
STATUTORY INSTRUMENTS

1996 No. 725

The Business Tenancies (Northern Ireland) Order 1996

Application to the Lands Tribunal

Tenancy application by landlord or tenant

10.—(1) In this Order “tenancy application” means either—

- (a) an application by the landlord for an order that the tenant is not entitled to a new tenancy; or
- (b) an application by the tenant for an order for the grant of a new tenancy.

(2) Where a landlord has served a notice to determine, a tenancy application may be made to the Lands Tribunal at any time between the date of service of the notice and the date of termination.

(3) Where a tenant has served a notice containing a request for a new tenancy, a tenancy application may be made to the Lands Tribunal at any time between the date of service of a notice served by the landlord under Article 7(6)(b) and the date specified in the tenant’s request for the beginning of the new tenancy.

(4) On a tenancy application by either party, the Lands Tribunal may exercise any power that would have been exercisable by it on a tenancy application by the other, and, accordingly—

- (a) neither the landlord nor the tenant may make a tenancy application if the other has done so; and
- (b) the landlord may not withdraw a tenancy application made by him unless the tenant consents to its withdrawal.

(5) The Lands Tribunal, on an application made by the landlord or the tenant in relation to a tenancy, may by order—

- (a) vary (by extension or reduction) the time limit mentioned in paragraph (2) or paragraph (3) (and any extension may be made after the expiration of the time limit);
- (b) set an alternative time limit for the purposes of paragraph (3) where the landlord has not served a notice under Article 7(6)(a) or (b).

Interim continuation of tenancies pending determination by the Lands Tribunal

11.—(1) In any case where—

- (a) a notice to determine a tenancy has been served under Article 6 or a request for a new tenancy made under Article 7; and
- (b) a tenancy application has been made; and
- (c) but for this Article the effect of that notice or request would be to terminate the tenancy before the expiration of the period of 3 months beginning with the date on which the tenancy application is finally disposed of,

the effect of the notice or request shall be to terminate the tenancy either at such date as the Lands Tribunal may by order direct or at the expiration of the said period of 3 months and not at any other time.

(2) The reference in paragraph (1)(c) to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of the withdrawal or abandonment.

(3) Where the term of a tenancy is extended in consequence of the operation of paragraph (1), the Lands Tribunal may by order—

- (a) vary the rent payable under the tenancy to such amount, effective from such date (including a date then past), and
- (b) direct that interest shall be payable on rent in arrear (including rent in arrear by virtue of a variation under sub-paragraph (a)), at such rate,

as the Lands Tribunal considers proper in all the circumstances.

(4) Where the Lands Tribunal, under paragraph (3), orders a variation of rent by way of increase from a date then past, it shall order the payment of—

- (a) the sum of any arrears of rent created by virtue of that variation; or
- (b) where it also directs that interest shall be payable on rent in arrear, the sum of any arrears so created and interest on such arrears.

(5) None of the provisions of the Rent (Northern Ireland) Order 1978 shall operate to limit or affect the amount of the rent which may be fixed by the Lands Tribunal under paragraph (3).

Opposition by landlord to new tenancy

12.—(1) The grounds on which a landlord may make a tenancy application, or may oppose a tenancy application by the tenant, are such of the following grounds as may be stated in the landlord's notice to determine under Article 6, or as the case may be, in the landlord's notice under Article 7(6)(b), that is to say—

- (a) where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with those obligations;
- (b) that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;
- (c) that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;
- (d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, and—
 - (i) that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances; and
 - (ii) that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding;
- (e) where the current tenancy was created by the subletting of part only of the property comprised in a superior tenancy and the landlord is the owner of an estate in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents

reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy;

- (f) that on the termination of the current tenancy the landlord intends—
 - (i) to demolish a building or structure which comprises, or forms a substantial part of, the holding and to undertake a substantial development of the holding; or
 - (ii) to carry out substantial works of construction on the holding or part of it;and that the landlord could not reasonably do so without obtaining possession of the holding;
- (g) subject to Article 13(4), that on the termination of the current tenancy the landlord intends that the holding will be occupied for a reasonable period—
 - (i) for the purposes, or partly for the purposes, of a business to be carried on in it by him or by a company in which he has a controlling interest; or
 - (ii) as his residence;
- (h) subject to Article 13(4) and (5), that the landlord is a company and that on the termination of the current tenancy a person with a controlling interest in the company intends to occupy the holding for a reasonable period—
 - (i) for the purposes, or partly for the purposes, of a business to be carried on in it by him or by the company; or
 - (ii) as his residence;
- (i) where there subsists in the premises comprised in the tenancy an estate acquired (whether before or after the commencement of this Order) by a public authority, that possession of the premises is reasonably necessary for the public authority to carry out its functions under any statutory provision or rule of law.

