

Renting Homes: The Final Report

Volume 1: Report









The Law Commission

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RENTING HOMES: THE FINAL REPORT VOLUME 1: REPORT

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THE LAW COMMISSION

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THE LAW COMMISSION

RENTING HOMES: THE FINAL REPORT

To the Right Honourable the Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor

PART 1 INTRODUCTION

INTRODUCTION

- 1.1 Renting homes is big business. Almost a third of the population rent their homes. Despite the attention paid to the owner-occupied sector, rented housing remains a significant part of the housing market in England and Wales. An active, well-run rental market is needed:
 - (1) to provide choice for those who want to rent;
 - (2) to meet social need by providing housing for those who cannot afford to buy;
 - (3) to increase flexibility in the accommodation and labour markets by enabling people to move quickly to take up job opportunities or to explore new housing options.
- 1.2 It is generally accepted that the rented housing sector needs regulation. Market mechanisms cannot redress imbalances in the bargaining power of landlords and occupiers. At the same time, the regulatory framework must be one that works and can be delivered in a cost-effective way.
- 1.3 At the heart of our recommendations the result of one of the largest consultation exercises ever undertaken by the Law Commission¹ are two radical changes to the legislative approach to the regulation of rented housing. These recommendations are encapsulated in the Rented Homes Bill which we are publishing alongside this Report.

We published two Consultation Papers: Renting Homes 1: Status and Security (2002) Law Commission Consultation Paper No 162, in April 2002, http://www.lawcom.gov.uk/docs/cp162.pdf; Renting Homes 2: Co-occupation, Transfer and Succession (2002) Law Commission Consultation Paper No 168, in September 2002, http://www.lawcom.gov.uk/docs/cp168.pdf (last visited 15 March 2006). We addressed over 70 public events; we received over 400 written responses to the Consultation Papers. The essential contribution made by consultees was acknowledged in our Report Renting Homes (2003) Law Com No 284, at Annex D.

- 1.4 First, we recommend the creation of a single social tenure. At present, local authorities can only let on secure tenancies; registered social landlords only on assured tenancies. Our recommendations are "landlord-neutral". They enable social housing providers, referred to in the Bill as "community landlords", and those private sector landlords who so wish to rent on identical terms. This has long been sought by local authorities and registered social landlords. This offers the prize of vastly increased flexibility both to policy makers and landlords in the provision and management of social housing.
- 1.5 Secondly, we recommend a new "consumer protection" approach which focuses on the contract between the landlord and the occupier (the contract-holder), incorporating consumer protection principles of fairness and transparency. Thus our recommended scheme does not depend on technical legal issues of whether or not there is a tenancy as opposed to a licence (as has usually been the case in the past). This ensures that both landlords and occupiers have a much clearer understanding of their rights and obligations.
- 1.6 The terms of the contract, underpinned by our statutory scheme, will be set out in model contracts that we anticipate will be free and easily downloadable.² They will benefit landlords by explaining their rights and obligations, thus reducing the ignorance many landlords have about their responsibilities. They will benefit occupiers who will also have a clear statement of their rights and obligations, which sets out the basis on which they occupy accommodation, and the circumstances in which their rights to occupy may come to an end.

TERMS OF REFERENCE

1.7 Our original terms of reference were:

To consider the law relating to the existing forms of housing tenancies in the rented sector and their creation, terms and termination, with a view to its simplification and reform; and in particular to review the law on

- (1) the forms of housing tenancy let by:
 - (a) local authorities and other social landlords, and
 - (b) private landlords,

with a view to providing a simple and flexible statutory regime for both the social and the private housing sectors;

- (2) the remedies available in respect of harassment and unlawful eviction:
- (3) tenants' statutory rights of succession; and

Two sample model contracts appear at the end of this Report (Appendix B).

- (4) such other aspects of Housing Law as may be agreed between the Law Commission, the Department of the Environment, Transport and the Regions and the Lord Chancellor's Department.³
- 1.8 It was always envisaged that the project would be undertaken in two phases. The original intention was to deal with item (1) in the first phase, leaving items (2) and (3) to the second. As phase one progressed, it became clear that succession could not be left to phase two. Nor could other issues about how people live in their homes, specifically joint occupation and transfer, be omitted. They were added to phase one.

OUR GENERAL APPROACH

- 1.9 In carrying out our work, the Commission has had three principal objectives in mind:
 - (1) simplification;
 - increased comprehensibility;
 - (3) flexibility.

Simplification

- 1.10 The provision of housing has long been subject to regulation, initially by the common law, but over the last 100 years increasingly by statute. Most, if not all, advanced countries have housing legislation. The question is not whether there should be regulatory intervention, but how it can be done well rather than badly.
- 1.11 In this country, there is widespread agreement that the current law regulating rented housing is too complicated. This has significant drawbacks. A legal framework that is too complicated cannot achieve its policy objectives. Those whom the law is designed to protect cannot use its protection. Those whose behaviour is sought to be regulated are not influenced by what they cannot understand.
- 1.12 The Better Regulation Task Force⁵ says simplification includes three elements:
 - "Deregulation" removing regulations from the statute book, leading to greater liberalisation of previously regulated regimes;

Now the Office of the Deputy Prime Minister and the Department for Constitutional Affairs, respectively.

An early comment on the effects of excessive complexity in housing law is to be found in Parry v Harding [1925] 1 KB 111. Lord Hewart CJ observed (at p 114): "It is deplorable that in dealing with such a matter as this, a Court, and still more a private individual, and most of all a private individual who lives in a small tenement, should have to make some sort of path through the labyrinth and jungle of these sections and schedules. One would have thought that this was a matter above all others which the Legislature would take pains to make abundantly clear."

⁵ Regulation – Less is More: Reducing Burdens, Improving Outcomes (March 2005).

- (2) "Consolidation" bringing together different regulations into a more manageable form and restating the law more clearly. By improving transparency and understanding, it should reduce compliance costs;
- (3) "Rationalisation" using "horizontal" legislation to replace a variety of sector specific "vertical" regulations.
- 1.13 Our Bill achieves all these objectives. It offers a fundamental restatement of the law that significantly improves transparency and understanding particularly through the use of model contracts. It rationalises sector-specific rules (for example current legal distinctions between local authorities and housing associations, and between the public sector and private sector) to eliminate unnecessary differences between them. This enables both the social and private sectors of the rental housing market to operate with greater freedom. Although our draft Bill does not include schedules of repeals, enactment will result in the repeal of a great deal of existing legislation.

Increased comprehensibility

- 1.14 Central to our recommendations is an emphasis on what we call the consumer protection approach. In many contexts, Parliament passes legislation which implies protective terms into consumer contracts. We have taken this a step further. In the same way that Parliament has provided that employers must provide employees with a copy of their employment contract, so here we recommend that landlords should provide their occupiers with a written statement of their occupation contract. We want both landlords and occupiers to be able easily to find out their rights and obligations. The written statement expressly sets out those matters which Parliament wants to regulate.
- 1.15 The impact of our approach can be seen in the illustrative model contracts we have provided. In just over twenty pages we have shown that is it possible to set out a statement of rights and obligations that reflects the legal relationship as regulated by Parliament between landlord and occupier. These will be supplemented by guidance which explains those matters which it is hard to summarise in the contract or which do not readily fit into it. Many local authorities and registered social landlords already adopt this practice; and, for the private sector, there is already a good range of guidance booklets available from the Office of the Deputy Prime Minister. Such publications can be adapted to the scheme we recommend. Thus the recommended scheme will ensure that all occupiers benefit from the provision of this information.
- 1.16 Many landlord-tenant disputes currently arise from ignorance. Our recommended scheme, with its emphasis on written model contracts, drafted in plain language, enables both landlords and occupiers to discover easily their respective rights and responsibilities. This will reduce the need to seek legal advice and facilitate the resolution of problems and disputes. All parties gain from this approach which leads to significantly reduced compliance costs.

⁶ Model contracts are considered below in Part 3.

For booklets for landlords and tenants renting privately, see the Office of the Deputy Prime Minister website at http://www.odpm.gov.uk/index.asp?id=1151894, and for booklets on social renting see http://www.odpm.gov.uk/index.asp?id=1152108 (last visited 15 March 2006).

Flexibility

- 1.17 Finally, and most important, our recommendations bring much-needed flexibility to the operation of the rented sector. Existing distinctions between the different branches of the rental market with different rules, but with similar objectives are replaced by a single framework that allows far greater freedom to policy makers.
- 1.18 Our approach has a number of important outcomes.
 - (1) Technical legal distinctions between those who rent from local authorities and those who rent from housing associations are removed.
 - (2) Opportunities for local authorities and housing associations to enter new partnerships and other forms of agreement for the development and management of social housing are increased.
 - (3) Community landlords are able to manage their housing assets more satisfactorily, while protecting the fundamental interests of those who live in social housing. This results in the better use of publicly funded investments.
 - (4) Private sector landlords who wish to do so can let on exactly the same terms as social landlords.⁸
 - (5) Private landlords are able to respond even more flexibly to different demands for rented accommodation at market rents.
 - (6) Registered social landlords are able to provide housing at market, or submarket, rents in those areas where this is needed, to provide accommodation for key workers.
 - (7) Occupiers of rented housing have clearer information about their rights and obligations, what they can expect from their landlords, and the circumstances in which contracts may be brought to an end.
 - (8) For the first time, there is a legal structure designed to assist the most socially excluded to move from supported housing to housing independence, while giving the providers of such housing a practical legal framework to achieve this goal.
 - (9) Generally, the provisions in the Bill increase the options available for ensuring that the rental sector plays its proper role in the creation and maintenance of sustainable communities.
- 1.19 These objectives were strongly endorsed by those who responded to our consultation.

⁸ This is subject to one exception, namely the right of secure contract-holders of community landlords to transfer the contract to another secure contract-holder of a community landlord.

TWO KEY FEATURES

1.20 We now consider in more detail the two features of the scheme mentioned above: landlord-neutrality and the consumer protection approach.

