

RENTING HOMES: SUMMARY OF THE FINAL REPORT

Introduction

- 1.1 The Law Commission's renting homes recommendations constitute a fundamental and thorough-going reform of housing tenure law. They will affect the vast majority of the six million plus households who currently live in rented accommodation. A report of our conclusions was published in November 2003, in advance of the drafting of the Bill. Now (on 5 May 2006), the final report with the draft Bill is published.

Coverage

- 1.2 The renting homes regime as a whole aims to be as inclusive as possible. Subject to a very limited number of exceptions, all agreements, whether tenancies or licences, which confer on an individual a right to occupy premises as a home will be occupation contracts.
- 1.3 All existing secure, assured and assured shorthold tenancies will become occupation contracts, as will many existing common law tenancies and licences. The only significant groups of pre-existing tenancies to be excluded from the regime are Rent Act 1977 tenancies and their agricultural equivalents.

Contract types

- 1.4 All of the existing tenancy types are replaced by just two:
 - (1) the *secure contract*, modelled on the present local authority secure tenancy, giving substantial security of tenure protected by statute; and
 - (2) the *standard contract*, broadly modelled on the present assured shorthold tenancy, where the duration of the occupation is largely determined by the contract. A key difference between the contract and existing assured shortholds is that the standard contract is not subject to the "moratorium" – that is, the rule that stops a court ordering possession before the end of the first six months of an assured shorthold.

In principle, any category of landlord can use either contract type (subject to the rules below).

Rules on the use of the contracts

- 1.5 Part of the background to the rented homes project was the demand for a "single social tenancy", to be used by both councils and registered social landlords (RSLs). Renting homes accomplishes this by bringing those two categories of landlord together as "community landlords", and requiring them to use secure contracts, unless a specific exception applies. Where an exception applies, a community landlord can (but is not required to) use a standard contract, for example for probationary contracts.
- 1.6 Contracts entered into by private landlords are standard contracts unless the landlord gives the contract-holder a notice specifying that it is a secure contract.

Written statement of the contract

- 1.7 Landlords are required to provide the “contract-holder” with a written statement of the contract. The Secretary of State in relation to England and, in Wales, the National Assembly for Wales (referred to in the Bill as “the appropriate authority”) have the power to prescribe model contracts, after consultation. We recommend that the appropriate authority prescribes a model contract specifically for supported housing providers. Importantly, model contracts will not be subject to the unfair terms regulations (that is, the Unfair Terms in Consumer Contracts Regulations 1999, or regulations which the Secretary of State is given power to make under the Bill).
- 1.8 Landlords are not *required* to use the relevant model contract. If they choose not to, the fundamental terms and any supplementary terms which incorporate supplementary provisions without modification will still not be subject to the unfair terms regulations.
- 1.9 Landlords who do not provide the written statement are subject to proportionate (non-criminal) sanctions, both financial and procedural.

Terms of the contract

- 1.10 Occupation contracts contain four classes of terms:
- (1) terms relating to key matters;
 - (2) fundamental terms;
 - (3) supplementary terms; and
 - (4) additional terms.

Terms relating to key matters

- 1.11 The key matters are those which go to the heart of the occupation contract. They include the name and address of the property and the amount of the rent. As they are unique to each contract, they cannot be statutorily prescribed, though the Bill defines the key matters that must appear in the contract.

Fundamental terms

- 1.12 Fundamental *provisions* in the Bill are incorporated in occupation contracts as fundamental *terms*. For the most part, they contain the key contract-holders’ rights. Most fundamental terms can be modified or varied, but only in favour of the contract-holder.

Supplementary terms

- 1.13 Supplementary provisions set out in delegated legislation are incorporated in occupation contracts as supplementary terms. These deal with all the practical matters needed to make the contract work, for example, requirements that the occupier pays the rent and that the occupier looks after the premises and fixtures and fittings. Supplementary terms will be prescribed, after consultation with interested parties, by the appropriate authority.

Additional terms

- 1.14 There are also additional terms. These deal with specific issues that parties want dealt with in the contract, but in relation to which there is no statutory provision.