(2) In paragraph (1)(f) “development” has the same meaning as in the Planning (Northern Ireland) Order 1991.

Provisions supplemental to Article 12

13.—(1) Where the landlord relies on the ground specified in Article 12(1)(f), the Lands Tribunal shall require the landlord to furnish evidence that any permission required under any statutory provision has been granted to him in respect of the demolition and development, or the works of construction, which he intends to undertake.

(2) Where the landlord relies on the ground specified in Article 12(1)(f), the Lands Tribunal shall not hold that he could not reasonably carry out the demolition and development, or the works of construction, intended without obtaining possession of the holding if—

- (a) the tenant agrees to the inclusion in the terms of the new tenancy of terms giving the landlord access and other facilities for carrying out the work intended and, given that access and those facilities, the landlord could reasonably carry out the work without obtaining possession of the holding and without interfering to a substantial extent or for a substantial time with the use of the holding for the purposes of the business carried on by the tenant; or
- (b) the tenant is willing to accept a tenancy of an economically separable part of the holding and either sub-paragraph (a) is satisfied with respect to that part or possession of the remainder of the holding would be reasonably sufficient to enable the landlord to carry out the intended work.

(3) For the purposes of paragraph (2)(b) a part of a holding shall be deemed to be an economically separable part if, and only if, the aggregate of the rents which, after the completion of the intended work, would be reasonably obtainable on separate lettings of that part and the remainder of the premises affected by or resulting from the work would not be substantially less than the rent which would then be reasonably obtainable on a letting of those premises as a whole.

(4) The landlord shall not be entitled to rely on the ground specified in Article 12(1)(g) or (h) if the estate of the landlord, or an estate which has merged in that estate and but for the merger would be the estate of the landlord, was purchased or created after the beginning of the period of 5 years which ends with the termination of the current tenancy, and at all times since the purchase or creation thereof the holding has been comprised in a tenancy or successive tenancies of the description specified in Article 3(1).

(5) The landlord shall not be entitled to rely on the ground specified in Article 12(1)(h) if the controlling interest was acquired after the beginning of the period of 5 years which ends with the termination of the current tenancy, and at all times since the acquisition of the controlling interest the holding has been comprised in a tenancy or successive tenancies of the description specified in Article 3(1).

Consequences where landlord successfully opposes

14.—(1) The Lands Tribunal shall make an order that the tenant is not entitled to a new tenancy where the landlord makes a tenancy application or opposes a tenancy application by the tenant on grounds on which he is entitled to make his application or oppose the tenant's application in accordance with Articles 12 and 13 and establishes any of those grounds to the satisfaction of the Lands Tribunal.

(2) Where the landlord makes or opposes a tenancy application on one or more of the grounds specified in paragraphs (d), (e) and (f) of Article 12(1) but fails to establish any of those grounds to the satisfaction of the Lands Tribunal, the Lands Tribunal, if it would have been satisfied as to any of those grounds had the date of termination specified in the landlord's notice to determine or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin, been such later date as the Lands Tribunal may determine, being a date not more than one year later than the date so specified,—

- (a) shall make an order containing a declaration to that effect, stating on which of the said grounds it would have been satisfied as aforesaid and specifying the later date determined by the Lands Tribunal as aforesaid, but shall not make an order for the grant of a new tenancy; and
- (b) if, within 14 days after the making of the declaration, the tenant so requires, shall make an order substituting that later date for the date specified in the said landlord's notice to determine or the tenant's request, and thereupon that notice or request shall have effect accordingly.

Power of Lands Tribunal to order the grant of a new tenancy

15.—(1) Where, on a tenancy application—

- (a) the landlord does not establish to the satisfaction of the Lands Tribunal any of the grounds mentioned in Article 12; and
- (b) the Lands Tribunal does not make a declaration under Article 14(2),

the Lands Tribunal shall make an order for the grant of a new tenancy comprising such property, at such rent and on such other terms, as are provided in the succeeding provisions of this Order.

(2) Where a tenancy is continued or a new tenancy is granted under this Order in any premises, such continued or new tenancy shall for all purposes be deemed to be a graft upon the tenancy

previously subsisting in those premises, and the interest of the tenant thereunder shall be subject to any rights or equities arising from its being such graft.

