
STATUTORY INSTRUMENTS

2003 No. 3096

The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003

DUTIES TO GIVE INFORMATION

Provision of information

23. For section 40 substitute—

“Duties of tenants and landlords of business premises to give information to each other

40.—(1) Where a person who is an owner of an interest in reversion expectant (whether immediately or not) on a tenancy of any business premises has served on the tenant a notice in the prescribed form requiring him to do so, it shall be the duty of the tenant to give the appropriate person in writing the information specified in subsection (2) below.

(2) That information is—

- (a) whether the tenant occupies the premises or any part of them wholly or partly for the purposes of a business carried on by him;
- (b) whether his tenancy has effect subject to any sub-tenancy on which his tenancy is immediately expectant and, if so—
 - (i) what premises are comprised in the sub-tenancy;
 - (ii) for what term it has effect (or, if it is terminable by notice, by what notice it can be terminated);
 - (iii) what is the rent payable under it;
 - (iv) who is the sub-tenant;
 - (v) (to the best of his knowledge and belief) whether the sub-tenant is in occupation of the premises or of part of the premises comprised in the sub-tenancy and, if not, what is the sub-tenant’s address;
 - (vi) whether an agreement is in force excluding in relation to the sub-tenancy the provisions of sections 24 to 28 of this Act; and
 - (vii) whether a notice has been given under section 25 or 26(6) of this Act, or a request has been made under section 26 of this Act, in relation to the sub-tenancy and, if so, details of the notice or request; and
- (c) (to the best of his knowledge and belief) the name and address of any other person who owns an interest in reversion in any part of the premises.

(3) Where the tenant of any business premises who is a tenant under such a tenancy as is mentioned in section 26(1) of this Act has served on a reversioner or a reversioner’s mortgagee in possession a notice in the prescribed form requiring him to do so, it shall be the duty of the person on whom the notice is served to give the appropriate person in writing the information specified in subsection (4) below.

- (4) That information is—
- (a) whether he is the owner of the fee simple in respect of the premises or any part of them or the mortgagee in possession of such an owner,
 - (b) if he is not, then (to the best of his knowledge and belief)—
 - (i) the name and address of the person who is his or, as the case may be, his mortgagor's immediate landlord in respect of those premises or of the part in respect of which he or his mortgagor is not the owner in fee simple;
 - (ii) for what term his or his mortgagor's tenancy has effect and what is the earliest date (if any) at which that tenancy is terminable by notice to quit given by the landlord; and
 - (iii) whether a notice has been given under section 25 or 26(6) of this Act, or a request has been made under section 26 of this Act, in relation to the tenancy and, if so, details of the notice or request;
 - (c) (to the best of his knowledge and belief) the name and address of any other person who owns an interest in reversion in any part of the premises; and
 - (d) if he is a reversioner, whether there is a mortgagee in possession of his interest in the premises and, if so, (to the best of his knowledge and belief) what is the name and address of the mortgagee.
- (5) A duty imposed on a person by this section is a duty—
- (a) to give the information concerned within the period of one month beginning with the date of service of the notice; and
 - (b) if within the period of six months beginning with the date of service of the notice that person becomes aware that any information which has been given in pursuance of the notice is not, or is no longer, correct, to give the appropriate person correct information within the period of one month beginning with the date on which he becomes aware.
- (6) This section shall not apply to a notice served by or on the tenant more than two years before the date on which apart from this Act his tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the landlord.
- (7) Except as provided by section 40A of this Act, the appropriate person for the purposes of this section and section 40A(1) of this Act is the person who served the notice under subsection (1) or (3) above.
- (8) In this section—
- “business premises” means premises used wholly or partly for the purposes of a business;
 - “mortgagee in possession” includes a receiver appointed by the mortgagee or by the court who is in receipt of the rents and profits, and “his mortgagor” shall be construed accordingly;
 - “reversioner” means any person having an interest in the premises, being an interest in reversion expectant (whether immediately or not) on the tenancy;
 - “reversioner's mortgagee in possession” means any person being a mortgagee in possession in respect of such an interest; and
 - “sub-tenant” includes a person retaining possession of any premises by virtue of the Rent (Agriculture) Act 1976 or the Rent Act 1977 after the coming to an end of a sub-tenancy, and “sub-tenancy” includes a right so to retain possession.”.

Section 40 duties in transfer cases

24. After section 40 insert the following sections—

“Duties in transfer cases

40A.—(1) If a person on whom a notice under section 40(1) or (3) of this Act has been served has transferred his interest in the premises or any part of them to some other person and gives the appropriate person notice in writing—

- (a) of the transfer of his interest; and
- (b) of the name and address of the person to whom he transferred it,

on giving the notice he ceases in relation to the premises or (as the case may be) to that part to be under any duty imposed by section 40 of this Act.

(2) If—

- (a) the person who served the notice under section 40(1) or (3) of this Act (“the transferor”) has transferred his interest in the premises to some other person (“the transferee”); and
- (b) the transferor or the transferee has given the person required to give the information notice in writing—
 - (i) of the transfer; and
 - (ii) of the transferee’s name and address,

the appropriate person for the purposes of section 40 of this Act and subsection (1) above is the transferee.

(3) If—

- (a) a transfer such as is mentioned in paragraph (a) of subsection (2) above has taken place; but
- (b) neither the transferor nor the transferee has given a notice such as is mentioned in paragraph (b) of that subsection,

any duty imposed by section 40 of this Act may be performed by giving the information either to the transferor or to the transferee.

Proceedings for breach of duties to give information

40B. A claim that a person has broken any duty imposed by section 40 of this Act may be made the subject of civil proceedings for breach of statutory duty; and in any such proceedings a court may order that person to comply with that duty and may make an award of damages.”.