Landlord-neutrality

- 1.21 At present local authorities can only let on secure tenancies;⁹ registered social landlords can only let on assured tenancies.¹⁰ Both play a similar role in the housing market, but the regulatory framework is quite different. Our recommendations break the link between the identity of the landlord and the statutory rules that apply to agreements entered into by that landlord.
- 1.22 Under our scheme, both local authority and registered social landlords (and private landlords) are able to enter occupation contracts on identical terms. This enables the interface between local authorities, arms-length management organisations, and other social landlords whether registered or unregistered to become much more permeable. It facilitates the development of new partnerships between social sector and private sector landlords in the provision of social rented housing.¹¹
- 1.23 Under our scheme, there are circumstances in which landlords are required to use one or other of the two types of contract we are creating. But these apply across the board, and are not generally confined to a specific type of landlord.
- 1.24 This approach gives the Government much greater scope for the development of new housing policy initiatives. For example, our recommendations could create opportunities for social landlords to enter new sectors of the housing market (as some registered social landlords already do). These might address some of the difficulties surrounding the provision of accommodation for key workers in areas of high housing demand. They could also be used in combination with new equity sharing schemes.

Consumer protection approach¹²

1.25 The consumer protection approach¹³ is designed to ensure that all landlords and occupiers have a written statement of their contract, setting out the rights and obligations of the parties.

⁹ Housing Act 1985.

Housing Act 1988.

For example, it could be a condition of the receipt publicly funded grants that private sector landlords would have to enter contracts on the same terms as other social landlords.

For further background on the consumer protection approach, see Renting Homes (2003) Law Com No 284 Part 4.

This builds on the fact that the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083) already apply to tenancy agreements.

- 1.26 At present, many landlords do not provide clear tenancy agreements. Agreements frequently fail to mention the effect of protective legislation. In order to understand the exact legal relationship between landlord and occupier, parties have to read their agreements alongside a complex body of statute and case law. Not surprisingly, many cannot discover what their true legal position is. Our recommendations transform this unsatisfactory situation.
- 1.27 Our approach has a number of practical consequences.
 - (1) The regulatory framework governing the relationship between landlord and occupier applies wherever there is a contract (other than an excepted contract) giving the right to occupy premises as a home.
 - (2) The principles underlying the Unfair Terms in Consumer Contracts Regulations 1999¹⁴ are extended to all landlords and occupiers.
 - (3) Fundamental terms, and supplementary terms which incorporate supplementary provisions without modification, reflect mandatory statutory provisions and as such are not subject to the Unfair Terms in Consumer Contracts Regulations.¹⁵ Terms relating to key matters will not be subject to the regulations so long as they are in plain intelligible language.¹⁶
- 1.28 In addition to fairness and transparency, this approach has other benefits. In particular, the recommended scheme encourages a new professionalism amongst private landlords and their agents, not only those with substantial property portfolios, but also small "hobby" landlords. By emphasising the mutual recognition of each party's rights and responsibilities, 17 our recommendations provide a foundation for improving relationships between occupiers and landlords. While there may be some initial start-up costs, overall costs should quickly reduce. There should be significantly reduced compliance costs.
- 1.29 Implementation of the consumer protection approach in the Bill is achieved in a variety of ways. Two introductory points are made here.

Provisions and terms

1.30 The provisions of the Bill which set out the most important rights and obligations of the parties to an occupation contract have a dual function. They are statutory provisions. But they are also incorporated into occupation contracts as terms of the contract. As terms they will be readily accessible to the parties, because they are set out in the written statement of the contract. This is a central part of our consumer protection approach.

¹⁴ SI 1999 No 2083.

Cls 13 and 23(1), and Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083) reg 4(2).

¹⁶ Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083), reg 6(2).

Adoption of many of the ideas floated in The Joseph Rowntree Foundation – Shelter Commission on the Private Rented Sector, *Private Renting: A new settlement: A commission on standards and supply* (Shelter, 2002) would be greatly facilitated by the introduction of the scheme recommended here.

- 1.31 The provisions of the Bill which are incorporated in this way are referred to as "fundamental provisions". When incorporated as terms of a particular contract, they form the "fundamental terms" of the contract.
- 1.32 The appropriate authority (the Secretary of State or the National Assembly for Wales) has power to prescribe further provisions for incorporation as terms of occupation contracts. We intend this power to be used to deal with issues which are of less crucial importance than those dealt with in the fundamental provisions, but which need to be addressed to make the contracts work.¹⁸
- 1.33 Provisions prescribed by the appropriate authority are referred to as "supplementary provisions". When incorporated as terms of a particular contract, they form the "supplementary terms" of the contract.
- 1.34 In addition, parties will be free to add their own additional terms to address particular issues relevant to the agreement.

Relationship of the scheme to consumer protection law

- 1.35 Our adoption of the consumer protection approach is based on the fact that, from 1999, the Unfair Terms in Consumer Contracts Regulations 1999¹⁹ applied to tenancy agreements. In Renting Homes we said that we wanted to extend the principles contained in those regulations to all occupation contracts.²⁰ Those principles should apply across the board, not just to those who under the 1999 regulations are "suppliers" and "consumers".²¹
- 1.36 Details of how these principles are to be put into effect will appear in regulations. The Bill gives the Secretary of State power to make regulations relating to unfair terms in occupation contracts. In particular, regulations may make provision for the parties to whom and the occupation contracts to which the unfair terms regulations may apply. This enables the Secretary of State to ensure that the regulations apply to all landlords and all contract-holders. In the Bill, the general term "unfair terms regulations" is used to refer to both the existing 1999 regulations and these Rented Homes-specific regulations. We follow that usage in this report.

We set out in Appendix A our recommendations on the terms that should be included as supplementary terms.

¹⁹ SI 1999 No 2083.

²⁰ (2003) Law Com No 284.

Compare with the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083) reg 4(1).

²² CI 205.

²³ Cls 205(1) and (2)(a).

²⁴ CI 236.

- 1.37 There is also power to define circumstances in which the unfair terms regulations do not apply to a term of an occupation contract, or where the landlord may not rely on the terms of the occupation contract. In these cases, the regulations may also provide for the terms which are to apply in those circumstances.²⁵
- 1.38 Fundamental provisions incorporated as terms of the occupation contract, and supplementary provisions incorporated as terms without modification, cannot be challenged under the unfair terms regulations as unfair. ²⁶ Only additional terms or supplementary provisions which are incorporated as terms with modifications, will be subject to challenge as being unfair. These recommendations address concerns expressed to us by many landlords that they did not know exactly where they stood in relation to the Unfair Terms in Consumer Contracts Regulations 1999 and the interpretation of those regulations, in particular by the Office of Fair Trading.²⁷

DEVELOPING THE SCHEME: CONSENSUS AND CONTROVERSY

- 1.39 From the start, we were asked to assume that the disposition of rights and obligations, and the balance of rights and obligations as between landlords and occupiers, that existed under the current law should remain broadly the same. In particular, changes to the regulation of the private rented sector introduced by the Housing Acts of 1988 and 1996 should be retained.
- 1.40 As with all Law Commission projects, we consulted widely in developing our recommendations. We received over four hundred written submissions to our two Consultation Papers; and we spoke at numerous public meetings with landlords and tenants, lawyers and advisers, policy makers and administrators, and others interested in this area of housing policy.²⁸ We wanted to build as much agreement as possible about both the approach and the detail of our recommendations. Analyses of the responses to our two Consultation Papers will be made available to the Office of the Deputy Prime Minister, and published on the Law Commission website.
- 1.41 Many of our initial ideas and thoughts were altered in the light of these responses. We have radically changed our thinking on the regulation of supported housing, where initially we failed to understand how that part of the housing market really operates. We did not pursue suggestions to abolish the suspended possession order, though we retain the idea of giving the Secretary of State power to pilot alternative forms of procedure for dealing with rent arrears. We amended our views on how to manage anti-social behaviour in the specific housing context (though this has been an area where law and policy has developed rapidly in any event).

²⁵ Cls 205(2)(b) to (d).

²⁶ See below, at paras 3.44 and 3.46.

The uncertainties currently facing many landlords are revealed in the Office of Fair Trading Report *Guidance in Unfair Terms in Tenancy Agreements* Revised ed. Sept 2005.

See Renting Homes (2003) Law Com No 284, Annexes C and D at http://www.lawcom.gov.uk/docs/lc284.pdf and above n 1.

1.42 In shaping our recommendations, however, we have had to adjust aspects of the existing law to create a more coherent and sensible whole. There are two particular issues where there is still controversy which we cannot duck, and which we highlight here.

The recommended abolition of ground 8 in the social rented sector

- 1.43 At present, where an assured tenant gets into serious (two months') rent arrears, the landlord can seek possession on what is known as ground 8. This provides that, if the relevant amount of arrears is established, a court is *obliged* to order possession. There is no judicial discretion.
- 1.44 Registered social landlords let on assured tenancies. Many, as a matter of policy, refuse to take advantage of ground 8 on the basis that use of ground 8 is not appropriate for social landlords. Where registered social landlords have acquired housing stock as the result of a large scale voluntary transfer, they undertake not to use ground 8. But some do use ground 8 and have expressed considerable concern about our recommendation to abolish it. They also draw attention to current proposals for the reform of housing benefit, which are intended to place much greater responsibility on renters for paying the rent themselves.²⁹ If housing benefit is to be paid to tenants, rather than directly to landlords, registered social landlords are worried that housing benefit payments may be diverted to other items of household or personal expenditure. They are concerned that this could lead to an increase in rent arrears. Some would therefore like to retain ground 8 as a deterrent to tenants who might otherwise divert housing benefit payments to non-housing expenditure.
- 1.45 The Council of Mortgage Lenders, who represent the financial institutions that have provided the bulk of loan capital for the expansion of the registered social landlord sector, were also concerned. They argued that an inability to regain possession of premises where tenants were in serious arrears might have an adverse financial impact on the ability of registered social landlords to comply with their loan covenants.
- 1.46 When we discussed the issue with those who put this point of view, we were told that the principal reason why ground 8 should be retained was because of the difficulties, actual or perceived, of getting judges to exercise their discretion to make possession orders in serious rent arrears cases.

