



Housing Act 1988

1988 CHAPTER 50

PART I

RENTED ACCOMMODATION

CHAPTER V

PHASING OUT OF RENT ACTS AND OTHER TRANSITIONAL PROVISIONS

35 Removal of special regimes for tenancies of housing associations etc.

- (1) In this section “housing association tenancy” has the same meaning as in Part VI of the Rent Act 1977.
- (2) A tenancy which is entered into on or after the commencement of this Act cannot be a housing association tenancy unless—
 - (a) it is entered into in pursuance of a contract made before the commencement of this Act; or
 - (b) it is granted to a person (alone or jointly with others) who, immediately before the tenancy was granted, was a tenant under a housing association tenancy and is so granted by the person who at that time was the landlord under that housing association tenancy; or
 - (c) it is granted to a person (alone or jointly with others) in the following circumstances—
 - (i) prior to the grant of the tenancy, an order for possession of a dwelling-house was made against him (alone or jointly with others) on the court being satisfied as mentioned in paragraph (b) or paragraph (c) of subsection (2) of section 84 of the ^{M1}Housing Act 1985; and
 - (ii) the tenancy is of the premises which constitute the suitable accommodation as to which the court was so satisfied; and
 - (iii) in the proceedings for possession the court directed that the tenancy would be a housing association tenancy; or

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- [^{F1}(d) it is a tenancy under which the interest of the landlord was at the time the tenancy was granted held by [^{F2}the Commission for the New Towns or a development] corporation, within the meaning of section 80 of the Housing Act 1985, and, before the date which has effect by virtue of paragraph (a) or paragraph (b) of subsection (4) of section 38 below, ceased 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]
- (3) Where, on or after the commencement of this Act, [^{F3}a private registered provider of social housing or] a [^{F4}registered social landlord, within the meaning of the Housing Act 1985 (see section 5(4) and (5) of the Act)], grants a secure tenancy [^{F5}or a secure contract] pursuant to an obligation under section 554(2A) of the ^{M2}Housing Act 1985 (as set out in Schedule 17 to this Act) then, in determining whether that tenancy is a housing association tenancy, it shall be assumed for the purposes only of section 86(2) (b) of the ^{M3}Rent Act 1977 (tenancy would be a protected tenancy but for section 15 or 16 of that Act) that the tenancy was granted before the commencement of this Act.
- (4) [^{F6}Subject to section 38(4A) below] a tenancy or licence which is entered into on or after the commencement of this Act cannot be a secure tenancy unless—
- (a) the interest of the landlord belongs to a local authority, a [^{F7}development] corporation or an urban development corporation, all within the meaning of section 80 of the Housing Act 1985 [^{F8}or a housing action trust established under Part III of this Act]; or
 - [^{F9}(aa) the interest of the landlord belongs to a Mayoral development corporation; or]
 - (b) the interest of the landlord belongs to a housing co-operative within the meaning of section 27B of the Housing Act 1985 (agreements between local housing authorities and housing co-operatives) and the tenancy or licence is of a dwelling-house comprised in a housing co-operative agreement falling within that section; or
 - [^{F10}(ba) the interest of the landlord belongs to the Homes and Communities Agency^{F11}, the Greater London Authority] or the Welsh Ministers and the tenancy or licence falls within section 80(2A) to (2E) of the Housing Act 1985; or]
 - (c) it is entered into in pursuance of a contract made before the commencement of this Act; or
 - (d) it is granted to a person (alone or jointly with others) who, immediately before it was entered into, was a secure tenant and is so granted by the body which at that time was the landlord or licensor under the secure tenancy; or
 - (e) it is granted to a person (alone or jointly with others) in the following circumstances—
 - (i) prior to the grant of the tenancy or licence, an order for possession of a dwelling-house was made against him (alone or jointly with others) on the court being satisfied as mentioned in paragraph (b) or paragraph (c) of subsection (2) of section 84 of the Housing Act 1985; and
 - (ii) the tenancy or licence is of the premises which constitute the suitable accommodation as to which the court was so satisfied; and
 - (iii) in the proceedings for possession the court considered that, in the circumstances, the grant of an assured tenancy would not afford the required security and, accordingly, directed that the tenancy or licence would be a secure tenancy; or