(3) Paragraph (2) shall not operate so as to extend any liability under any guarantee or other security for the payment of rent.

Property to be comprised in new tenancy

16.—(1) Subject to paragraph (2), an order under Article 15 for the grant of a new tenancy shall be an order for the grant of a new tenancy of the holding; and in the absence of agreement between the landlord and the tenant as to the property which constitutes the holding the Lands Tribunal shall in the order designate that property by reference to the circumstances existing at the date of the order.

(2) Where the property comprised in the current tenancy includes other property besides the holding and the landlord requires any new tenancy ordered to be granted under Article 15 to be a tenancy of the whole of the property comprised in the current tenancy, the Lands Tribunal shall make an order for the grant of a new tenancy of the whole of the property comprised in the current tenancy; and in any such case references in the succeeding provisions of this Order to the holding shall be construed as references to the whole of that property.

(3) Where the current tenancy includes rights enjoyed by the tenant in connection with the holding, those rights shall, unless the parties otherwise agree or the Lands Tribunal otherwise directs, be included in a tenancy ordered to be granted under Article 15.

Duration of new tenancy

17.—(1) Where the Lands Tribunal makes an order for the grant of a new tenancy, the new tenancy shall be—

- (a) a tenancy for such period as may be agreed between the landlord and tenant; or
- (b) in the absence of agreement, a tenancy for such period, not exceeding 15 years, as may be determined by the Lands Tribunal to be reasonable in all the circumstances,

and shall begin on the coming to an end of the current tenancy.

(2) Where the period for which in accordance with this Order it is agreed or determined by the Lands Tribunal that a new tenancy should be granted thereunder will extend beyond the date on which the estate of the immediate landlord will come to an end, then subject to paragraph (3), the power of the Lands Tribunal under this Order to order such a grant shall include power to order the grant of a new tenancy until the expiration of that estate and, subject to the following provisions of this Article, to order the grant of such a reversionary tenancy or reversionary tenancies as may be required to secure that the combined effects of those grants will be equivalent to the grant of a tenancy for that period; and the provisions of this Order shall, subject to the necessary modifications, apply to the grant of a tenancy together with one or more reversionary tenancies as they apply in relation to the grant of one new tenancy.

(3) The Lands Tribunal shall not under paragraph (2) grant a reversionary tenancy unless the tenant has, within such time as may be specified in Lands Tribunal Rules, served notice of his application for a new tenancy on any person, other than the landlord, having a reversionary estate which would be affected by the grant of the reversionary tenancy.

(4) Any person having a reversionary estate which is likely to be affected by the grant of a reversionary tenancy (including any terms or conditions attached to such grant) may in accordance with Lands Tribunal Rules apply to the Lands Tribunal to be made a party to the proceedings and, on such application being granted, may oppose the grant of the reversionary tenancy on any grounds which appear to the Lands Tribunal to be relevant and shall be bound by the proceedings.

Rent under new tenancy

18.—(1) The rent payable under a new tenancy granted in pursuance of an order of the Lands Tribunal shall be such as may be agreed between the landlord and the tenant.

(2) In the absence of agreement the rent shall be such as may be determined by the Lands Tribunal to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded—

- (a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding;
- (b) any goodwill attached to the holding by reason of the carrying on thereof of the business of the tenant (whether by him or by a predecessor of his in that business);
- (c) any effect on rent of any improvement—
 - (i) carried out by the tenant or a predecessor in title of his; or
 - (ii) where the tenant or a predecessor in title of his has remained in occupation of the holding during two or more tenancies, carried out by him or that predecessor in title during a tenancy other than the current tenancy;other than in pursuance of an obligation to the immediate landlord;
- (d) in the case of a holding comprising premises licensed under the Licensing (Northern Ireland) Order 1990, any addition to its value attributable to the licence, if it appears to the Lands Tribunal that having regard to the terms of the current tenancy and any other relevant circumstances the benefit of the licence belongs to the tenant.

(3) None of the provisions of the Rent (Northern Ireland) Order 1978 shall operate to limit or affect the amount of the rent which may be fixed by the Lands Tribunal under paragraph (2).

(4) Where the Lands Tribunal fixes the amount of rent under this Article, it may by order direct—

- (a) that the rent shall be payable in that amount from such date (including a date then past), and
- (b) that interest shall be payable on rent in arrear (including rent in arrear by virtue of a direction under sub-paragraph (a)) at such rate,

as the Lands Tribunal considers proper in all the circumstances.

