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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business, professional and other non-residential tenants) (“Part 2”). Amongst other things, the Act provides that a tenancy to which Part 2 applies continues unless terminated in accordance with the provisions of the Act, and enables the tenant to apply to the court for a new tenancy.

Pending agreement on the terms of the new tenancy, the landlord may apply to the court for an interim rent. Where the parties fail to agree, the court fixes the terms of the new tenancy. The landlord may oppose renewal on specific grounds, certain of which give the tenant the right to claim compensation.

Before entering into a tenancy, the parties may apply jointly to the court for its approval to an agreement to exclude the provisions of Part 2 which confer security of tenure. Where the court has authorised such an agreement, the tenant has no right to renew the tenancy, and no statutory entitlement to compensation.

This Order implements most of the recommendations of the Law Commission contained in their 1992 paper *Business Tenancies: A Periodic Review of the Landlord and Tenant Act Part II* (Law Com No. 208). (Copies may be obtained from HMSO). A consultation paper “*Business tenancies legislation in England and Wales: the Government’s proposals for reform*” was published by the Department of the Environment, Transport and the Regions in March 2001. Copies may be obtained from the Land and Property Division, Office of the Deputy Prime Minister, Eland House, Bressenden Place, London SW1E 5DU (tel: 020 7944 5559).

The main changes made by this Order are as follows:—

### *Renewal and termination procedures*

Articles 3 to 9 change the procedures to be followed in order to renew a tenancy or to terminate it without renewal. Both landlords and tenants are permitted to apply to the court for the terms of a new tenancy to be settled. Landlords are permitted to apply for an order that the tenancy be terminated without renewal if they can make out one of the statutory grounds for opposition. The requirement for a tenant to serve a counternotice to a landlord’s notice of termination is abolished.

### *Time limits for court applications*

Articles 10 to 12 substitute new time limits for applications to the court to renew tenancies and enable the parties to agree to extend these.

### *Ownership and control of businesses*

Articles 13 to 17 widen the circumstances in which landlord and tenant can operate the statutory procedures of Part 2. They provide, in particular, that an individual and any company he controls should be treated as one and the same for the purposes of those procedures and that companies controlled by one individual should be treated as members of a group of companies.

### *Interim rent*

Article 18 introduces several changes relating to interim rent (rent payable pending renewal of a tenancy). Tenants as well as landlords are enabled to apply to the court for interim rent. The date from

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which any interim rent determined by the court is payable becomes the earliest date for renewal of the tenancy which could have been specified in the statutory notice served by the landlord or tenant. A new method for the calculation of the amount of interim rent is introduced where the landlord does not oppose renewal. The interim rent is set at the same level as the rent for the new tenancy (i.e. usually, the open market rent), but subject to adjustment where market conditions or the occupational terms of the tenancy change significantly during the interim period. In other circumstances, the rules for calculation of interim rent formerly in section 24A(3), and now contained in section 24D(2), continue to apply.

#### *Compensation provisions*

Articles 19 and 20 amend the rules relating to the compensation that a tenant may claim where his tenancy is not renewed. They amend the method of calculation of compensation where the tenant has occupied different parts of premises for different periods of time, and where different landlords control different parts. They also enable a tenant to claim compensation if he is induced not to apply to court, or to withdraw an application for renewal, because of a misrepresentation.

#### *Contracting out and agreements to surrender*

Articles 21 and 22 replace the requirement for both parties to apply to court for approval to an agreement to exclude security of tenure or to surrender a tenancy. The new procedure requires a landlord to serve a prescribed notice on the tenant at least 14 days before the parties enter into such an agreement. The tenant must sign a simple declaration that he has received and accepted the consequences of the notice. If the parties wish to waive the 14 day period, the tenant will have to sign a statutory declaration, rather than a simple declaration, that he has received and accepted the consequences of the notice. In the case of an agreement to exclude security of tenure, the declaration must be made before the tenant enters into the tenancy or becomes contractually bound to do so. In the case of an agreement to surrender, the declaration must be made before entering into the agreement. The forms of the notice, the simple declaration and the statutory declaration are set out in Schedules 1 to 4 to this Order.

#### *Notices requiring information*

Articles 23 and 24 increase the categories of information which a landlord and tenant can require the other to provide towards the end of a tenancy term, in order to enable effective use of the statutory renewal or termination process. They also impose an obligation to keep such information up to date for six months, make provision for parties which transfer their interests and clarify the powers of the court where a party fails to comply with obligations to provide or update information.

#### *Tenants' notices of termination*

Article 25 clarifies what a tenant must do to terminate a tenancy to which Part 2 applies. If a tenant has ceased to occupy the business premises at the expiry of the contractual term, no continuation tenancy arises. Where a tenancy has continued beyond the end of the fixed contractual term, the tenant must give three months notice, ending on any day. Where necessary, rent is apportioned.

#### *Other*

Article 26 increases the length of the term of a new tenancy that the court may order from 14 to 15 years. Article 27 makes provision for landlords of parts of the same business premises to make joint use of the Part 2 procedures.

Article 28 introduces Schedules 5 and 6 which make consequential amendments and repeals. Schedules 1 to 4, containing the form of the notices and declarations required by the new section 38A,

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which is inserted by article 22, are designated as subordinate provisions for the purposes of section 4 of the Regulatory Reform Act 2001. The National Assembly for Wales is given power concurrently with the Secretary of State to amend these provisions.