Modification of terms

- 1.15 The Bill provides that the parties can agree to incorporate most fundamental provisions, and all supplementary provisions, with modifications.
- 1.16 Modification of a small number of fundamental provisions is not permitted. Of particular relevance are those relating to prohibited conduct (anti-social behaviour and violence within the home) and to the securing of a contract by deception.
- 1.17 Modifications to (or omission of) other fundamental provisions are permitted, so long as the result of the modification is to enhance the position of the contract-holder. If parties agree to modify a provision, it is incorporated into the contract as modified.
- 1.18 Modification of supplementary provisions is also permitted. Here, modification can be either for or against the interests of the contract-holder. Any modified supplementary term must be compliant with the unfair terms regulations.

Variation of terms

- 1.19 The Bill also contains detailed provisions enabling the parties to vary the contract once it has been agreed. Obviously parties must be able to alter the rent payable. In addition, particularly where occupiers live in premises for a long time, it is important that the parties can vary other details of the contract. Variation refers to changes to the terms *after* the contract has been entered into. Variation can, depending on the terms of the contract, occur following notice from the landlord (except for the fundamental terms of a secure contract and a fixed term standard contract) or by agreement between the parties. Fundamental terms in the contracts provide for this. The provisions on variation also apply to any additional terms which the landlord and contract-holder choose to include.

Transactions relating to the contract

- 1.20 At present very complex provisions deal with the circumstances in which renters may take in a lodger, add a party to the contract, or transfer or sub-let a tenancy agreement to another. There are also unsatisfactory rules as to what happens when one or more joint tenants wish to leave an agreement. We recommend a significant rationalisation of the current law.

Lodgers and sub-occupation

- 1.21 Secure contract-holders have a right to have lodgers. It is a supplementary term of standard contracts that the contract-holder can apply for consent to take a lodger. The landlord can refuse to consent, but not unreasonably. Supplementary terms in all contracts allow contract-holders to apply to enter into a sub-occupation contract, but landlords have a veto over this (that is, their refusal does not have to be reasonable). Lodgers' agreements are generally excluded from the regime and will not bind the landlord when the contract-holder leaves. The landlord will be bound by sub-occupation contracts to which he or she has consented, not otherwise. If a landlord consents to a sub-occupation contract, but it is entered into in breach of conditions which the landlord has attached to their consent, it does bind the landlord, but the landlord can choose to treat it only as a periodic standard contract.

Adding a party to the contract

- 1.22 Currently, if a tenant wants to add another as a joint tenant, the tenancy must be terminated and re-granted to the joint tenants. We propose that a contract-holder should have the right to ask for the landlord's consent to add another person to the contract. The landlord can refuse consent, but not unreasonably. The landlord can also consent with conditions, which can include the exclusion of succession rights.

Leaving the agreement

- 1.23 Currently, if a joint tenant serves a tenant's notice to quit, the entire tenancy comes to an end. We recommend that a joint contract-holder should be entitled to end only his or her interest in the contract. Where doing so would result in under-occupation of the property, a landlord has a time limited ground for possession, but must provide the contract-holder with suitable alternative accommodation. To end the contract itself, all joint contract-holders would have to agree.

Obligations under the contract

Repairing obligations

- 1.24 The effect of the Landlord and Tenant Act 1985 section 11, which imposes obligations on the landlord to keep in repair certain essential matters relating to the structure of and facilities within the premises and/or common parts, is reproduced as a fundamental term, in modernised language. In addition, we recommend incorporation of recommendations made in an earlier Law Commission report (Landlord and Tenant: Responsibility for State and Condition of Property (1996)), amended to take account of the enactment of the Housing Act 2004. This would require a landlord to ensure that there was no "category 1 hazard", in the terms of the 2004 Act, on the premises.
- 1.25 We also make clear that, in addition to the contract-holder(s), other "permitted occupiers" have the right to take proceedings for breach of these terms of the contract.