(5) Where rent is in arrear by virtue of a direction under paragraph (4)(a), the Lands Tribunal shall order the payment of—

- (a) the sum of any arrears of rent created by virtue of that direction; or
- (b) where the Lands Tribunal also directs that interest shall be payable on rent in arrear, the sum of any arrears so created and interest on such arrears.

Other terms of new tenancy

19.—(1) The terms of a tenancy granted in pursuance of an order of the Lands Tribunal (other than terms as to the duration thereof and as to the rent payable thereunder) shall be such as may be agreed between the landlord and the tenant, or as, in the absence of agreement, may be determined by the Lands Tribunal; and in determining those terms the Lands Tribunal shall have regard to the terms of the current tenancy and to all relevant circumstances.

(2) Without prejudice to the generality of paragraph (1), the Lands Tribunal may by order direct the inclusion in the tenancy of such terms as the Lands Tribunal considers appropriate for securing that the obligations of the landlord or of the tenant (or of both of them) under the tenancy are satisfactorily performed, and may, in particular, require the provision of sufficient security (including the finding of sureties acceptable to the party to be protected).

Carrying out of order for new tenancy

20.—(1) Where the Lands Tribunal makes an order for the grant of a new tenancy, then, unless the order is revoked under paragraph (2) or the landlord and tenant agree not to act upon the order, the landlord shall be bound to execute in favour of the tenant, and the tenant shall be bound to accept, a contract of tenancy of the holding embodying the terms agreed between the landlord and the tenant or determined by the Lands Tribunal in accordance with the foregoing provisions of this Order, and where the landlord executes such a contract the tenant shall be bound, if so required by the landlord, to execute a counterpart or duplicate thereof.

(2) If the tenant, within 14 days after the making of an order for the grant of a new tenancy, applies to the Lands Tribunal for the revocation of the order, the Lands Tribunal shall revoke the order; and where the order is so revoked, then, if it is so agreed between the landlord and the tenant or determined by the Lands Tribunal, the current tenancy shall continue beyond the date at which, but for this paragraph, it would have come to an end, for such period as may be so agreed or determined to be necessary to afford to the landlord a reasonable opportunity for reletting or otherwise disposing of the premises which would have been comprised in the new tenancy; and while the current tenancy continues by virtue of this paragraph it shall not be a tenancy to which this Order (other than this paragraph, paragraph (3) and Article 21) applies.

(3) Where an order is revoked under paragraph (2), any provision thereof as to payment of costs shall not cease to have effect by reason only of the revocation; but the Lands Tribunal may, if it thinks fit, revoke or vary any such provision or, where no costs have been awarded in the proceedings for the revoked order, award such costs.

(4) A contract of tenancy made under this Article, where the estate of the landlord is subject to a mortgage, shall be deemed to be one authorised by section 18 of the Conveyancing Act 1881 (which confers certain powers of leasing on mortgagors in possession), and subsection (13) of that section (which allows those powers to be restricted or excluded by agreement) shall not have effect in relation to such a contract.

(5) In paragraph (4) the reference to section 18 of the Conveyancing Act 1881 shall be construed as a reference to that section as modified by subsection (10) of section 3 of the Conveyancing Act 1911 and, so far as it relates to the powers of leasing, by subsection (11) of the said section 3.

(6) Where a landlord or tenant refuses, neglects or fails within a reasonable time to execute or accept any document which he is bound under the provisions of this Article to execute or accept, the Lands Tribunal may, on the application in accordance with Lands Tribunal Rules of any interested party, nominate some proper person to execute or accept or join in executing or accepting the document on behalf of the person in default, and the person so nominated may recover summarily as a civil debt due to him by the person in default any costs incurred by him in executing or accepting that document.

Compensation for landlord where tenant withdraws, etc., application or rejects new tenancy

21.—(1) Where a tenant has made a tenancy application and—

- (a) the tenant withdraws, or fails to pursue, the application before the Lands Tribunal comes to a decision on it; or
- (b) the tenant, after the making of an order for the grant of a new tenancy, applies to the Lands Tribunal under Article 20(2) for the revocation of the order and the order is revoked,

the landlord may apply to the Lands Tribunal for an order that the tenant pay the landlord such sum as appears sufficient as compensation for damage or loss sustained by the landlord as the result of the tenant's action or inaction referred to in sub-paragraph (a) or (b).

