

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: REGULATORY REFORM

Home Businesses

Section 35: Exclusion of home businesses from Part 2 of the Landlord and Tenant Act 1954

239. Part 2 of the Landlord and Tenant Act 1954 (“the 1954 Act”) contains provisions giving security of tenure to tenants of premises that are occupied for business purposes, or for those and other purposes. Thus prima facie they would apply to homes in which business is also carried on in the premises. The 1954 Act provisions may offer tenants rights to remain in premises that exceed those available under legislation applicable to dwellings. The application of the 1954 Act can however be simply avoided by the inclusion of a covenant against business use by virtue of section 23(4) of the Act, barring consent or acquiescence by the landlord. Accordingly, the law as it stands establishes a strong incentive for landlords to include such a covenant in the tenancies of dwellings. This means also that tenants among the large and growing number of people who do conduct business activities in their homes are likely to be doing so in breach of the terms of their tenancies.
240. The section is intended to remove the incentive to include an absolute covenant against business use in tenancies of dwellings, and thus facilitate the operation of home businesses, by establishing a new concept of the “home business”, which may be carried on in the home without the home therefore coming within the ambit of the 1954 Act. Subsection (4) of the section introduces a new section into 1954 Act. Subsection (4) of that section defines a home business as “a business of a kind which might reasonably be carried on at home”; subsection (5) excludes the sale and consumption of alcohol on licensed premises from that definition, and subsection (6) establishes a power in to prescribe further cases of what are, or are not, to be home businesses.
241. To come within the home business exception the tenancy should comply with the conditions in subsection (2) of the new section for the creation of a “home business tenancy”. The conditions are that the tenancy must relate to a home let as a separate dwelling, to an individual tenant or tenants, for occupation as a home, must permit a home business, or permit a home business only with consent of the landlord, and must not permit the carrying on of a business other than a home business. Alternatively, and by virtue of the amendment in subsection (3) of the section, where the original tenancy prohibits any business use, if the landlord subsequent consents to, or acquiesces in the carrying on of a home business, then the tenancy will also come within the exception.

Section 36: Section 35: supplementary and consequential provision

242. The section provides supplementary provision to ensure that a “home business tenancy” also applies in situations where the property is held on trust and where at least one trustee or beneficiary of the trust is living in the dwelling.
243. The section also ensures that a dwelling let on a home business tenancy will be “let as a separate dwelling” within the meaning of that expression in the Rent Act 1977 (protected tenancies), Housing Act 1985 (secure tenancies), the Housing Act 1988 (assured tenancies), and any other England and Wales enactment relating to protected, secure or assured tenancies.