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Recent press reports suggest that the Government may not proceed with these reforms at least in relation to the social rented sector: see the article by Keith Cooper, "U-turn on direct payment" (28 October 2005) *Inside Housing* p 1.

- 1.47 We have heard it suggested that use of ground 8 by registered social landlords is on the increase. We have found no hard empirical data to substantiate the claim. Such evidence as we do have suggests that use of ground 8 is, in fact, still relatively modest. But whether or not use of ground 8 is widespread, there is still the policy question whether its use is appropriate for landlords in the social sector.³⁰
- 1.48 One of the principal policy objectives for this project is to create a single social tenancy a level playing field for the whole social rented sector. To achieve this, ground 8 would either need to be retained and extended to local authority tenants, or would have to be abolished. We took the view that the former option would be unacceptable both to local authorities and their tenants. In any event, we think our recommended secure contract should set the gold standard. It should be modelled on the existing secure tenancy, rather than the assured tenancy.
- 1.49 We have not ignored the concerns that were expressed to us. Thus we recommend that judicial discretion in possession proceedings should be structured. Before making a possession order, judges will be required consciously to balance the interests of those threatened with eviction against the interests of the landlord, and indeed of other occupiers who have paid the rent on time. We think that this addresses the principal worries of the registered social landlord sector.
- 1.50 In addition, if fears about the effect of reforms to housing benefit come to pass, this will affect the whole of the social rented sector, not just registered social landlords. In this case the Government can revisit the issue. But this is a policy matter for the future, not part of our reform programme.

The recommended abolition of the six-month moratorium

- 1.51 A second issue on which there is still controversy is the recommendation to abolish the rule which we describe as the six-month moratorium that forbids a court to order possession of a private sector assured shorthold tenancy before the end of the first six months of the agreement. This arises where a landlord seeks possession on the "notice-only" ground for possession,³¹ where the landlord does not have to prove that the tenant is in any way at fault. In our recommended scheme, standard contracts will replace assured shorthold tenancies.
- 1.52 Many, in particular lawyers who represent tenants, argued that the moratorium was an important measure of tenant protection. Others, in particular landlords, argued that it brought unwelcome inflexibility into the market.

One likely procedural change is the development of a new Possession Protocol, drafted by the Housing Committee of the Civil Justice Council. If adopted, this will require social landlords to demonstrate that all housing benefit problems have been sorted out before any court proceedings are started. Judges find it particularly hard to order possession against a tenant in rent arrears through *no* fault of theirs, but simply inefficient administration of housing benefit.

Housing Act 1988, s 21(5) as inserted by Housing Act 1996, s 99.

- 1.53 We found that, in practice, many landlords let for minimum periods of six or twelve months. In this case, the contract "trumps" the statute, rendering the moratorium redundant. There is no reason to think that landlords will alter their letting practices. Most landlords want to keep their tenants for as long as possible (to prevent voids); they are not interested in turning people out after a short time. And we received no evidence of any tenant taking advantage of the six-month period to assert their rights against a difficult landlord.
- 1.54 In a recent report,³² Shelter argues the case for increased security of tenure in the private rented sector. Insofar as the private rented sector is used to house the disadvantaged lone parents, the elderly this is clearly an important policy consideration. But the private rented sector also houses many more who do not fall into these groups. Indeed, the private rented sector is far more diverse than the social rented sector. Although ultimately a question for the Government, we do not think that a blanket extension of statutory security to the whole of the private rented sector will achieve the goal to which Shelter aspires. It will introduce inflexibility into this sector of the market which, in many cases occupiers do not want any more than landlords. This will in turn reduce the number of units of accommodation available for renting.
- 1.55 We acknowledge that security of tenure is an important issue. But we think it best addressed by focussing on the contractual rights between the parties (which are at the heart of our recommendations) rather than statutory rights. A number of local authorities, for example, are entering agreements with private landlords to provide housing for longer contractual periods. These could be, for example, for a fixed term;³³ or until any children in the household reach the age of 16, or school-leaving age. All these options are possible under our scheme. They give flexibility in the use of contracts for particular classes of user of the private rented sector without affecting other groups who want to take advantage of the private rented sector. The private rented sector offers people choice and flexibility that the social sector cannot. To seek to make the private rented sector more like the social rented sector would only serve to remove the very things that make the private rented sector attractive in the first place.
- 1.56 In our future work on developing good landlord practices, we shall explore ways in which additional incentives can be given to landlords to enhance their contracts for the benefit of their occupiers.

Conclusion

1.57 We acknowledge that these matters are controversial. We have not found them easy to resolve. But we think our recommendations on these issues are practical and do not adversely affect the interests of, respectively, social landlords and tenants. And in our future work, we consider alternative ways to ensure that these specific reforms do not have undesired consequences. In the meantime, both these changes greatly assist the creation of the more rational and flexible regulatory framework that is the great prize of our recommendations.

³² Safe and Secure? The private rented sector and security of tenure (Shelter, 2005)

Changes to the rules relating to the provision of accommodation by private landlords to the homeless are an example of this principle in practice: Housing Act 1996, s 193 (amended by the Homelessness Act 2002). This principle could apply more generally.

CHANGES IN THE LEGISLATIVE CONTEXT

1.58 Since this project began, in 2001, there have been two significant legislative developments. The first relates to anti-social behaviour; the second is the Housing Act 2004.

Anti-social behaviour

1.59 Our original Consultation Paper³⁴ contained a number of detailed proposals relating to anti-social behaviour. Some of these, in particular the concept of demotion, were taken up by Government and put into their own proposals. Our proposals were the subject of considerable criticism during consultation. But, in view of the other changes that have occurred, our recommendations in relation to anti-social behaviour are now limited to tidying up one or two procedural matters that arise where the anti-social behaviour impacts on an occupier's housing rights and obligations, and are designed to make the law operate more effectively. These are discussed below in Part 9.

Housing Act 2004

1.60 This is an enormous Act. Much of it does not relate to the rented sector at all: for example, the provision of Home Information Packs. The impact of the Act on the rented sector will be particularly felt in the following contexts.

Housing conditions

1.61 The new Housing Health and Safety Rating Scheme provides local authorities with a new set of criteria and a new set of procedures for dealing with unfit housing. Our scheme reinforces this legislation. We recommend that it should be a term in every occupation agreement that, from the outset, the accommodation meets the "category 1 hazard" standard. Thus, in addition to the public law remedies available through the local authority, occupiers will also have a private law remedy in breach of contract in cases where this term of the contract is broken. This is discussed in Part 8.

Licensing of houses in multiple occupation

1.62 Our scheme has no direct impact on the new law relating to the licensing of housing in multiple occupation. It does however offer considerable scope to reinforce the new law. Our scheme envisages that the contract between the landlord and occupier should be supplemented by guidance setting out other matters of importance to the landlord and tenant. Information about the licensing scheme can be published there. This will be an extremely cost-effective way of publicising the effect of the new scheme.

Selective licensing

1.63 This is another topic on which information can be provided in the guidance just referred to. Our future work on compliance and the promotion of good practice will complement and build on these new provisions.

Renting Homes 1: Status and Security (CP 162) in April 2002 http://www.lawcom.gov.uk/docs/cp162.pdf.

Other control provisions relating to residential accommodation

1.64 The same point can be made. Landlords and occupiers can be given information about the new management and empty dwelling orders provided for in the 2004 Act through the guidance booklet.

Tenancy deposit schemes

1.65 We think our recommendations significantly strengthen the potential value of the provisions of the part of the Housing Act 2004 dealing with tenancy deposits, to the advantage of both landlords and occupiers. We discuss this at Part 11.

Overcrowding

1.66 If the powers to redefine overcrowding³⁵ are implemented, these can be directly communicated to landlords and occupiers through amendments to the terms of the occupation contract.

Energy efficiency

1.67 The Housing Act 2004 requires the Secretary of State to take "reasonable steps" to ensure that the general level of energy efficiency of residential accommodation in England is increased by 20% by 2010. Clearly, information will be key to delivering that target. The guidance booklet will be a direct source of information. Should the Secretary of State wish to go further, he could, by simple legislative amendment, use our scheme to introduce a new fundamental provision which would make specific contractual provision on energy efficiency relating to rented housing.

Grants to bodies other than registered social landlords

1.68 Our scheme makes clear that secure contracts can be entered into by any landlord who so wishes. All secure contracts have identical statutory underpinning.³⁶ It would be straightforward to adapt these new powers to ensure that grants were made for investment in the provision of accommodation to be rented under secure contracts.

IMPLEMENTATION IN WALES

1.69 In our 2003 Report, we considered whether, in the light of devolution, it would have been appropriate to have made different provision for Wales. We concluded that, in general, it was appropriate for the National Assembly for Wales to have the same powers as the Secretary of State in England. In one important area, however, we recommended that the National Assembly should have greater powers. The draft Bill therefore gives the National Assembly a broad power to amend the rules as to when a community landlord is required to use a secure contract (clause 9). That was based on the devolution settlement set out in the Government of Wales Act 1998.

³⁵ Housing Act 2004, s 216.

Other than the right to transfer to another secure contract-holder which applies only to secure contracts with community landlords.