(2) A sum ordered to be paid under paragraph (1) may include an increase of rent for any period for which the current tenancy is ordered to continue under Article 20(2), and paragraphs (3) and (4)

of Article 11 shall apply to such an increase as they apply to a variation of rent by way of increase under that Article.

Powers of Lands Tribunal where landlord cannot be found or is under a disability

22. Where, on a tenancy application, the landlord or any landlord cannot be found or is under a disability or is acting in a fiduciary capacity, the Lands Tribunal may make such order as it may think proper to enable a new tenancy to be granted notwithstanding that impossibility of being found, disability or fiduciary capacity, as the case may be.

Compensation where order for new tenancy is opposed on certain grounds

23.—(1) Where a landlord—

(a) has served—

(i) a notice to determine a tenancy to which this Order applies, or

(ii) in response to the tenant’s request for a new tenancy, a notice under Article 7(6)(b) stating that he will oppose a tenancy application by the tenant,

and the notice states that a tenancy application by the tenant would or will be opposed, on any of the grounds specified in sub-paragraphs (e), (f), (g), (h) and (i) of paragraph (1) of Article 12; and

(b) either—

(i) in consequence of the landlord’s notice the tenant does not make a tenancy application or, if he has made such an application, withdraws it, or

(ii) on hearing a tenancy application by the landlord or a tenancy application by the tenant, the Lands Tribunal, on any of the grounds mentioned in sub-paragraph (a), grants the former application or dismisses the latter; and

(c) the circumstances are such that paragraph (7) does not apply,

then, subject to the provisions of this Order, the tenant shall be entitled on quitting the holding to recover from the landlord by way of compensation a sum determined in accordance with the following provisions of this Article.

(2) That sum depends upon the period immediately preceding the termination of the current tenancy during which the occupation conditions have been complied with (“the qualifying period”) and shall be ascertained by multiplying the net annual value of the holding by, for each of the qualifying periods set out in column 1 of the following Table, the respective multiplier set out in column 2:

TABLE

Qualifying period	Multiplier
Not exceeding 5 years	2.5
Exceeding 5 years but not exceeding 10 years	5
Exceeding 10 years but not exceeding 15 years	7.5
Exceeding 15 years	10

(3) The occupation conditions are—

- (a) that during the whole of the qualifying period, premises being or comprised in the holding have been occupied for the purposes of a business carried on by the occupier or for those and other purposes; or
 - (b) that, if during the qualifying period there was a change in the occupier of the premises, the person who was the occupier immediately after the change was the successor to the business carried on by the person who was the occupier immediately before the change.
- (4) For the purposes of paragraph (2) the question of net annual value of the holding shall be referred to the Commissioner of Valuation and shall be decided as follows—
- (a) the net annual value shall be that value shown in the valuation list in force under the Valuation Acts at the date on which the landlord's notice under Article 6 or, as the case may be, Article 7(6), is served;
 - (b) where no such value is so shown with respect to the holding but such a value or values is or are shown with respect to premises comprised in or comprising the holding or part of it, the net annual value of the holding shall be taken to be such value as is certified by the Commissioner of Valuation to be attributable to the value or values so shown;
 - (c) where the net annual value of the holding cannot be ascertained in accordance with the foregoing provisions of this paragraph, it shall be taken to be the value which the Commissioner of Valuation certifies would on a proper assessment be the value to be entered in the said valuation list as the net annual value of the holding.
- (5) The Department of Finance and Personnel may by an order made subject to affirmative resolution vary (by substitution, addition or omission) the periods or multipliers (or both) set out in the Table in paragraph (2); and may by regulations made subject to negative resolution prescribe the procedure in connection with references under paragraph (4).
- (6) In this Article the reference to the termination of the current tenancy is a reference to the date of termination specified in the landlord's notice to determine, or, as the case may be, the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to begin.
- (7) This Article does not entitle a tenant to compensation where—
- (a) the landlord is a public authority; and
 - (b) the tenant was aware of that (or should have been aware of it) at the time when he entered into his contract of tenancy; and
 - (c) the contract of tenancy, or an agreement between the persons who were, or became, the landlord and the tenant preceding or contemporaneous with that contract, disentitled the tenant to compensation.
- (8) Subject to Article 39(1), a sum which a tenant is entitled to recover by way of compensation under this Article may be recovered by the tenant summarily as a civil debt due to him by the landlord.