



# Housing Act 1985

## 1985 CHAPTER 68

### PART IV

#### SECURE TENANCIES AND RIGHTS OF SECURE TENANTS

##### *Assignment, lodgers and subletting*

#### **91 Assignment in general prohibited.**

- (1) A secure tenancy which is—
  - (a) a periodic tenancy, or
  - (b) a tenancy for a term certain granted on or after 5th November 1982,is not capable of being assigned except in the cases mentioned in subsection (3).
- (2) If a secure tenancy for a term certain granted before 5th November 1982 is assigned, then, except in the cases mentioned in subsection (3), it ceases to be a secure tenancy and cannot subsequently become a secure tenancy.
- (3) The exceptions are—
  - (a) an assignment in accordance with section 92 (assignment by way of exchange);
  - [<sup>F1</sup>(b) an assignment in pursuance of an order made under—
    - (i) section 24 of the Matrimonial Causes Act 1973 (property adjustment orders in connection with matrimonial proceedings),
    - (ii) section 17(1) of the Matrimonial and Family Proceedings Act 1984 (property adjustment orders after overseas divorce, &c.), <sup>F2</sup> . . .
    - (iii) paragraph 1 of Schedule 1 to the Children Act 1989 (orders for financial relief against parents) [<sup>F3</sup>, or
    - (iv) Part 2 of Schedule 5, or paragraph 9(2) or (3) of Schedule 7, to the Civil Partnership Act 2004 (property adjustment orders in connection with civil partnership proceedings or after overseas dissolution of civil partnership, etc.)]]

*Status: Point in time view as at 01/04/2010.*

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- (c) an assignment to a person who would be qualified to succeed the tenant if the tenant died immediately before the assignment.

#### Textual Amendments

- F1** S. 91(3)(b) substituted (1.10.1996) by 1996 c. 52, s. 222, **Sch. 18 Pt. III para. 12**; S.I. 1996/2402, **art. 3** (subject to transitional provisions and savings in **Sch.**)
- F2** Word at the end of s. 91(3)(b)(ii) repealed (5.12.2005) by **Civil Partnership Act 2004 (c. 33)**, ss. 261(4), 263(10), **Sch. 30**; S.I. 2005/3175, **art. 2(6)**
- F3** S. 91(3)(b)(iv) and preceding word inserted (5.12.2005) by **Civil Partnership Act 2004 (c. 33)**, ss. 81, 263(2), **Sch. 8** {para. 24}; S.I. 2005/3175, **art. 2(1)**, **Sch. 1**

## 92 Assignments by way of exchange.

- (1) It is a term of every secure tenancy that the tenant may, with the written consent of the landlord, assign the tenancy to another secure tenant who satisfies the condition in subsection (2) [<sup>F4</sup>or to an assured tenant who satisfies the conditions in subsection (2A)].
- (2) The condition is that the other secure tenant has the written consent of his landlord to an assignment of his tenancy either to the first-mentioned tenant or to another secure tenant who satisfies the condition in this subsection.

[<sup>F5</sup>(2A) The conditions to be satisfied with respect to an assured tenant are—

- (a) that the landlord under his assured tenancy is [<sup>F6</sup>the Regulator of Social Housing, a private registered provider of social housing,]<sup>F7</sup> . . . a [<sup>F8</sup>a registered social landlord] or a housing trust which is a charity; and
- (b) that he intends to assign his assured tenancy to the secure tenant referred to in subsection (1) or to another secure tenant who satisfies the condition in subsection (2).]
- (3) The consent required by virtue of this section shall not be withheld except on one or more of the grounds set out in Schedule 3, and if withheld otherwise than on one of those grounds shall be treated as given.
- (4) The landlord may not rely on any of the grounds set out in Schedule 3 unless he has, within 42 days of the tenant's application for the consent, served on the tenant a notice specifying the ground and giving particulars of it.
- (5) Where rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed, the consent required by virtue of this section may be given subject to a condition requiring the tenant to pay the outstanding rent, remedy the breach or perform the obligation.
- (6) Except as provided by subsection (5), a consent required by virtue of this section cannot be given subject to a condition, and a condition imposed otherwise than as so provided shall be disregarded.