- 1.70 The position would be substantially changed if the current Government of Wales Bill receives Royal assent in its current form. The current Bill makes provision (among other things) for legislative competence to be extended to the National Assembly for Wales on a case by case basis. Schedule 5 to the Bill sets out a series of "fields" covering the areas of policy devolved to the Assembly. Housing is one of those fields. It is envisaged that under each field, "matters" will be added. Once a matter is added, the Assembly will be empowered to make legislation (in the form of "Assembly Measures") in relation to the matter. The Bill itself only adds matters to the field entitled "National Assembly for Wales", which concern various areas internal or incidental to the functioning of the Assembly. Matters related to substantive policy areas will be added in the future. Matters can be added by primary legislation, or by an order in council. Before such an order can be made, a draft of it must be approved by, first, the Assembly, and then both Houses of Parliament.
- 1.71 Our draft Bill is drafted on the basis of the law as it is now. However, it would be wrong to ignore the proposals in the Government of Wales Bill. Apart from broader considerations, our recommendation to give greater powers to the National Assembly than to the Secretary of State would no longer be appropriate the Government of Wales Bill also provides a statutory underpinning to the split between a legislative Assembly and an executive Welsh Assembly Government, and gives secondary legislative powers to the executive. We felt it justified to give greater powers to the Welsh institutions when that power was exercised by the democratically elected Assembly. That would not be the case if secondary legislative power lay with the Welsh Ministers, who would be in a similar position in relation to the Assembly as the Secretary of State is to the UK Parliament.
- 1.72 We must, therefore, consider the issue of legislative competence for the Assembly. First, we recognise that there are significant differences in housing between England and Wales. We pointed to some of these in the first Renting Homes Consultation Paper.³⁷ The Welsh Assembly Government and the National Assembly are of course in a better position than the UK Government to take account of these in relation to Wales when implementing policy.
- 1.73 More importantly, devolution to Wales is designed to give people in Wales the democratic and Governmental structures necessary to come to their own conclusions on the policy choices facing them in the devolved areas. Even if objective conditions are identical in Wales and England, the logic of devolution is that the Welsh political institutions may choose a different path to that chosen in England.
- 1.74 Housing is a devolved field, and housing tenure policy sits at the centre of that field. We have never seen Rented Homes as providing a once and for all solution to all problems. Rather, it is designed to give policy makers the appropriate tools with which to implement policy changes that have an impact on tenure law, without each time having to interfere with the underlying legal structures involved. That in the future housing policy makers in Wales may take different paths from those in England is inherent in the idea of devolution.

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See Renting Homes 1: Status and Security (CP 162) April 2002, paras 1.74 to 1.77 http://www.lawcom.gov.uk/docs/cp162.pdf.

- 1.75 We conclude, therefore, that if the current Government of Wales Bill becomes law in its current form, legislation taking forward our recommendations should extend legislative competence to the National Assembly. However, we still consider that what we are recommending is the right structure, in detail as well as in its broad thrust, for Wales, just as we do for England.
- 1.76 We therefore recommend that the Rented Homes recommendations be implemented for both England and Wales in a single Government Bill, but that that Bill should include housing tenure as a "matter" under the field of "housing", allowing the National Assembly *future* legislative competence.
- 1.77 It may be that the Welsh Assembly Government and the Office of the Deputy Prime Minister come to differing conclusions about whether to accept our recommendations, or as to the priority to be accorded to implementing them. In particular, the Office of the Deputy Prime Minister may reject them while the Welsh Assembly Government accepts them. Or, if both accept them (with or without modifications), the Welsh Assembly Government may wish to accord them greater priority. In the first of these situations, it would be right for the National Assembly to be able to legislate on its own for Rented Homes. In the second, it would be right for the National Assembly to legislate in advance of the legislation for England.
- 1.78 If our recommendations are accepted in Wales but not for England, or if the Welsh Assembly Government wishes to implement them earlier, we recommend that the First Minister should initiate the order in council procedure. Legislative competence could thereby be extended to the National Assembly in order to introduce Rented Homes as an Assembly Measure.

REGULATORY IMPACT

- 1.79 All Bills are subject to a Regulatory Impact Assessment. The Law Commission does not currently have the expertise and resources to carry out a full RIA. Our consultees identified a number of issues that must be faced.
 - (1) Local authorities and registered social landlords have concerns about the initial costs of preparing new occupation contracts.
 - (2) Private landlords have anxieties about the costs of implementation.
 - (3) There was agreement on the need for a generous budget for publicity and training, prior to the introduction of any new scheme (The importance of not forgetting private landlords and occupiers was stressed.)
 - (4) There was agreement on the need for adequate resources to enable proper advice to be given, both at the start of the new scheme and on a continuing basis, both to landlords and to occupiers.

Notwithstanding these matters, consultees broadly supported our proposals, which they considered carried substantial public benefit.

1.80 While there will be start-up costs, this is a key investment which, in the short to medium term, will reduce overall costs. This will be achieved by:

- (1) the creation of model contracts, reducing the need for individually drafted agreements;
- (2) better use of IT enabling much of the present cost (for example, posting copies of the agreement) to be significantly reduced;
- (3) the standardisation of agreements, allowing advisors to deal with issues more easily;
- (4) added clarity, enabling occupiers and landlords to discover their legal position more readily without the need to obtain costly advice; and more generally
- (5) the commercial opportunities for investment in housing that follow from the creation of a more flexible regulatory regime.

OUTLINE OF THE REPORT AND BILL

- 1.81 Part 2 provides an outline of the scheme. This is followed by specific Parts relating to: the formation and variation of occupation contracts (Part 3); the termination of occupation contracts (Part 4); the powers of the courts (Part 5); dealing with occupation contracts (Part 6); survivorship and succession (Part 7); repairs and improvements (Part 8); prohibited conduct (Part 9); supported housing (Part 10); and other rights and obligations (Part 11). The Bill is published separately so that it can be read alongside the analysis of its provisions set out here.
- 1.82 Our Bill does not deal with all of the consequential issues that arise. A number of discrete issues which rely on current tenancy types fell outside our terms of reference. They include:
 - (1) the right to buy, a free-standing right exercisable by local authority tenants;
 - (2) the right to acquire, which is exercisable by tenants of registered social landlords;
 - (3) certain rights provided for in the Housing Act 1985, which derive from the "Tenants' Charter" such as council tenants' right to improve their homes;
 - (4) the right of council tenants (but not tenants of registered social landlords) under the Housing Act 1985 to insist on the management of their housing being contracted to a tenant management organisation; and
 - (5) agricultural occupancies.

We have not included provision in our Bill to translate these schemes into renting homes terms. In respect of (1), (2), (3) and (5) above, we think the Government will want to consider how the underlying policies should be adapted to reflect the renting homes scheme.

- 1.83 As regards the right to manage, we repeat the recommendations we made in Renting Homes:³⁸
 - (1) the existing right to manage should be retained for local authority secure contract-holders;
 - (2) the appropriate authority should have power to bring defined registered social landlord housing within the right to manage, as if the landlord were a local authority;
 - (3) that registered social landlords could voluntarily opt-in to the right to manage; and
 - (4) that the appropriate authority be given a broad power to either create a single scheme for both local authorities and registered social landlords; or to create different schemes for each.
- 1.84 What this Report, and the draft Bill do is show how our recommendations can be translated into practical reality, which will benefit landlords and occupiers, by making the rules regulating their relationship much clearer, and benefit the Government by creating a robust but much more flexible legal framework within which to develop their housing policies.

³⁸ (2003) Law Com No 284.

PART 2 THE SCHEME IN OUTLINE

2.1 In outline the scheme provides as follows.¹

COVERAGE

2.2 Unless otherwise excluded,² all contracts to occupy premises for residential purposes come within the scheme.

CONTRACT TYPES

- 2.3 There are two types of occupation contract:
 - (1) the *secure contract*, modelled on the present secure tenancy, giving substantial security of tenure protected by statute; and
 - (2) the *standard contract*, modelled on the present assured shorthold tenancy, where the duration of the occupation is determined by the contract.

Community landlords will be required to enter into secure contracts, except where the Bill allows them to enter into standard contracts (for example as probationary contracts, or following a court order after the anti-social behaviour term has been breached).

Conversion of existing tenancies and licences to occupation contracts

2.4 Existing tenancy agreements and licences are converted into either secure or standard contracts. This is necessary to prevent the ever-increasing accumulation of different types of tenancy which happened in the past. Further detail on conversion is set out in Part 3.

Exceptions

2.5 There are two exceptions. First, following public consultation, we do not recommend automatic conversion of agreements still protected by the Rent Act 1977 (protected and statutory tenancies). Their conversion to secure contracts would be logical. But there is considerable resistance to the idea from the tenants who would be most affected. Nevertheless, we include a power enabling the appropriate authority to bring this group into the new scheme.³

¹ In Renting Homes (2003) Law Com No 284, the scheme in outline, and the scope of the scheme, were discussed in Parts 3 and 6 respectively.

² See below, at paras 2.56 to 2.62.

³ Cl 221. The appropriate authority is defined in cl 228 as the National Assembly for Wales, in relation to Wales, and in any other case the Secretary of State.

2.6 Secondly, we do not recommend the conversion of agricultural occupancies protected by the Rent (Agriculture) Act 1976, the agricultural equivalent of the Rent Act 1977. In addition, we have not attempted to include the "agricultural occupancies" regime set out in the Housing Act 1988, part 1, chapter 3 (the equivalent of the general assured tenancy regime). The status of these occupancies is particularly complex as their tenure scheme is linked with the regulation of agricultural wages. We recommend that the current law should be the subject of a special review by a body with particular expertise in this area.

WRITTEN STATEMENT OF THE CONTRACT

- 2.7 Landlords are required to provide the occupier (known in the Bill as the "contract-holder") with a written statement of the contract. Model contracts are prescribed, which will be readily and cheaply available. Parties can complete them simply by filling in the front page. Assuming that the terms relating to key matters are in plain intelligible language, the model contracts will not be subject to the unfair terms regulations.⁴
- 2.8 Landlords are not *required* to use the relevant model contract. If they choose not to, the fundamental terms and any supplementary terms which incorporate supplementary provisions without modification will still not be subject to the unfair terms regulations.⁵
- 2.9 Landlords who do not provide the written statement are subject to proportionate (non-criminal) sanctions: financial and procedural.⁶

TERMS OF THE CONTRACT

- 2.10 Occupation contracts contain four classes of term:
 - (1) terms relating to key matters;
 - (2) fundamental terms;
 - (3) supplementary terms; and
 - (4) additional terms.

Terms relating to key matters

2.11 The key matters are those which go to the heart of the occupation contract. They include the name and address of the property and the amount of the rent. As they are unique to each contract, they cannot be statutorily prescribed, though the Bill defines the key matters that must appear in the contract.⁷

⁴ This term is defined in para 1.36 above.

Cls 13 and 23(1) and the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083).

