



**The Law
Commission**

Renting Homes

**Law Com No 284 (Executive Summary)
5 November 2003**

RENTING HOMES

EXECUTIVE SUMMARY

THE PROJECT

- 1.1 Nearly a third of the population in this country rent their homes. The law regulating the relationship between landlords and occupiers has over the last 100 years become exceptionally complex, found in a tangled web of statute law and judicial decision. In 2001 the Law Commission was asked to review the law with a view to providing a simple and flexible statutory regime for both the social and private housing sectors. This report is the outcome of two consultation papers, numerous meetings with landlord and tenant groups, and over 400 written responses. It sets out our principal recommendations.
- 1.2 We will publish a draft Bill, which translate these recommendations into legislative form, together with a final report, in 2004. The recommendations set out here are therefore subject to any detailed amendment required by the drafting of the Bill.

THE CONSUMER APPROACH

- 1.3 At the heart of our proposals is the proposition that housing law should be shaped by a “consumer approach”. (We have built on the fact that the Unfair Terms in Consumer Contract Regulations 1999 (“UTCCR”) already apply to tenancy agreements.) What this means is that:
 - (1) Landlords and occupiers should be able to know their rights and obligations towards each other from the terms of their agreement;
 - (2) The contents of the agreement should be written down;
 - (3) The terms of the agreement should be fair and transparent;
 - (4) Plain language must be used in the agreement;
 - (5) The structure of the agreement must be user-friendly.
- 1.4 Regulations will contain model agreements, which will, by definition, meet these criteria. Landlords will be encouraged to use them, adapted as necessary to meet particular cases.

AGREEMENT TYPES AND THEIR USE

- 1.5 Two occupation agreement types will replace the current plethora of housing statuses.
 - (1) Type I agreements with a high degree of security of tenure protected by the Act; and
 - (2) Type II agreements with security of tenure determined largely by the agreement.

- 1.6 Social landlords will be required to use type I agreements unless conditions set out in a defined list of exceptions are met. We expect private landlords to use type II agreements. There will be nothing to prevent landlords providing their occupiers through the agreement with terms more advantageous than those required by the legislation.

SCOPE OF THE SCHEME

- 1.7 Unless there are compelling reasons for excluding them, all occupation agreements should come within the scope of the scheme we propose. For this purpose the historic distinction between the lease and the licence will no longer be of importance.
- 1.8 We also recommend abolition of the “six-month moratorium”,¹ which we do not believe to be an effective measure of tenant protection. Abolition is essential if the simplification, which Government desires, is to be achieved.
- 1.9 As a result, a number of types of agreement currently outside the principal statutory schemes, will come within the proposed scheme. These will include service occupancies and student accommodation provided by universities and local authorities.²
- 1.10 There will still be exclusions from the scheme.
- (1) Agreements covered by other statutory schemes, business tenancies, agricultural holdings, and mobile homes.
 - (2) Certain types of agreement excluded on social policy grounds, including holiday lets and agreements where the occupier shares accommodation with the landlord.

Application of the new scheme

- 1.11 The scheme will obviously apply to all new agreements entered into after the legislation comes into force. In addition, existing agreements should, as far as possible, be brought within the scope of the new scheme.
- 1.12 There will be two exceptions: (a) tenancies still covered by the Rent Act 1977; and (b) agreements still covered by the Rent (Agriculture) Act 1976.

THE WRITTEN AGREEMENT

- 1.13 While a landlord and an occupier will be able to reach a binding occupation agreement orally, once made, the landlord must provide a written statement of the agreement. This will provide evidence of the existence of the agreement and

¹ The rule that prevents a court ordering possession during the first 6 months of an assured shorthold tenancy, where the landlord seeks possession on the ‘notice-only’ ground.

² Though excluded from the current principal schemes, these were still covered by the terms of the Protection from Eviction Act 1977 and were thus not wholly outside statutory regulation.

ensure that both parties have their respective rights and obligations fully set out in writing.

