. 56	Landlord and Tenant Act 1954	Section 24(2)(b) and the word "or" immediately preceding it. Section 25(5). In section 27(2), the word "quarter". Section 30(3). Section 38(4). In section 42(1), the second paragraph. Section 55. In section 67, the words "(2) or".
_____ 1967 c. 88	_____ Leasehold Reform Act 1967	_____ In Schedule 3, paragraph 2(4)(b) and the word "and" immediately preceding it.
_____ 1969 c. 59	_____ Law of Property Act 1969	_____ Section 6
_____ 1989 c. 40	_____ Companies Act 1989	_____ In Schedule 18, paragraph 3.

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