These are discussed in detail at paras 3.55 and 3.56. We do not think use of the criminal law is appropriate in this context. The criminal sanctions in the current law are, in any event, rarely used in practice.

⁷ Cl 27.

Fundamental terms

2.12 Fundamental *provisions* in the Bill are incorporated in occupation contracts as fundamental *terms*. They deal with the essential rights and obligations of landlords and contract-holders. Parts 3 to 11 of this Report discuss each of the fundamental provisions and terms separately. Most fundamental terms can be modified or varied, but only in favour of the contract-holder.⁸

Supplementary terms

2.13 Supplementary provisions set out in delegated legislation are incorporated in occupation contracts as supplementary terms. These deal with all the practical matters needed to make the contract work, for example, requirements that the occupier pays the rent and that the occupier looks after the premises and fixtures and fittings. In this Report we include our recommendations for provisions we think the appropriate authority should prescribe in regulations. The list will not be finalised until there has been a consultation with appropriate bodies. The list will not be

Additional terms

2.14 There are also additional terms. These deal with specific issues that parties want dealt with in the contract, but in relation to which there is no statutory provision.

MODIFYING AND VARYING THE CONTRACT

2.15 Although our scheme places great emphasis on the provision of model contracts, there must be flexibility to adapt them to meet particular circumstances. The Bill provides for two possibilities: modification and variation.

Modification

- 2.16 The Bill provides that the parties can agree to incorporate most fundamental provisions, and all supplementary provisions, with modifications.
- 2.17 Modification of fundamental provisions relating to prohibited conduct, to the securing of a contract by deception, to survivorship and to the death of the contract-holder is not permitted at all.¹¹

⁸ Cls 81, 86 and 89.

See Appendix A for our recommendations. The appropriate authority is defined in cl 228 as the National Assembly for Wales, in relation to Wales, and in any other case the Secretary of State.

In the illustrative model contracts attached to this Report, some of the supplementary terms correspond to matters we have recommended should be in the contracts. Others are illustrative of the types of provision landlords and tenants currently include in secure and assured shorthold tenancies, which are likely to become supplementary provisions following consultation. We have included them all as supplementary terms to give readers a better sense of what the model contracts will look like.

¹¹ CI 11(4).

- 2.18 Modifications to other fundamental provisions are permitted, so long as the result of the modification is to enhance the position of the contract-holder. ¹² Indeed, it is possible for a fundamental provision to be omitted so long as the omission enhances the position of the contract-holder. If parties agree to modify a provision, it is incorporated into the contract as modified.
- 2.19 Modification of supplementary provisions is also permitted. Here, modification can be either for or against the interests of the contract-holder. Any modified supplementary term must be compliant with the unfair terms regulations.

Variation

2.20 The Bill also contains detailed provisions enabling the parties to vary the contract once it has been agreed. 14 Obviously parties must be able to alter the rent payable. In addition, particularly where occupiers live in premises for a long time, it is important that the parties can vary other details of the contract. Variation refers to changes to the terms *after* the contract has been entered into. Variation can, depending on the terms of the contract, occur following notice from the landlord (except for the fundamental terms of a secure contract and a fixed term standard contract) or by agreement between the parties. Fundamental terms in the contracts provide for this. 15 The provisions on variation also apply to any additional terms which the landlord and contract-holder choose to include.

TRANSACTIONS RELATING TO THE CONTRACT

2.21 At present very complex provisions deal with the circumstances in which renters may take in a lodger, add a party to the contract, or transfer or sub-let a tenancy agreement to another. There are also unsatisfactory rules as to what happens when one or more joint tenants wish to leave an agreement. We recommend a significant rationalisation of the current law.

Lodgers

2.22 At present, local authority tenants have a statutory right to take in lodgers. This is retained and extended to all secure contracts. 16

Adding a party to the contract

2.23 The Bill provides that contract-holders have the right to ask permission to add another party or parties to the contract. These provisions primarily affect social landlords. We accept that these landlords must be able to control who are parties to the contract. Otherwise premises may be occupied by those who lack the required degree of housing need. Thus any request is subject to the giving of consent by the landlord. But landlords cannot unreasonably refuse consent.¹⁷

¹² CI 11(3).

¹³ Cl 21(4).

¹⁴ See Rented Homes Bill, part 3, ch 1.

¹⁵ Discussed below, at paras 3.58 to 3.72.

¹⁶ CI 122.

¹⁷ Cls 74 and 109.

- 2.24 While consent must not be unreasonably withheld, it can be given subject to conditions. Here we recommend one important change to the current law. Our scheme gives the landlord power to impose as a condition of giving consent that a contract-holder should forego the right to succeed that would otherwise arise on the death of the contract-holder.¹⁸
- 2.25 The landlord is not required to agree to any request that is not made in writing. Where a request is made in writing, we think the landlord should respond to a request within a reasonable time. If the landlord fails to respond in writing within a defined time period, consent is deemed to have been given without conditions.¹⁹ Details of these provisions are set out in Part 6.

Sub-letting and transfers

2.26 The scheme also provides means enabling those who wish to do so to enter into sub-occupation contracts or to transfer their contracts to another. These provisions, discussed under the general heading of "dealing", also seek to rationalise and clarify the present law, while protecting landlords from unwittingly being required to assume responsibilities that are not appropriate. The details are discussed in Part 6.

Leaving the agreement

2.27 Where a joint tenant wishes to leave the agreement, the present law is, in our view, extremely unsatisfactory. We recommend significant changes which are outlined below at paragraphs 2.44 to 2.46. The details are considered in Part 4.

OBLIGATIONS UNDER THE CONTRACT

Repairing obligations

- 2.28 The Landlord and Tenant Act 1985 section 11 currently imposes obligations on the landlord to keep in repair certain essential matters relating to the structure of and facilities within the premises and/or common parts. We have modernised the language of these provisions, while adapting them to meet the requirements of the scheme. In addition, we recommend incorporation of recommendations made in the Law Commission report Landlord and Tenant: Responsibility for State and Condition of Property,²⁰ amended to take account of the enactment of the Housing Act 2004.
- 2.29 We also make clear that, in addition to the contract-holder(s), other "permitted occupiers" have the right to take proceedings for breach of these terms of the contract.²¹ Full details of the landlord's repairing obligations are set out in Part 8.

This is discussed in more detail at paras 6.72 to 6.76 below.

Cl 74(8). We are not making special provision for cases where the contract-holder says they have written to ask permission and the landlord denies receiving the written request. We think that in the rare cases where this becomes a problem it should be dealt with as a matter of evidence and proof.

⁽¹⁹⁹⁶⁾ Law Com No 238. Even if the Government fully implements the renting homes recommendations, this would not involve the full implementation of the recommendations set out in Responsibility for State and Condition of Property (1996) Law Com No 238.

²¹ Cl 229(5).

Improvements

2.30 At present, secure tenants may not make improvements to the premises without the landlord's consent, which the landlord may not unreasonably withhold. In addition, the current law provides that a landlord may be required to pay compensation for improvements made by the contract-holder, or to reimburse the contract-holder, where the contract has come to an end. We understand that these complex provisions are hardly ever used in practice. We have not included specific provision about improvements in the Bill as we anticipate that the appropriate authority may wish to revisit the underlying policy.

Prohibited behaviour

- 2.31 Existing housing law contains a number of provisions making various forms of threatening and criminal behaviour grounds for possession. They are little used in practice. We recommend a new approach, which we think will be more effective.
- 2.32 We recommend that it should be a fundamental term in all contracts that contract-holders may not:
 - (1) use or threaten to use violence against a person lawfully living in the premises;
 - (2) do anything which creates a risk of significant harm to such a person;
 - engage or threaten to engage in conduct that is capable of causing nuisance or annoyance to a person;
 - (a) living in the locality of the premises; or
 - (b) engaged in lawful activity in the premises or the locality of the premises;
 - (4) use or threaten to use the premises, or any common parts that they are entitled to use under the contract, for criminal purposes.²²
- 2.33 Breach of this term is a ground for possession. The landlord is entitled to bring proceedings in reliance on this ground at the same time as giving a possession notice to the contract-holder (see below). In addition, the court is given power to grant an injunction to prohibit breaches or threatened breaches of this term.
- 2.34 Community landlords and charity landlords may also seek a court order to demote a contract-holder from a secure contract to a standard contract for a trial period. Details of these provisions are discussed in Part 9.

²² CI 51.

Obtaining a contract by deception

2.35 It is a fundamental term of an occupation contract that, where a landlord is induced to grant the contract by a false statement, this is to be treated as a breach of contract (and so is a ground for possession). This important provision, already in the present law, protects social landlords who must be able to allocate housing following proper assessments of housing need. This cannot be achieved in the absence of honestly provided information. This is discussed in Part 11.

Uninterrupted occupation of the accommodation

2.36 Once an occupation contract is entered into, the contract-holder should be able to live in the accommodation without unnecessary interruption from the landlord. We recognise that there are circumstances where a landlord must have access (for example to carry out repairs). But we do not think the landlord should be entitled to enter the premises at will. Thus, we recommend that there should be a fundamental term in the contract that in the absence of a special reason the landlord must not do anything to interfere with the contract-holder's right to occupation of the accommodation. The details of this provision are set out in Part 11.

Landlord's name and address

2.37 Existing statutory provisions relating to the provision of the landlord's name and address are brought into occupation contracts as fundamental terms. See below Part 11.

Consultation on management matters

2.38 Current obligations to consult tenants on management matters are also brought into our scheme. Community landlords are under an obligation to consult their contract-holders on management matters and to provide a statement of consultation arrangements.²³ For details see below Part 11.

TERMINATING THE CONTRACT

2.39 The bases on which and the procedures by which occupation contracts may be terminated by the landlord are provided for in the Bill and become terms in the contract. The fundamental principles of the current law are retained. These are, first, that the landlord must start the process by giving a notice of intention to take proceedings — here called the possession notice — to the contract-holder (although where possession of premises subject to a standard contract is sought on the notice-only ground, a separate possession notice is not required). Second, this must be followed up by appropriate court procedures. We recommend rationalisation of the detailed rules. We also adopt the principle of "use it or lose it"; if a notice is not followed up by action within a defined period of time, it becomes ineffective.