- 1.14 Landlords who fail to provide a written statement of the agreement will be liable to civil penalties: a financial penalty related to the rent payable and, in the case of type II agreements only, to a procedural penalty. These provide proportionate incentives to landlords to comply.
- 1.15 Agreements will have four types of term.
- (1) *Key terms*, providing information about the parties, the property and the rent.
 - (2) *Compulsory-minimum terms* which will (a) prescribe the circumstances in which a landlord may seek possession against an occupier; and (b) set down the duties imposed by law on landlords (such as statutory repairing obligations). The parties may agree to change these terms but only in favour of the occupier. It will not be possible for either party to contract out of these terms.
 - (3) *Special terms*, which impose obligations on occupiers for social policy reasons (in particular, those relating to anti-social behaviour).
 - (4) *Other terms*. This will include default terms dealing with a list of issues needed to make the contract work, and set out in the model agreements; substitute terms agreed by the parties in place of the default terms, which will have to be fair and transparent; and additional terms dealing with other matters not otherwise considered.
- 1.16 There will be mechanisms enabling agreements, once made, to be varied.
- 1.17 Some issues will remain outside the agreement. These include matters relating to tenants of local housing authorities, such as their right to repair and rights relating to consultation and information.

TERMINATION OF AGREEMENTS AND PROCEEDINGS FOR POSSESSION

Termination by landlords

Due process

- 1.18 The principle of due process, whereby a landlord may not lawfully recover possession without an order of the court, is retained in the proposed scheme.
- 1.19 In addition, proceedings should not be commenced without the landlord first issuing a notice of his intention to take proceedings. (In the case of proceedings for anti-social behaviour, court proceedings should be capable of being started at the same time as the notice is issued to the occupier.)

Grounds for possession

- 1.20 Type I agreements will only be capable of being ended legally on discretionary grounds, where a court considers it reasonable. Type II agreements will be able to be ended on mandatory grounds as well.

- 1.21 Landlords under a type I agreement may seek possession on the ground either that the occupier is in breach of the terms of the agreement or that other prescribed circumstances relating to estate management are satisfied. In the latter case, the landlord will have to ensure that suitable alternative accommodation is available.
- 1.22 In addition, landlords under a type II agreement may seek possession on the (mandatory) ground of serious rent arrears, or a notice-only ground.

Powers of the court

Discretionary grounds for possession

- 1.23 When exercising their discretion, judges will be required to balance the interests of (a) the occupier against whom proceedings are being taken, (b) the landlord (whose cashflow may be disrupted by failures to pay rent) and (c) other occupiers and neighbours (who are often aggrieved, for example, when their fellow occupiers do not pay the rent on time or are a nuisance).

Mandatory grounds for possession

- 1.24 These will only be available in relation to type II agreements. (The discretionary grounds will also be available.) The accelerated possession procedure currently available to landlords using the notice-only ground for possession will be retained.

CHALLENGING DECISIONS BY PUBLIC BODIES

- 1.25 The county court should have power to review decisions taken by public bodies relating to mandatory possession cases.³ In exercising these powers, county courts would apply judicial review principles.

Termination of fixed-term agreements

- 1.26 Where a fixed-term agreement ends because its time has expired, the occupier will automatically become a periodic type II occupier, on as many of the same terms as before as are relevant.

Abandonment

- 1.27 Where accommodation is abandoned by an occupier, the landlord will have available a procedure enabling him to recover possession following service of an abandonment notice. If the occupier has not actually abandoned the accommodation, he or she will be able to challenge the notice in court.

Termination by the occupier

- 1.28 The occupier, under a periodic agreement, will have the right to give a month's notice to terminate the agreement. The agreement will continue until the expiry of the notice period. If the occupier continues to occupy after the period is over, he or she will become a trespasser and the landlord may take steps to evict on that basis.

³ Along the lines of those granted to them by the Housing Act 1996, s 204A (as inserted by the Homelessness Act 2002).