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- (f) it is granted pursuant to an obligation under section 554(2A) of the Housing Act 1985 (as set out in Schedule 17 to this Act).
- (5) If, on or after the commencement of this Act, the interest of the landlord under a protected or statutory tenancy becomes held by a housing association, a housing trust ^{F12}[^{F13}or the Regulator of Social Housing]]^{F14}or, where that interest becomes held by him as the result of the exercise by him of functions under Part III of the Housing Association Act 1985, the Secretary of State,] nothing in the preceding provisions of this section shall prevent the tenancy from being a housing association tenancy or a secure tenancy and, accordingly, in such a case section 80 of the Housing Act 1985 (and any enactment which refers to that section) shall have effect without regard to the repeal of provisions of that section effected by this Act.
- (6) In subsection (5) above “housing association” and “housing trust” have the same meaning as in the ^{M4}Housing Act 1985.

Textual Amendments

- F1** S. 35(2)(d) substituted by [Local Government and Housing Act 1989 \(c. 42, SIF 75:1\)](#), s. 194, **Sch. 11 para. 105(1)**
- F2** Words in s. 35(2)(d) 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. 38(2)** (with Sch. 2); [S.I. 2008/3068, art. 2\(1\)\(b\)](#) (with arts. 6-13)
- F3** Words in s. 35(3) 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. 66(2)** (with art. 6, Sch. 3)
- F4** Words in s. 35(3) substituted (1.10.1996) by [S.I. 1996/2325](#), art. 5(1), **Sch. 2 para. 18(2)**
- F5** Words in s. 35(3) inserted (1.12.2022) by [The Renting Homes \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2022 \(S.I. 2022/1166\)](#), regs. 1(1), **16(4)** (with savings and transitional provisions in [S.I. 2022/1172](#), regs. 3, 10, 19)
- F6** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 75:1\)](#), s. 194, **Sch. 11 para. 105(2)**
- F7** Word in s. 35(4)(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. 38(3)(a)** (with Sch. 2); [S.I. 2008/3068, art. 2\(1\)\(b\)](#) (with arts. 6-13)
- F8** Words in s. 35(4)(a) substituted (1.10.1998) by [1998 c. 38](#), s. 129, **Sch. 15 para. 15** (with ss. 139(2), 141(3), 143(2)); [S.I. 1998/2244, art. 4](#)
- F9** S. 35(4)(aa) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(l), **Sch. 22 para. 26**
- F10** S. 35(4)(ba) 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. 38(3)(b)** (with Sch. 2); [S.I. 2008/3068, art. 2\(1\)\(b\)](#) (with arts. 6-13)
- F11** Words in s. 35(4)(ba) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), **Sch. 19 para. 26**; [S.I. 2012/628, art. 6\(i\)](#) (with arts. 911141517)
- F12** Words in s. 35(5) substituted (1.11.1998) by [1998 c. 38](#), s. 140(1), **Sch. 16 para. 60**; [S.I. 1998/2244, art. 5](#)
- F13** Words in s. 35(5) 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. 66(3)** (with art. 6, Sch. 3)
- F14** Words in s. 35(5) inserted (15.1.1999) by [S.I. 1999/61](#), art. 2, **Sch. para. 3(2)**

Modifications etc. (not altering text)

- C1** S. 35(5) modified (1.12.2008) by [The Transfer of Housing Corporation Functions \(Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/2839\)](#), arts. 1(1), 3, **Sch. para. 1**; [S.I. 2008/3068, art. 2\(1\)\(b\)](#) (with arts. 6-11)

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Marginal Citations

M1 1985 c. 68.

M2 1985 c. 68.

M3 1977 c. 42.

M4 1985 c. 68.

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Changes and effects yet to be applied to :

- specified provision(s) savings for amendments by 2018 anaw 1, s. 6, Sch. 6 by [S.I. 2019/110 reg. 5](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)