Possession notices

2.40 We recommend a number of detailed changes to the law relating to possession notices.

²³ Cl 211.

- (1) Under the principle of "use it or lose it", if the possession notice is not followed up by actual proceedings within six months, the notice lapses. (The period is four months where possession is sought on the notice-only ground.) Contract-holders should not be kept in a state of uncertainty for unreasonably long periods.
- (2) The scheme provides that proceedings cannot, save in two cases, be started until one month after the possession notice has been given to the contract-holder. This rationalises the present law which contains a number of time differences that are hard to justify.
- (3) As currently happens with assured shorthold tenancies, landlords under standard contracts can give a two months' "no-fault" notice that they want to recover possession. The inability of a private landlord to obtain a possession order from the court on this notice-only ground for the first six months of an assured shorthold tenancy is removed.²⁴

Grounds for possession

- 2.41 We anticipate that the extensive statutory lists of grounds for possession, which have long existed in successive Rent and Housing Acts will be repealed.²⁵ They are replaced by two classes of grounds for possession, which become fundamental terms of the contract:
 - (1) breach of the occupation contract; and
 - (2) estate management grounds.
- 2.42 Landlords under standard contracts also have available to them the mandatory "notice-only" ground for possession, currently available in relation to the assured shorthold tenancy, and a mandatory serious rent arrears ground. Grounds for possession by the landlord are discussed more fully in Part 4.

Termination by the contract-holder

2.43 In addition to termination by the landlord, the scheme also provides terms to enable the contract-holder to bring the contract to an end. It is made clear that, once this happens, the contract-holder must give up possession of the premises on the date set out in the relevant notice. Termination by the contract-holder is discussed below in Part 4.

Termination by joint contract-holders

2.44 At present, one joint tenant can bring a joint tenancy to an end simply by serving a notice to quit. We recommend that, in future, a joint contract-holder should be able to terminate their interest in the contract, without ending the whole contract.

The controversy surrounding this issue is discussed above, in Part 1, at paras 1.51 to 1.56.

²⁵ As a framework Bill, our draft Bill does not currently make specific provision for repeals.

- 2.45 We are aware that the current law is used, for example, where a violent man has driven his joint tenant partner from their home. The landlord (frequently a local authority) gets the woman to serve a notice to quit. As a result the man becomes a trespasser in the premises against whom the local authority then takes proceedings.
- 2.46 While such an outcome may often be satisfactory, this is not a transparent way of achieving it. Indeed, there can be cases where the process is unfair. We recommend that the landlord should in full knowledge of the facts take proceedings against the man in the normal way. Assuming his violence can be proved, it will be reasonable for a court to order possession. The outcome has been achieved directly rather than indirectly. The position of joint tenants is discussed below in Part 4.

Abandonment

2.47 In consultation, many argued that it was currently hard for a landlord to regain possession of premises that had been abandoned. We recommend a new procedure to enable the landlord to regain possession in such cases, which does not involve court proceedings. This is modelled on a procedure already available in Scotland. Abandonment is discussed further in Part 4.

POWERS OF THE COURT

- 2.48 As is already the law, the powers of the court to deal with possession proceedings distinguish between:
 - (1) cases where the court may order possession if it considers it reasonable to do so ("discretionary grounds"); and
 - (2) cases where the court must order possession ("mandatory grounds").
- 2.49 During consultation it was frequently suggested to us that courts currently exercise their discretion inconsistently.²⁷ To meet this, we recommend that the court's discretion be statutorily structured. The judge will, in effect, have a checklist of questions he or she must answer in coming to a decision whether or not to order possession. The powers of the court are discussed in detail in Part 5.

The current law was found not to contravene the Human Rights Act 1998 in *Qazi v Harrow LBC* [2003] UKHL 43, upheld in *Kay v Lambeth LBC* [2006] UKHL 10.

A recent empirical study looked at this issue: C Hunter, S Blandy, D Cowan, J Nixon, E Hitchings, C Pantazis and S Parr, *The Exercise of Judicial Discretion in Rent Arrears Cases*, DCA Research Series 6/05 (October 2005), http://www.dca.gov.uk/research/2005/6_2005sm1.pdf (last visited 5 January 2006).

2.50 In the first Consultation Paper,²⁸ we asked whether the current power of the court to grant suspended possession orders was appropriate. Many consultees accepted that proceedings taken essentially to recover rent arrears, where there was no serious intent to obtain possession, were not always a sensible use of court process. However, the general response was against fundamental reform of the law. Our scheme gives the Secretary of State power to pilot new procedures. These are discussed in Part 5.

DEATH OF THE CONTRACT-HOLDER

2.51 We recommend reform and rationalisation of the law relating to what happens when a contract-holder dies.

Joint contract-holders: survivorship

2.52 As a general principle, where a joint contract-holder under a contract ceases to be a party to the contract (whether as a result of death or for any other reason, for example withdrawal from the contract), the remaining contract-holders should have all the rights and obligations under the contract.

Succession

- 2.53 There are currently statutory rights to succeed to secure and assured tenancies. The present law differs as between the two forms of tenancy, so we recommend a rationalisation of it.
- 2.54 As most partners now occupy residential accommodation on the basis of joint agreements, the surviving partner takes through operation of the survivorship principle. If there is no joint contract, the surviving spouse or partner has a statutory right of succession, in priority to any other potential successor. Such a person is called a "priority successor". If there is no such person, then a wider circle of people, called "reserve successors", acquires the right to succeed.
- 2.55 We also recommend an important reform. The definition of reserve successor in the draft Bill includes certain classes of "carer" who have given up their own home to look after the deceased. This is modelled on a provision already in effect in Scotland. Our recommendations on succession are considered more fully in Part 7.

EXCLUDED CONTRACTS

2.56 Our broad policy objective is that, unless there are compelling reasons for exclusion, all contracts to occupy premises as a home should come within the scheme. Thus a number of types of agreement, which currently fall outside existing statutory schemes, are brought within the recommended scheme. These include, for example, service occupancies and student accommodation provided by universities and local authorities.²⁹

Renting Homes 1: Status and Security (2002) Law Commission Consultation Paper No 162.

Though excluded from the current principal schemes, these are still covered by the terms of the Protection from Eviction Act 1977 and are thus not wholly outside statutory regulation.

2.57 Nevertheless, there have to be exceptions. These are listed in schedule 1 to the Bill.³⁰ They fall into two broad classes: contracts covered by other legislation; and contracts excluded on social policy grounds.

Contracts covered by other legislation

- 2.58 These include:
 - (1) business tenancies;
 - (2) tenancies protected by the Rent Act 1977 or the Rent (Agriculture) Act 1976:³¹
 - (3) long tenancies; and
 - (4) agricultural tenancies.

Contracts excluded on social policy grounds.

- 2.59 These include:
 - (1) tenancies or licences relating to direct access accommodation;³²
 - (2) tenancies or licences where no rent or other consideration is payable;³³
 - (3) holiday lets;34
 - (4) provision of accommodation in a care institution;³⁵
 - (5) provision of accommodation in barracks;³⁶
 - (6) provision of accommodation as a temporary expedient to persons who entered premises as trespassers;³⁷ and
 - (7) accommodation shared with the landlord.³⁸
- 2.60 In cases (2) to (7) inclusive, it is possible for the landlord to bring the contract within the scheme by issuing a notice, either before or at the time when the tenancy or licence is made, to the effect that the agreement is to be an occupation contract within the scheme.
- 2.61 Special rules also apply to:

³⁰ Power is given to the appropriate authority to amend this list of exceptions: sch 1 para 15.

Discussed above, at paras 2.5 and 2.6.

³² Sch 1 para 5.

³³ S 1(1)(b) and sch 1 para 1(2).

³⁴ Sch 1 para 6(2)(a).

³⁵ Sch 1 para 6(2)(b); "care institution" is defined in sch 1 para 7.

³⁶ Sch 1 para 6(2)(c); "barracks" is defined in sch 1 para 8.

³⁷ Sch 1 para 6(2)(d); "temporary expedient" is defined in sch 1 para 9.

³⁸ Sch 1 para 6(2)(e); "shared accommodation" is defined in sch 1 para 10.

- (1) accommodation for the homeless;³⁹ and
- (2) supported accommodation.⁴⁰
- 2.62 While this may seem like a long list of exceptions, the total number of contracts affected by them is modest compared with the total number of occupation contracts that come within the scope of the scheme.

OTHER MATTERS

2.63 A number of matters have not been considered as part of our reform of the law on rented homes but are nevertheless very closely related to it. These include housing benefit and rent regulation.

Housing benefit

2.64 Many consultees argued that housing law cannot be reformed without addressing housing benefit. We accept that housing benefit is a key factor in sustaining many landlord-tenant relationships. We also know that failings in administration frequently trigger claims for possession, which are not really about seeking possession but are about getting housing benefit problems sorted out.⁴¹ But these issues are outside the scope of this project. The Government is currently undertaking a major review of housing benefit.⁴²

Rent regulation

2.65 A number of consultees criticised the Commission for not revisiting the law relating to rent control and regulation. This was never envisaged as part of our remit. The present Government accepted that the policy of market rents in the private rented sector is not to be disturbed. It may be noted, however, that an important consequence of the ability of landlords to charge market rents for their lettings is that it is reasonable to expect landlords to adhere to their contractual obligations.⁴³

³⁹ Sch 1 paras 11 and 12.

⁴⁰ Sch 1 paras 13 and 14.

The Civil Justice Council is currently developing a housing possession protocol which, if approved, should go a long way to ensure that cases that are really only about housing benefit do not get to court.

See A New Deal for Welfare: Empowering People to Work (2006) Cm 6730, ch 6 ("A radical new approach to Housing Benefit").

⁴³ We revisit these issues in our Ensuring Responsible Renting project.