- 1.29 In the case of a type II agreement, the landlord will have the right to treat the occupier's notice as a landlord's notice of intention to seek possession on the notice-only ground; thus the landlord can obtain possession through the accelerated possession procedure. The occupier will be entitled to continue in occupation until the court orders possession and the order is acted upon.
- 1.30 Where all joint occupiers give notice, this will similarly terminate the agreement.
- 1.31 Where one or more, but not all, joint occupiers give notice, this will have the effect of terminating only the interest in the agreement of the person(s) giving the notice; it will not, as is currently the law, have the effect of bringing the whole agreement to an end.

SPECIFIC ISSUES

- 1.32 We have to make sure that the scheme reflects the ways in which people lead their lives. Arrangements made at the start of an agreement may not always remain appropriate or workable. A person may start on his or her own, but subsequently wish to bring another person in. A group of occupiers may start off getting on well, but then one may want to leave; and the rest of the group may wish to introduce a new occupier to the dwelling. The possibilities are endless.
- 1.33 The current law is piecemeal and incoherent. We seek to bring order to these issues, to make the law more workable and – more importantly – to help landlords and occupiers understand better where they stand legally.

(1) Consent

- 1.34 While an occupier may wish to alter the agreement, for example by adding a new person to it, the landlord may not wish to do so. For example, he may be worried about the ability of a new party to look after the premises properly; or, in the case of social landlords, the new occupier may not have that degree of social housing need that would justify the allocation of a scarce publicly-funded resource to them. There will, therefore, be many situations where it is right that the landlord should be able to turn down a proposal that a new person come into the premises.
- 1.35 Three possibilities can be envisaged.
- (1) The landlord has an absolute right to veto a proposal put to him.
 - (2) The occupier must seek the landlord's consent to do something, but the landlord may only withhold consent on the ground that it is reasonable to do so.
 - (3) There should be no requirement for consent – the landlord should not be able to prevent the occupier doing what he or she wants.
- 1.36 In situation (2), where consent is required, the occupier must submit any request in writing; consent would be deemed to have been granted if the landlord failed to respond to a request within two months of the request being made (or within two months of any request for further information being complied with). Where consent was denied, a short statement of reasons should be given by the landlord to the occupier.

- 1.37 Any action taken by an occupier in the teeth of a landlord's veto or reasonable refusal of consent would not bind the landlord and would expose the occupier to proceedings for possession for breach of the agreement.
- 1.38 These general propositions apply differently in the contexts number (2) – (5) discussed below.

(2) Joint occupation

Joint and several liability

- 1.39 The contractual liabilities of joint occupiers should be joint and several. If one of a number of joint occupiers defaults on his or her part of the deal, the other occupier(s) will remain fully liable under the agreement, albeit with the right to seek compensation from the defaulter. Joint and several liability is the only practical way to ensure that the economic interests of the landlord are properly protected.

Altering the identity of the occupiers

- 1.40 Where, as commonly happens, relatively fluid groups of occupiers share a home, we need to provide mechanisms for altering the parties to the agreement. In so doing, we balance the rights of the landlord to control the numbers and identity of those living in the home with the rights of the occupier to be able to take in a new occupier.

ADDING NEW OCCUPIERS TO AN AGREEMENT

- 1.41 The occupier will be able to add a new party to the agreement, subject to the occupier asking and obtaining the consent of the landlord.⁴

PERMITTING A JOINT OCCUPIER TO LEAVE AN AGREEMENT

- 1.42 A joint occupier should be able to give notice terminating his or her interest in the agreement without it bringing the whole agreement to an end.
- 1.43 Where a joint occupier leaves without properly bringing the agreement to an end, the landlord should be able to use the new abandonment procedure to seek a declaration that the former occupier has indeed abandoned the premises.

DEALING WITH NON-CONTRACTUAL OCCUPANTS

- 1.44 In normal circumstances, the occupation agreement should provide that the occupier should control who else occupies the premises. Non-contractual occupants should, under the Civil Procedure Rules, be notified of any possession proceedings being brought in relation to the premises in which they are living.⁵

⁴ The landlord will be able, subject to UTCCR, to determine the number, age and general characteristics of any proposed new joint occupier, subject to the overall law on overcrowding.