Prohibited behaviour

- 1.26 We recommend that it should be a fundamental term in all contracts that contract-holders may not:

- (1) use or threaten to use violence against a person lawfully living in the premises;
 - (2) do anything which creates a risk of significant harm to such a person;
 - (3) engage or threaten to engage in conduct that is capable of causing nuisance or annoyance to a person;
 - (a) living in the locality of the premises; or
 - (b) engaged in lawful activity in the premises or the locality of the premises;
 - (4) use or threaten to use the premises, or any common parts that they are entitled to use under the contract, for criminal purposes.
- 1.27 Breach of this term is a ground for possession. The landlord is entitled to bring proceedings in reliance on this ground at the same time as giving a possession notice to the contract-holder (see below). In addition, the court is given power to grant an injunction to prohibit breaches or threatened breaches of this term.
- 1.28 Community landlords and charity landlords may also seek a court order to demote a contract-holder from a secure contract to a standard contract for a trial period.

Obtaining a contract by deception

- 1.29 Mirroring the current law, it is a fundamental term of an occupation contract that, where a landlord is induced to grant the contract by a false statement, this is to be treated as a breach of contract (and so is a ground for possession).

Uninterrupted occupation of the accommodation

- 1.30 Once an occupation contract is entered into, the contract-holder should be able to live in the accommodation without unnecessary interruption from the landlord. We recognise that there are circumstances where a landlord must have access (for example to carry out repairs). Thus, we recommend that there should be a fundamental term in the contract that in the absence of a special reason the landlord must not do anything to interfere with the contract-holder's right to occupation of the accommodation. This reproduces in clearer and more general form the current misleadingly-named "covenant of quiet enjoyment" which applies only to leases.

Landlord's name and address

- 1.31 Existing statutory provisions relating to the provision of the landlord's name and address are brought into occupation contracts as fundamental terms.

Consultation on management matters

- 1.32 Current obligations to consult tenants on management matters are also brought into our scheme. Community landlords are under an obligation to consult their contract-holders on management matters and to provide a statement of consultation arrangements. A novel proposal requires courts to take account of landlords' management policies, but only where the contract-holders have agreed the policies.

Terminating the contract

- 1.33 The bases on which and the procedures by which occupation contracts may be terminated by the landlord are provided for in the Bill and become terms in the contract. The fundamental principles of the current law are retained. These are, first, that the landlord must start the process by giving a notice of intention to take proceedings – here called the possession notice – to the contract-holder (although where possession of premises subject to a standard contract is sought on the notice-only ground, a separate possession notice is not required). Second, this must be followed up by appropriate court procedures. We recommend rationalisation of some of the detailed rules. We also adopt the principle of “use it or lose it”; if a notice is not followed up by action within a defined period of time, it becomes ineffective.

Possession notices

- 1.34 We recommend a number of detailed changes to the law relating to possession notices.
- (1) Under the principle of “use it or lose it”, if the possession notice is not followed up by actual proceedings within six months, the notice lapses. (The period is four months where possession is sought on the notice-only ground.) Contract-holders should not be kept in a state of uncertainty for unreasonably long periods.
 - (2) The scheme provides that proceedings cannot, save in two cases, be started until one month after the possession notice has been given to the contract-holder. This rationalises the present law which contains a number of time differences that are hard to justify.
 - (3) As currently happens with assured shorthold tenancies, landlords under standard contracts can give a two months' “no-fault” notice that they want to recover possession. Importantly, the inability of a private landlord to obtain a possession order from the court on this notice-only ground for the first six months of an assured shorthold tenancy is removed.

Grounds for possession

- 1.35 The extensive statutory lists of grounds for possession, which have long existed in successive Rent and Housing Acts will be replaced by two classes of grounds for possession. These become fundamental terms of the contract:
- (1) breach of the occupation contract; and
 - (2) estate management grounds.

- 1.36 Landlords under standard contracts also have available to them the mandatory “notice-only” ground for possession, currently available in relation to the assured shorthold tenancy, and a mandatory serious rent arrears ground.

Termination by the contract-holder

- 1.37 In addition to termination by the landlord, the scheme also provides terms to enable the contract-holder to bring the contract to an end. It is made clear that, once this happens, the contract-holder must give up possession of the premises on the date set out in the relevant notice.