PART 3 OCCUPATION CONTRACTS

INTRODUCTION

- 3.1 One of the principal reasons why the current law relating to the renting of homes is so complex is the large number of different tenancy types that are found in the legislation. They include: secure tenancies; assured tenancies; assured shorthold tenancies; introductory tenancies; statutory tenancies; protected tenancies; demoted tenancies. Each of these different legislative statuses attracts different sets of rights and obligations, particularly in relation to questions of security of tenure.¹
- 3.2 In addition, a whole raft of supplementary rules defines when a tenancy agreement falls within the scope of a particular legislative scheme and when not. For example, in the case of assured tenancies:
 - (1) the rent must be below a defined level;
 - (2) the rent must be above a defined level;
 - (3) the premises must be used as the tenant's only or principal home;
 - (4) the premises must be let;²
 - (5) the tenancy must not fall within one of the other exceptions listed in Schedule 1 to the Housing Act 1988 (which include lettings to students, agricultural tenancies and lettings by local authorities).
- 3.3 Analogous provisions define the scope of secure tenancies. In particular, secure tenancies can only be granted by those who meet the "landlord condition".³ They can only be granted to those who satisfy the "tenant condition".⁴
- 3.4 Tenancies that do not meet the statutory criteria by definition fall outside the statutory schemes. They remain subject to the general rules of common law and law of equity that regulate the landlord and tenant relationship. While these are appropriate for long leases, they are not well suited for shorter term letting arrangements.
- 3.5 A fundamental aim of our project is to simplify this complex range of rules and distinctions.
- 3.6 Central to the recommended scheme is the concept of the occupation contract. This Part considers issues relating to the creation and use of occupation contracts.⁵ Here we discuss:

Our recommendations for the rationalisation of the rules on security are discussed below in Part 4.

² If the agreement constitutes a licence it falls outside the scheme.

³ Essentially, they must be local authorities: Housing Act 1985, s 80.

⁴ They must occupy the premises as their only or principal home: Housing Act 1985, s 81.

- (1) the concept of the occupation contract;
- (2) types of occupation contract;
- (3) the use of occupation contracts (including special rules affecting community landlords);
- (4) the written statement of the contract;
- (5) enforcement;
- (6) modification and variation; and
- (7) conversion of existing tenancies and licences.

THE OCCUPATION CONTRACT

- 3.7 At the heart of the scheme is the occupation contract. So long as a contract conferring the right to occupy premises satisfies normal common law rules relating to the creation of contracts that there should be an offer, acceptance of the offer, and consideration it is potentially an occupation contract within the scope of the scheme. A landlord and a contract-holder can reach a binding occupation contract orally without the need for any written formality.
- 3.8 In addition, the parties must have the capacity to enter into a contract. (We discuss below the particular recommendations we make in relation to those aged 16 and 17.)9 In the context of our consultation and research on supported housing. 10 an issue of general application to our scheme arose. This related to capacity to enter into contracts, particularly among those with mental health problems. The lack of clarity in the law made us ask whether our Bill should address this issue. In the event, the enactment of the Mental Capacity Act 2005 has gone a long way to clarifying the law, and setting down decision-making frameworks for those who lack capacity. We have concluded that to make distinct provision in relation to mental capacity and the making of occupation contracts would not be helpful. We note that the Mental Capacity Act 2005 provides for a Code of Practice to be issued by the Lord Chancellor. We recommend to the Department for Constitutional Affairs that this should contain consideration of the relationship between the law of mental capacity and the capacity to enter into occupation contracts.

The written agreements or occupation contracts were discussed in Parts 7 and 8 of Renting Homes (2003) Law Com No 284.

⁶ Cl 1(1). In Renting Homes (2003) Law Com No 284 this was called the occupation agreement.

⁷ It will be possible for a landlord to bring a tenancy or licence in relation to which there is no consideration within the scheme by giving the occupier notice: see sch 1 para 1(2).

The Bill specifically provides that any requirements in the Land Registration Act 2002 for tenancies must be satisfied: cl 217. Nothing in the Bill prevents the creation of leases, though long leases are outside the scope of the scheme: see below at para 3.14.

⁹ Paras 3.10 to 3.12.

¹⁰ See Part 10.

- 3.9 A number of points about the definition of "occupation contract" should be noted at the outset.
 - (1) It is specifically provided that an occupation contract can be either a tenancy or a licence.¹¹ This avoids historic complications whereby statutory schemes only applied where premises were "let".¹² This definition recognises that the distinction between a lease/tenancy and a licence exists. This will often be important. For example, where a landlord sells their legal estate in a property to another, it is highly relevant whether that estate is subject to a lease or a licence. These issues continue to be determined by application of the current law. We also make explicit that, where an occupation contract is a tenancy, any land registration requirements must be satisfied.¹³
 - (2) The contract must be made between a landlord and an individual ¹⁴ (the "contract-holder" ¹⁵). The contract must confer the right to occupy premises as a home. ¹⁶ Where the contract is made with two or more persons, at least one must be an individual. ¹⁷ Contracts relating to the occupation of premises for purposes other than occupation as a home fall outside the scope of our scheme. In many situations, such agreements fall within the scope of other statutory schemes, for example business tenancies. These exceptions are set out in schedule 1 to the Bill and are discussed below at paragraphs 3.13 to 3.17.
 - (3) Despite the breadth of the definition, not all contracts which confer the right to occupy premises as a home fall within the scope of the Bill. These exceptions are set out in schedule 1 and discussed in more detail below.

¹¹ CI 1(1).

A phrase interpreted by the courts to mean that there must be an agreement which satisfied the criteria for the creation of a tenancy. The most important restatement of these rules was made by the House of Lords in *Street v Mountford* [1985] AC 809. Land law purists argued that their interpretation was not in strict accord with the law as previously understood. The new concept is designed to avoid these problems.

¹³ Cl 217.

¹⁴ The individual must be at least 16 years old: cl 1(5).

¹⁵ Cl 1(4). In Renting Homes (2003) Law Com No 284 we referred to the contract-holder as the occupier.

¹⁶ Cl 1(2).

Cl 1(3). A contract made exclusively with a company could still be an occupation contract if it is confers the right to occupy premises as a home on an individual and the landlord gives notice that the contract is to be an occupation contract. See sch 1 para 1(1) and para 2.

¹⁸ Cl 1(6).

- (4) Most of the ancillary tests currently used to define the scope of statutory protection are removed. Thus, there is no requirement that the rent should be above or below a defined rent limit. Nor is there any requirement that the premises must be occupied as the "only or principal home".¹⁹
- (5) Most importantly in the context of the social rented sector, there is no "landlord condition". Our emphasis on the principle of landlord neutrality means that the scheme will, for the first time, enable the creation of a single type of contract that can apply throughout the social rented sector, irrespective of the identity of the landlord.
- (6) Once created, an occupation contract continues in existence either until it is terminated in accordance with the provisions of the scheme, or unless the premises or the contract come within the scope of the exceptions listed in paragraph 3 of schedule 1.²⁰ In the latter case, the underlying tenancy or licence would continue to exist.²¹

Contract-holders aged 16 and 17

- 3.10 The Bill specifically provides that an individual who has not reached the age of 16 cannot be a contract-holder.²²
- 3.11 In the light of responses to our Consultation Papers,²³ we know that the present law can create unnecessary difficulties for landlords who want to make housing provision for, for example, a young person who has had to leave the parental home. This Bill provides that landlords can create occupation contracts with 16 and 17 year-olds.²⁴

A landlord who wishes to impose this requirement will be able to do so in the agreement. A contract-holder who has more than one occupation contract is then in breach of the agreement and liable to face proceedings for possession. But as the purpose of the scheme is to ensure that *all* contract-holders are informed about their contractual rights and obligations, there is no statutory rule preventing more than one contract from falling within the scope of the scheme.

²⁰ See below, at paras 3.13 to 3.17.

²¹ Sch 1 para 3(1).

²² CI 1(5).

Renting Homes 1: Status and Security (2002) Law Commission Consultation Paper No 162; and Renting Homes 2: Co-occupation, Transfer and Succession (2002) Law Commission Consultation Paper No 168.

²⁴ CI 204.

3.12 To prevent abuse of this rule, it is specifically provided that the contract-holder is not entitled to repudiate the contract, merely because the contract was made when the contract-holder was under 18.²⁵ Nor will a court be able to treat the contract as unenforceable, merely because it was made when the contract-holder was under 18.²⁶ In all other respects the Bill applies to the contract-holder, as if they had been 18 at the time the contract was made.²⁷

Exceptions

- 3.13 As mentioned above, schedule 1 to the Bill lists a number of exceptions. These largely reflect exemptions from current schemes of statutory protection. They can be divided into three classes:
 - (1) contracts that can never be occupation contracts;
 - (2) contracts that will not be occupation contracts unless the landlord gives notice stating that the contract is an occupation contract; and
 - (3) special cases.
- 3.14 The following can never be occupation contracts, mainly because such contracts are covered by other statutory regimes:
 - (1) contracts made with persons under 16;²⁸
 - (2) long leases;²⁹
 - (3) Rent Act tenancies;³⁰
 - (4) Rent (Agriculture) Act occupancies and tenancies;³¹
 - (5) agricultural tenancies;³²
 - (6) business tenancies;33 and

²⁵ Cl 204(2).

²⁶ Cl 204(3).

²⁷ Cl 204(4).

Discussed above, at para 3.10. See sch 1 para 3(2) and see cl 1(5). If a contract is made with a number of people, some over 16, others under 16, the contract will be within the scheme but only those over 16 will be contract-holders. A contract made with someone who is under 16 may become an occupation contract when that person reaches 16 (cl 203).

²⁹ Sch 1 para 3(3)(f) and para 4. In essence these are leases for more than 21 years. We have not made special provision for long leases in our draft Bill but we anticipate that appropriate provision will be made if and when the Bill is taken forward by Government.

³⁰ Sch 1 para 3(3)(c). For the power for the appropriate authority to bring these into the scheme, see cl 221.

³¹ Sch 1 para 3(3)(b). For the power for the appropriate authority to bring these into the scheme, see cl 222.

³² Sch 1 paras 3(3)(d) and (e).