⁵ This will be similar to the notification requirements now required in relation to occupiers of premises where possession proceedings are brought arising out of mortgage default: see CPR Rule 55.10.

(3) Lodgers and sub-occupation agreements

- 1.45 Type I occupiers should have the right to take in a lodger without having to get the consent of the landlord. Type II occupiers will be able to take in a lodger subject to the consent of the landlord. Lodgers will not be entitled to a written agreement. No (head) landlord will be bound by any lodging agreement.
- 1.46 The landlord will have a veto on the granting of any sub-occupation agreement by the occupier. Where the head landlord does give consent, the sub-occupation will usually be a type II periodic agreement. The head landlord who has given consent will then become the landlord of the sub-occupier should the original occupier subsequently leave the agreement.

(4) Transfer of rights of occupation

- 1.47 As a general principle, landlords should be able to veto any request for the transfer of rights of occupation from one contractual occupier to another, not a party to the contract. This will be subject to three specific exceptions.

Mutual exchange

- 1.48 The secure tenants of local authorities are currently able to exchange their tenancies, subject to the consent of the landlord.⁶ This right should be extended to all type I agreements granted by social landlords. The right will remain exercisable only with the consent of the landlord.

Transfer to potential successor

- 1.49 Occupiers under type I agreements should have the right to transfer their contractual rights of occupation to a potential successor, subject to obtaining the consent of the landlord. (Rights of succession are outlined below.)

Transfer by order of family courts

- 1.50 Family law should be amended to enable the court to make orders in relation to all occupation agreements coming within the proposed new scheme, whether or not they create a property interest.

(5) Effect of death on the occupation agreement

- 1.51 Where there are joint occupiers, the surviving joint occupier will take over the agreement. However, there should be some flexibility in the case of fixed term type II agreements.
- 1.52 When an occupier dies leaving no joint occupier or other successor, periodic agreements should be deemed by law to end on a defined date after the death of the occupier (or the last of joint occupiers).
- 1.53 A statutory scheme of succession should be available to spouses (broadly defined), other members of the family and unpaid carers. Any person in these last two groups must have lived in the home or resided with the deceased for a 12 months

⁶ Housing Act 1985, s 92 and Schedule 3.

before the death of the occupier before the right arises. Where more than one person is potentially entitled, joint succession will be possible. There will be a maximum of two statutory successions. Where one joint occupier dies and the remaining joint occupier(s) take over the agreement, this will not count as a statutory succession.

Anti-social behaviour

A general target duty on social landlords

- 1.54 Landlords have a role in the control of anti-social behaviour. The prime purpose of extending the powers of social landlords to respond to anti-social behaviour is to protect their occupiers. A general “target” duty should be imposed upon local authority landlords to take account of the need to deal with anti-social behaviour. A similar duty should be placed on registered social landlords by the Housing Corporation.

Special anti-social behaviour term

- 1.55 Both type I and type II agreements should contain a special term which prohibits anti-social behaviour by the occupiers of the property or by visitors. The term will also prohibit use of the property for criminal purposes.
- 1.56 This term may be enforced by possession proceedings or by injunction. Where an injunction is breached, the landlord will be able to seek a possession order as part of the proceedings for breach without having to issue separate possession proceedings. Possession may only be ordered by the court where it is reasonable to do so.

Additional powers for social landlords

- 1.57 For the purposes of powers to deal with anti-social behaviour, “social landlord” will be defined more broadly than elsewhere to include non-registered housing associations and charitable housing trusts.
- 1.58 Social landlords, as so defined, will have power to obtain a free-standing injunction against anti-social behaviour. Where the anti-social behaviour consists of or includes the use or threatened use of violence, or where there is a risk of significant harm to a person in the locality of the property, the social landlord will be able to obtain an order excluding an occupier from the property. A power of arrest may also be attached to the order.

