

EXPLANATORY MEMORANDUM TO THE

Demoted Tenancies (Review of Decisions)(England) Regulations 2004

2004 No. 1679

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

These Regulations set out the procedure to be followed in connection with a review of a landlord's decision to seek possession of a demoted tenancy.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

The enabling powers conferred upon the First Secretary of State by section 143F(3) and (4) of the Housing Act 1996 are new. This is the first time these powers have been exercised.

4. **Legislative Background**

4.1 New section 82A of the Housing Act of 1985, inserted by section 14(2) of the Anti-social Behaviour Act 2003 enables landlords which are local housing authorities, housing action trusts or registered social landlords, to apply to a county court for a demotion order in respect of a secure tenancy. A demotion order ends a secure tenancy and, if the tenant remains in occupation of the property after the date that the secure tenancy is ended, creates, in the place of the secure tenancy, a less secure demoted tenancy.

4.2 Section 14(5) of, and Schedule 1 to, the Anti-social Behaviour Act 2003 insert sections 143A to 143P into the Housing Act 1996. These sections contain various provisions in relation to demoted tenancies where the landlord is a local housing authority or a housing action trust. In particular, a demoted tenancy cannot be brought to an end without a possession order from a court. However the court cannot refuse a landlord's application for a possession order, unless it thinks that the procedure in section 143E and 143F has not been followed (see section 143D(2)).

4.3 Section 143E provides that proceedings for possession must not be brought unless the landlord has served on the tenant a notice under that section.

4.4 Section 143F enables the tenant to ask the landlord to review its decision to claim possession. These Regulations are made under section 143F(3) and (4) which enables the Secretary of State by regulations to make

provision as to the procedure to be followed in connection with the review. These powers came into force on 30 June 2004¹.

5. Extent

5.1 This instrument applies in relation to dwelling houses in England.

5.2 The National Assembly for Wales will be making similar regulations in Wales.

6. European Convention on Human Rights

This instrument is subject to the negative procedure and does not amend primary legislation. Therefore no statement as to compatibility is required.

7. Policy background

7.1 The introduction of demoted tenancies will allow landlords to apply to the court for an order to reduce the security of tenure of an existing tenant on the grounds of anti-social or unlawful conduct. Demotion gives a serious warning to the tenant since, if they continue to misbehave, swift action can be taken to end their tenancy. It also removes a number of their tenancy rights, thereby acting as a positive incentive to the tenant to change their behaviour: if they stop causing problems, they can regain a higher level of security and rights. The statutory provisions establish a clear linkage between the enjoyment of the benefits and rights of security, and responsible behaviour.

7.2 Demoted tenancies are similar to introductory tenancies² which have proved to be a very effective way of controlling anti-social behaviour in new tenants. The introduction of demoted tenancies aims to give social landlords a similar tool to control the behaviour of existing tenants who have been engaging in anti-social behaviour. The demoted tenancy regime is designed to put tenants back 'on probation' in much the same way as the introductory tenancy regime allows for a 'probationary' period. Demotion to a less secure tenancy for anti-social behaviour also derives from ideas generated by the Law Commission's ongoing review into reforming housing tenure law³. Proposals for demotion were included in the public consultation paper 'Tackling Anti-Social Tenants' issued by ODPM in April 2002. Fifty seven per cent of respondents agreed that demoted tenancies should be introduced, with 24 per cent stating that they disagreed with the proposal. Reasons for agreement were similar across respondents, with support for demotion as an effective warning that could also offer opportunities to work with perpetrators to encourage them to modify their behaviour.

7.3 The correct balance must be maintained between ensuring that effective remedies against anti-social behaviour are available to protect all members of the community and ensuring that those who are alleged to have engaged in anti-social behaviour are not treated unfairly. The key safeguard

¹ Anti-social Behaviour Act 2003 (Commencement No.3 and Savings) Order 2004. SI 2004/1502

² Provisions on introductory tenancies are in Chapter 1 of Part 5 of the Housing Act 1996.

³ Law Commission No. 284 Renting Homes.

here is the requirement for a court to grant a demotion order before a secure tenancy can be replaced by a demoted tenancy.

7.4 Once a tenant has been demoted it remains important to ensure that safeguards are in place to ensure that the tenant is not treated unfairly. Like introductory tenants, demoted tenants have a right to an internal review of a landlord's decision where the landlord decides to seek a possession order (see section 143F of the Housing Act 1996). These Regulations, which are similar in substance to the Introductory Tenants (Review) Regulations 1997⁴, make provision for the procedure in connection with such a review. The Regulations provide tenants with an opportunity to make representations to the landlord, enabling them to challenge and question the landlord's decision to end their tenancy. The Regulations also give the tenant an opportunity to provide evidence that might be pertinent to the landlord's final decision making. They also provide the landlord with a forum in which to expound their reasons for seeking possession.

7.5 The making of regulations about the procedure to be followed in connection with a review will ensure that landlords apply a clear and consistent approach in undertaking reviews. It will ensure that landlords and tenants (or their representatives) will understand the process and know what to expect, enabling them to prepare accordingly. Critically, it will enable the courts to clearly establish whether or not the review element of the statutory process set out in Sections 143E and 143F of the Housing Act 1996 has been carried out in a fair and reasonable manner.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is unlikely to be significant in terms of additional costs incurred where a tenant requests a review. A review will only be necessary where a landlord has taken a decision to seek possession. Where such a decision has been made, the benefits of following the statutory process (including a review) will outweigh any costs, as this will facilitate the smooth passage of possession proceedings in the courts.

9. Contact

Dawn Eastmead, Head of Housing Management Division, at the Office of the Deputy Prime Minister, (Tel: 020 7944 3630 or e-mail: dawn.eastmead@odpm.gsi.gov.uk) can answer any queries regarding the instrument.

⁴ S.I. 1997/72.