#### Textual Amendments

- F4** Words added by **Local Government and Housing Act 1989 (c. 42, SIF 61)**, s. 163(1)
- F5** S. 92(2A) inserted by **Local Government and Housing Act 1989 (c. 42, SIF 61)**, s. 163(3)

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- F6** Words in s. 92(2A)(a) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Consequential Provisions\) Order 2010 \(S.I. 2010/866\)](#), art. 1(2), **Sch. 2 para. 21** (with art. 6, Sch. 3)
- F7** Words in s. 92(2A)(a) repealed (1.11.1998) by [1998 c. 38, ss. 140, 152, Sch. 16 para. 10, Sch. 18 Pt. VI](#) (with ss. 137(1), 139(2), 141(1), 143(2)); [S.I. 1998/2244, art. 5](#)
- F8** Words in s. 92(2A)(a) substituted (1.10.1996) by [S.I. 1996/2325, art. 5\(1\), Sch. 2 para. 14\(9\)](#)

**Modifications etc. (not altering text)**

- C1** S. 92(2A)(a) modified (1.12.2008) by [The Transfer of Housing Corporation Functions \(Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/2839\)](#), art. 3, **Sch. para. 2(1)** (with art. 6); [S.I. 2008/3068, arts. 1\(2\), 2\(1\)\(b\)](#) (with arts. 6-13)

**93 Lodgers and subletting.**

- (1) It is a term of every secure tenancy that the tenant—
- (a) may allow any persons to reside as lodgers in the dwelling-house, but
  - (b) will not, without the written consent of the landlord, sublet or part with possession of part of the dwelling-house.
- (2) If the tenant under a secure tenancy parts with the possession of the dwelling-house or sublets the whole of it (or sublets first part of it and then the remainder), the tenancy ceases to be a secure tenancy and cannot subsequently become a secure tenancy.

**94 Consent to subletting.**

- (1) This section applies to the consent required by virtue of section 93(1)(b) (landlord's consent to subletting of part of dwelling-house).
- (2) Consent shall not be unreasonably withheld (and if unreasonably withheld shall be treated as given), and if a question arises whether the withholding of consent was unreasonable it is for the landlord to show that it was not.
- (3) In determining that question the following matters, if shown by the landlord, are among those to be taken into account—
- (a) that the consent would lead to overcrowding of the dwelling-house within the meaning of Part X (overcrowding);
  - (b) that the landlord proposes to carry out works on the dwelling-house, or on the building of which it forms part, and that the proposed works will affect the accommodation likely to be used by the sub-tenant who would reside in the dwelling-house as a result of the consent.
- (4) Consent may be validly given notwithstanding that it follows, instead of preceding, the action requiring it.
- (5) Consent cannot be given subject to a condition (and it purporting to be given subject to a condition shall be treated as given unconditionally).
- (6) Where the tenant has applied in writing for consent, then—
- (a) if the landlord refuses to give consent, it shall give the tenant a written statement of the reasons why consent was refused, and
  - (b) if the landlord neither gives nor refuses to give consent within a reasonable time, consent shall be taken to have been withheld.

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**95 Assignment or subletting where tenant condition not satisfied.**

- (1) This section applies to a tenancy which is not a secure tenancy but would be if the tenant condition referred to in section 81 (occupation by the tenant) were satisfied.
- (2) Sections 91 and 93(2) (restrictions on assignment or sub-letting of whole dwelling-house) apply to such a tenancy as they apply to a secure tenancy, except that—
  - (a) section 91(3)(b) and (c) (assignments excepted from restrictions) do not apply to such a tenancy for a term certain granted before 5th November 1982, and
  - (b) references to the tenancy ceasing to be secure shall be disregarded, without prejudice to the application of the remainder of the provisions in which those references occur.

**Status:**

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**Changes to legislation:**

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