



# Housing Act 1988

## 1988 CHAPTER 50

### PART I

#### RENTED ACCOMMODATION

#### CHAPTER V

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

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

- (1) The provisions of subsection (3) below apply in relation to a tenancy which was entered into before, or pursuant to a contract made before, the commencement of this Act if,—
  - (a) at that commencement or, if it is later, at the time it is entered into, the interest of the landlord is held by a public body (within the meaning of subsection (5) below); and
  - (b) at some time after that commencement, the interest of the landlord ceases to be so held.
- (2) The provisions of subsection (3) below also apply in relation to a tenancy which was entered into before, or pursuant to a contract made before, the commencement of this Act if,—
  - (a) at the commencement of this Act or, if it is later, at the time it is entered into, it is a housing association tenancy; and
  - (b) at some time after that commencement, it ceases to be such a tenancy.
- (3) [<sup>F1</sup>Subject to subsections (4) [<sup>F2</sup>[<sup>F3</sup>(4ZA), (4A), (4BA)] and (4B),] below] on and after the time referred to in subsection (1)(b) or, as the case may be, subsection (2)(b) above—
  - (a) the tenancy shall not be capable of being a protected tenancy, a protected occupancy or a housing association tenancy;

*Status: Point in time view as at 01/12/2022.*

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- (b) the tenancy shall not be capable of being a secure tenancy unless (and only at a time when) the interest of the landlord under the tenancy is (or is again) held by a public body; and
  - (c) paragraph 1 of Schedule 1 to this Act shall not apply in relation to it, and the question whether at any time thereafter it becomes (or remains) an assured tenancy shall be determined accordingly.
- (4) In relation to a tenancy under which, at the commencement of this Act or, if it is later, at the time the tenancy is entered into, the interest of the landlord is held by [<sup>F4</sup>the Commission for the New Towns or a development] corporation, within the meaning of section 80 of the <sup>M1</sup>Housing Act 1985 [<sup>F5</sup>and which subsequently ceases to be so held by virtue of a disposal by the Commission for the New Towns made pursuant to a direction under section 37 of the New Towns Act 1981], subsections (1) and (3) above shall have effect as if any reference in subsection (1) above to the commencement of this Act were a reference to—
- (a) the date on which expires the period of two years beginning on the day this Act is passed; or
  - (b) if the Secretary of State by order made by statutory instrument within that period so provides, such other date (whether earlier or later) as may be specified by the order for the purposes of this subsection.
- [<sup>F6</sup>(4ZA) In relation to any time on or after the coming into force of this subsection, subsection (4) applies as if—
- (a) the references to the Commission for the New Towns were references to the new towns residuary body;
  - (b) in the case of a disposal by the English new towns residuary body, the reference to section 37 of the New Towns Act 1981 were a reference to section 47 of the Housing and Regeneration Act 2008; and
  - (c) in the case of a disposal by the Welsh new towns residuary body, the words “made pursuant to a direction under section 37 of the New Towns Act 1981” were omitted.]

[<sup>F7</sup>(4A) Where, by virtue of a disposal falling within subsection (4) above and made before the date which has effect by virtue of paragraph (a) or paragraph (b) of that subsection, the interest of the landlord under a tenancy passes to [<sup>F8</sup>a private registered provider of social housing or] a [<sup>F9</sup>registered social landlord (within the meaning of the Housing Act 1985 (see section 5(4) and (5) of that Act))], then, notwithstanding anything in subsection (3) above, so long as the tenancy continues to be held by a body which would have been specified in subsection (1) of section 80 of the Housing Act 1985 if the repeal of provisions of that section effected by this Act had not been made, the tenancy shall continue to be a secure tenancy [<sup>F10</sup>or a secure contract] and to be capable of being a housing association tenancy.]

[<sup>F11</sup>(4B) Where, by virtue of a disposal by the Secretary of State made in the exercise by him of functions under Part III of the Housing Associations Act 1985, the interest of the landlord under a secure tenancy [<sup>F12</sup>or a secure contract] passes to a registered social landlord (within the meaning of the Housing Act 1985) then, notwithstanding anything in subsection (3) above, so long as the tenancy continues to be held by a body which would have been specified in subsection (1) of section 80 of the Housing Act 1985 if the repeal of provisions of that section effected by this Act had not been made, the tenancy shall continue to be a secure tenancy [<sup>F13</sup>or secure contract] and to be capable of being a housing association tenancy.]

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[<sup>F14</sup>(4BA) The references in subsections (4A) and (4B) to a body which would have been specified in subsection (1) of section 80 of the Housing Act 1985 if the repeal of provisions of that section effected by this Act had not been made includes a reference to the new towns residuary body.]

(5) For the purposes of this section, the interest of a landlord under a tenancy is held by a public body at a time when—

- (a) it belongs to a local authority, a [<sup>F15</sup>development] corporation or an urban development corporation, all within the meaning of section 80 of the Housing Act 1985 [<sup>F16</sup>or to the English new towns residuary body]; or
- [<sup>F17</sup>(aa) it belongs to a Mayoral development corporation; or]
- (b) it belongs to a housing action trust established under Part III of this Act; or
- [<sup>F18</sup>(c) . . . . .]
- (d) it belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department.