Exceptional use of type II agreements

- 1.59 Social landlords will be able to let on a type II basis where the letting is for an initial probationary period. The probationary period will normally last twelve months, but the period may be extended to eighteen months where the behaviour of the occupier warrants such an extension.
- 1.60 In addition, use of type II agreements will be available when in the course of possession proceedings for breach of the anti-social behaviour term the social landlord requests, as an alternative to eviction, that a type I agreement is demoted to a type II. Demotion will only be ordered where the social landlord produces a plan of support. Demotion will last for a maximum of one year. After this, the

occupier will either be promoted back to a type I agreement, or other arrangements will be made.

Domestic violence

- 1.61 Domestic violence will constitute breach of the anti-social behaviour term. Landlords will be able to take possession proceedings against the perpetrator. Where the perpetrator is a joint occupier, the proceedings will operate to terminate the occupation of the innocent party. However, the court will be able to consider the re-housing arrangements of the innocent party as part of its deliberations on reasonableness. This should provide the innocent joint occupier with sufficient protection.
- 1.62 Social landlords will be able to apply for orders to restrain anti-social behaviour. Where there is violence, the threat of violence or risk of significant harm to another occupier of the property, they should be able to obtain orders which exclude a perpetrator. A power of arrest may be attached to such order for use in the event of breach.

Supported housing

Status

- 1.63 Different types of supported housing should attract different levels of security.
- 1.64 Direct access accommodation, provided for immediate occupation, will be excluded from our scheme.
- (1) Temporary supported accommodation such as short stay or respite accommodation will also be excluded. However, once the provision of temporary accommodation exceeds four months it will be brought within the statutory scheme.
 - (2) Temporary accommodation provided for the purpose of assessment will also be excluded from our statutory scheme for a period of four months. Again, once the accommodation is provided for more than four months it will come within our scheme.
 - (3) All other supported housing will be treated consistently with our statutory scheme. Social landlords will be required to provide accommodation on a type I basis unless the provision falls within an exception to the statutory requirement.
- 1.65 There will be a limited exception to the statutory requirement which will enable social landlords to grant type II agreements to those needing supported housing for the first two years of provision. After that time most occupiers should have acquired the necessary skills to justify the provision of permanent accommodation on a type I basis.
- 1.66 For some residents the type I agreement will not be appropriate. In those circumstances social landlords will be able to continue to use the type II agreement following an assessment of the support needs of the resident and in particular a statement justifying the continued availability of the police exclusion order, see below.

Supported housing agreements

- 1.67 Managing a supported housing project imposes particular responsibilities upon a landlord. It must ensure appropriate use of scarce accommodation, it must be able to respond to the particular needs of residents and it must be able to act swiftly to protect the safety of residents and workers where necessary. There should be a specific model agreement to ensure that the needs of this type of provision are fully recognised.
- 1.68 Where supported housing is provided on a type II basis, managers should be able to ask the police to exclude an occupier for a period of 48 hours without the necessity of going to court. The police exclusion order will only be available following a request by a manager when he or she believes that a serious act of violence has occurred, that the safety of someone on the premises is in danger from a resident or a visitor, or that the ability of a resident to benefit directly from the support provided by the project has been seriously impeded by the behaviour of a resident or a visitor.
- 1.69 Police exclusion orders may be followed by an injunction to exclude the occupier from the project. The application for the injunction may be issued contemporaneously with possession proceedings and the injunction in such circumstances will last until effective eviction.
- 1.70 The modified type II agreement and the police exclusion order will only be available to relevant landlords. Relevant landlords will be defined more broadly than our normal definition of social landlords since it will include charitable housing trusts and housing charities. These broader powers should not be available to private landlords.

APPLICATION TO WALES

- 1.71 Under the devolution settlement, the National Assembly for Wales exercises powers that in England are exercised by the Secretary of State. The National Assembly has responsibility for housing policy. We have considered whether different provision for Wales would be appropriate. On one important issue – the rule that social landlords should generally be required to use the type I agreement – we have concluded that the National Assembly should have greater powers than the Secretary of State in England.

LAW COMMISSION

5 November 2003