Termination by joint contract-holders

- 1.38 At present, one joint tenant can bring a joint tenancy to an end simply by serving a notice to quit. We recommend that, in future, a joint contract-holder should be able to terminate their interest in the contract, without ending the whole contract.

Abandonment

- 1.39 In consultation, many argued that it was currently hard for a landlord to regain possession of premises that had apparently been abandoned. We recommend a new procedure to enable the landlord to regain possession in such cases, which does not involve court proceedings. This is modelled on a procedure already available in Scotland.

Powers of the court

- 1.40 As is already the law, the powers of the court to deal with possession proceedings distinguish between:

- (1) cases where the court may order possession if it considers it reasonable to do so (“discretionary grounds”); and
- (2) cases where the court must order possession (“mandatory grounds”).

- 1.41 During consultation it was frequently suggested to us that courts currently exercise their discretion inconsistently. To meet this, we recommend that the court’s discretion be statutorily structured. The judge will, in effect, have a check-list of questions he or she must answer in coming to a decision whether or not to order possession.

- 1.42 In our first consultation paper (Renting Homes 1: Status and Security), we asked whether the current power of the court to grant suspended possession orders was appropriate. Many consultees accepted that proceedings taken essentially to recover rent arrears, where there was no serious intent to obtain possession, were not always a sensible use of court process. However, the general response was against fundamental reform of the law. Our scheme gives the Secretary of State power to pilot new procedures.

Death of the contract-holder

- 1.43 We recommend reform and rationalisation of the law relating to what happens when a contract-holder dies.

Joint contract-holders: survivorship

- 1.44 As a general principle, where a joint contract-holder under a contract ceases to be a party to the contract (whether as a result of death or for any other reason, for example withdrawal from the contract), the remaining contract-holders should have all the rights and obligations under the contract.

Succession

- 1.45 There are currently statutory rights to succeed to secure and assured tenancies. The present law differs as between the two forms of tenancy, so we recommend a rationalisation of it.
- 1.46 As most partners now occupy residential accommodation on the basis of joint agreements, the surviving partner takes through operation of the survivorship principle. If there is no joint contract, the surviving spouse or partner has a statutory right of succession, in priority to any other potential successor. Such a person is called a “priority successor”. If there is no such person, then a wider circle of people – immediate family and resident carers – called “reserve successors” acquires the right to succeed.

Excluded contracts

- 1.47 Our broad policy objective is that, unless there are compelling reasons for exclusion, all contracts to occupy premises as a home should come within the scheme. Thus a number of types of agreement, which currently fall outside existing statutory schemes, are brought within the recommended scheme. These include, for example, service occupancies and student accommodation provided by universities and local authorities.
- 1.48 Nevertheless, there have to be exceptions. These are listed in schedule 1 to the Bill. They fall into two broad classes: contracts covered by other legislation; and contracts excluded on social policy grounds.

Contracts covered by other legislation

- 1.49 These include:
- (1) business tenancies;
 - (2) tenancies protected by the Rent Act 1977 or the Rent (Agriculture) Act 1976;
 - (3) long tenancies; and
 - (4) agricultural tenancies.

Contracts excluded on social policy grounds.

- 1.50 These include:
- (1) tenancies or licences relating to direct access accommodation;
 - (2) tenancies or licences where no rent or other consideration is payable;
 - (3) holiday lets;

- (4) provision of accommodation in a care institution;
- (5) provision of accommodation in barracks;
- (6) provision of accommodation as a temporary expedient to persons who entered premises as trespassers; and
- (7) accommodation shared with the landlord.

1.51 In cases (2) to (7) inclusive, it is possible for the landlord to bring the contract within the scheme by issuing a notice, either before or at the time when the tenancy or licence is made, to the effect that the agreement is to be an occupation contract within the scheme.

1.52 Special rules also apply to:

- (1) accommodation for the homeless; and
- (2) supported accommodation.

1.53 While this may seem like a long list of exceptions, the total number of contracts affected by them is modest compared with the total number of occupation contracts that come within the scope of the scheme.