[<sup>F19</sup>(5A) In this section “ new towns residuary body ” means—

- (a) in relation to times before the coming into force of this subsection, the Commission for the New Towns; and
- (b) in relation to other times—
  - (i) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008 [<sup>F20</sup>or the Greater London Authority so far as exercising its new towns and urban development functions] (and any reference to the English new towns residuary body shall be construed accordingly); and
  - (ii) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981 (and any reference to the Welsh new towns residuary body shall be construed accordingly).]

(6) In this section—

- (a) “housing association tenancy” means a tenancy to which Part VI of the <sup>M2</sup>Rent Act 1977 applies;
- (b) “protected tenancy” has the same meaning as in that Act; and
- (c) “protected occupancy” has the same meaning as in the <sup>M3</sup>Rent (Agriculture) Act 1976.

#### Textual Amendments

- F1** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 75:1\)](#), s. 194, **Sch. 11 para. 106(1)**
- F2** Words in s. 38(3) substituted (15.1.1999) by [S.I. 1999/61, art. 2, Sch. para. 3\(3\)\(a\)](#)
- F3** Words in s. 38(3) substituted (1.12.2008) by [The Housing and Regeneration Act 2008 \(Consequential Provisions\) Order 2008 \(S.I. 2008/3002\)](#), arts. 1(2), 4, **Sch. 1 para. 39(2)** (with Sch. 2); [S.I. 2008/3068, art. 2\(1\)\(b\)](#) (with arts. 6-13)

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- F4** Words in s. 38(4) substituted (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), arts. 1(2), 4, **Sch. 1 para. 39(3)** (with Sch. 2); S.I. 2008/3068, **art. 2(1)(b)** (with arts. 6-13)
- F5** Words inserted by Local Government and Housing Act 1989 (c. 42, SIF 75:1), s. 194, **Sch. 11 para. 106(2)**
- F6** S. 38(4ZA) inserted (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), arts. 1(2), 4, **Sch. 1 para. 39(4)** (with Sch. 2); S.I. 2008/3068, **art. 2(1)(b)** (with arts. 6-13)
- F7** S. 38(4A) inserted by Local Government and Housing Act 1989 (c. 42, SIF 75:1), s. 194, **Sch. 11 para. 106(3)**
- F8** Words in s. 38(4A) inserted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), art. 1(2), **Sch. 2 para. 67** (with art. 6, Sch. 3)
- F9** Words in s. 38(4A) substituted (1.10.1996) by S.I. 1996/2325, art. 5(1), **Sch. 2 para. 18(3)**
- F10** Words in s. 38(4A) inserted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **16(6)(a)** (with savings and transitional provisions in S.I. 2022/1172, regs. 3, 10, 19)
- F11** S. 38(4B) inserted (15.1.1999) by S.I. 1999/61, art. 2, **Sch. para. 3(3)(b)**
- F12** Words in s. 38(4B) inserted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **16(6)(b)(i)** (with savings and transitional provisions in S.I. 2022/1172, regs. 3, 10, 19)
- F13** Words in s. 38(4B) inserted (1.12.2022) by The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (S.I. 2022/1166), regs. 1(1), **16(6)(b)(ii)** (with savings and transitional provisions in S.I. 2022/1172, regs. 3, 10, 19)
- F14** S. 38(4BA) inserted (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), arts. 1(2), 4, **Sch. 1 para. 39(5)** (with Sch. 2); S.I. 2008/3068, **art. 2(1)(b)** (with arts. 6-13)
- F15** Word in s. 38(5)(a) substituted (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), arts. 1(2), 4, **Sch. 1 para. 39(6)(a)** (with Sch. 2); S.I. 2008/3068, **art. 2(1)(b)** (with arts. 6-13)
- F16** Words in s. 38(5)(a) inserted (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), arts. 1(2), 4, **Sch. 1 para. 39(6)(b)** (with Sch. 2); S.I. 2008/3068, **art. 2(1)(b)** (with arts. 6-13)
- F17** S. 38(5)(aa) inserted (15.1.2012) by Localism Act 2011 (c. 20), s. 240(1)(l), **Sch. 22 para. 27**
- F18** S. 38(5)(c) repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt. IV** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1998/2244, **art. 4**
- F19** S. 38(5A) inserted (1.12.2008) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (S.I. 2008/3002), arts. 1(2), 4, **Sch. 1 para. 39(7)** (with Sch. 2); S.I. 2008/3068, **art. 2(1)(b)** (with arts. 6-13)
- F20** Words in s. 38(5A)(b)(i) inserted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), **Sch. 19 para. 27**; S.I. 2012/628, art. 6(i) (with arts. 911141517)

#### Marginal Citations

- M1** 1985 c. 68.  
**M2** 1977 c. 42.  
**M3** 1976 c. 80.

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