³³ Sch 1 para 3(3)(a).

- (7) tenancies or licences relating to direct access accommodation.³⁴
- 3.15 Contracts that are not occupation contracts unless the landlord gives notice stating that the contract is an occupation contract are:
 - (1) those where no rent or other consideration (for example non-monetary consideration such as labour) is payable;³⁵
 - (2) contracts for another's benefit;³⁶
 - (3) holiday lets;37
 - (4) contracts for the provision of accommodation in a care institution,³⁸
 - (5) contracts for the provision of accommodation in barracks;³⁹
 - (6) contracts for accommodation provided as a temporary expedient;⁴⁰ and
 - (7) contracts for accommodation shared with the landlord.⁴¹

If the landlord decides to give notice that any of these arrangements are to be occupation contracts, the notice must be given in writing before or at the time the tenancy or licence is made.⁴²

- 3.16 Finally there are two cases for which special provision is made.
 - (1) Contracts for accommodation provided for the homeless:
 - (a) A tenancy or licence made by a local authority under its housing functions in relation to homelessness is not an occupation contract, unless the provision is to an applicant found to be in priority need and not intentionally homeless.⁴³ (In this case, the local authority may make a standard contract with the applicant.)⁴⁴

Sch 1 paras 3(3)(g) and 5. This is accommodation for a period of 24 hours or less provided by a community landlord or registered charity.

³⁵ Sch 1 para 1(1).

³⁶ Sch 1 paras 1(1) and 2.

³⁷ Sch 1 para 6(2)(a). Further consideration may need to be given to whether this exclusion ensures that "time-share" agreements fall outside the scope of the scheme.

³⁸ Sch 1 paras 6(2)(b) and 7.

³⁹ Sch 1 paras 6(2)(c) and 8.

⁴⁰ Sch 1 paras 6(2)(d) and 9.

Sch 1 paras 6(2)(e) and 10. This recasts and narrows the present law relating to resident landlords.

⁴² Sch 1 paras 1(3) and 6(3).

⁴³ Sch 1 para 11(1).

⁴⁴ Sch 2 para 6.

- (b) Where a local housing authority makes arrangements with a relevant landlord⁴⁵ in pursuance of its interim housing duties, a tenancy or licence is not an occupation contract until the end of the period of 12 months from the date of the authority's decision, or the date following any review or appeal. The relevant landlord may notify the person with whom the tenancy or licence is made, before that date, that it is to be an occupation contract.⁴⁶ When this occurs, it may become a standard contract.
- (2) Supported accommodation:

Tenancies and licences relating to supported accommodation are not occupation contracts if it is intended that accommodation will be provided for no longer than four months.⁴⁷ If accommodation is in fact provided for longer than that period they may become standard contracts.

3.17 The appropriate authority is given power to amend this list of exceptions by order.⁴⁸

TYPES OF OCCUPATION CONTRACT

3.18 In place of the current multiplicity of statutory statuses, the scheme provides for just two types of occupation contract: secure and standard.⁴⁹

This is either a community landlord which is a registered social landlord or a private landlord: sch 1 para 12(5) and cl 226.

⁴⁶ Sch 1 paras 12(2) to (4).

Sch 1 paras 13 and 14. Supported housing is discussed further in Part 10.

⁴⁸ Sch 1 para 15.

CI 2. These labels replace the "Type 1" and "Type 2" labels proposed in Renting Homes (2003) Law Com No 284. We discuss below the requirements relating to the use of each contract type: paras 3.22 to 3.33.

Secure contracts

3.19 Secure contracts are modelled on secure tenancies which currently can only be created by local authorities. As with secure tenancies, secure contracts have a high degree of security of tenure protected by the Bill.⁵⁰ They can be created only on a periodic basis. 51 The reason for this is that in the context of the high security of tenure granted by the Bill for a secure contract, having a fixed term would not be useful. If a fixed term secure contract were to be followed on holding over (that is where the contract-holder continues to live there after the expiry of the fixed term) by a periodic secure contract, there would be little point having a fixed term contract in the first place (especially when it would make it harder for the landlord to vary the contract). If a fixed term secure contract were to be followed by something less than a periodic secure contract, it would be significantly less valuable to the contract-holder than a periodic secure contract. The idea of the secure contract is to provide a security gold standard for use in the social sector. To allow fixed term secure contracts would at best muddle the picture, and at worst, undercut that objective.

Standard contracts

- 3.20 Standard contracts are modelled on the current assured shorthold tenancy granted by private landlords. Although they have a low degree of security of tenure protected by statute, there is nothing preventing landlords entering contracts which have a greater degree of security than the Bill requires. Often this happens because it is in the landlord's interest to do so, for example to minimise void letting periods. Standard contracts can be either fixed term or periodic.⁵²
- 3.21 In the case of standard contracts only, the Bill provides that a landlord is able to specify periods where, notwithstanding the existence of the contract, the premises cannot be used for occupation.⁵³ The purpose of this provision is to enable, for example, universities to enter occupation contracts with their students for the whole academic year, but also enable them to regain possession during vacation periods when the accommodation is needed for conferences. It would be a disproportionate administrative burden for there to be separate contracts for each academic term or semester.

USE OF OCCUPATION CONTRACTS

3.22 Although our definition of contract types is landlord-neutral, the way in which the contracts are to be used is not. In particular, the use of the two types of contract by community landlords is carefully prescribed.

⁵⁰ We discuss issues relating to security of tenure in Part 4.

⁵¹ Cl 3(1).

⁵² Cl 3(2).

⁵³ Cls 3(3) and (4). See also cl 27(2)(c).

Community landlords

- 3.23 The starting point is that community landlords⁵⁴ are required to enter into secure contracts. This principle applies equally whether the landlord has made the contract⁵⁵ or become the landlord under the contract.⁵⁶ There are four exceptions.⁵⁷
 - (1) The occupation contract is listed in schedule 2 to the Bill (which provides circumstances in which a community landlord may enter into a standard contract) and the landlord has given the contract-holder the requisite notice that the contract will be a standard contract. Where the landlord's decision to give the notice is subject to judicial review, the contract-holder may apply to the county court for a review on judicial review principles. 59
 - (2) The contract is made as a result of a court order following breach of the prohibited conduct term in the contract. ⁶⁰
 - (3) The contract is a new contract which has arisen or has been made at the end of a fixed term standard contract.⁶¹
 - (4) The contract is implied when a landlord starts to accept rent from a person who is a trespasser in relation to the premises. 62

Application in Wales

3.24 Special provision is made to enable the National Assembly for Wales to amend the application of these rules to community landlords in relation to premises situated in Wales.⁶³

This term, rather than "social landlords" which was used in Renting Homes (2003) Law Com No 284, is the one used in the Bill. Community landlords are defined at cl 226.

⁵⁵ Cl 4(1).

⁵⁶ CI 5(1).

⁵⁷ Cls 4(2) to (5). Similar exceptions apply where an occupation contract, which is a standard contract, is adopted by a community landlord: cls 5(4) to (7). A fifth exception is where a fixed term standard contract for which a premium was paid is adopted by a community landlord and the contract-holder chooses to have it remain a fixed term standard contract. In addition, a sub-occupation contract transferred to a community landlord will continue as a standard contract: cl 5(2).

⁵⁸ Cl 4(2)(c). The requirement for a written notice is set out in cl 6. If, despite the notice, the landlord gives the contract-holder a written agreement that is not relevant to a standard contract but only to a secure contract, the landlord may apply to the court to rectify the error: cl 33.

⁵⁹ Cl 7.

⁶⁰ Cl 4(3). The power of the court is set out in cl 59. "Prohibited conduct" is discussed below in Part 9.

⁶¹ Cl 4(4). A periodic standard contract will arise at the end of a fixed term standard contract if the contract-holder remains in occupation after the end of the term: cl 165(2).

⁶² CI 4(5). Such contracts are implied by cl 202.

⁶³ CI 9.

Ability of community landlords to make standard contracts

- 3.25 Given the objective of giving increased flexibility to landlords, there are cases where community landlords should be able to enter into standard, rather than secure contracts. This is happening already. For example, many registered social landlords, as part of their portfolio of lettings, let on assured shorthold tenancies at market rents. Our scheme brings further rationalisation to the current law and facilitates the development of future policy and practice.
- 3.26 Schedule 2 to the Bill sets out 11 circumstances in which they can enter into standard contracts, provided that notice is given.
 - (1) Contracts that would not be occupation contracts at all unless the landlord gave notice stating that they were an occupation contract.⁶⁴
 - (2) Occupation contracts relating to supported accommodation. 65
 - (3) Probationary contracts. 66 Under the present law local housing authorities are required to enter "all or nothing" arrangements; either all their tenancies start as (unprotected) introductory tenancies or they are all (protected) secure tenancies. This means that a person with years of impeccable behaviour may, on moving to another local authority, suddenly find they have lost their statutory protection. Our recommendations replace these inflexible rules and enable community landlords to confer probationary standard contracts on those for whom it is really appropriate.
 - (4) Contracts for the provision of accommodation to asylum seekers.⁶⁷
 - (5) Contracts for the provision of accommodation for displaced persons.⁶⁸
 - (6) Contracts relating to accommodation provided for the homeless to whom the local authority owes a duty. 69
 - (7) Service occupancies created by community landlords in certain specified circumstances.⁷⁰
 - (8) Contracts relating to student accommodation provided by community landlords.⁷¹

⁶⁴ Sch 2 para 1. The circumstances in which this can happen are set out at para 3.15 above.

⁶⁵ Sch 2 para 2. These contracts are discussed in more detail below in Part 10.

⁶⁶ Sch 2 para 3.

⁶⁷ Under part 6 of the Immigration and Asylum Act 1999. See sch 2 para 4.

⁶⁸ Sch 2 para 5.

⁶⁹ Sch 2 para 6. Most occupation contracts for the homeless fall outside the scheme unless the criteria set out here are satisfied. See also above, at para 3.16.

⁷⁰ Sch 2 paras 7 to 9.

⁷¹ Sch 2 para 10.

- (9) Contracts relating to accommodation provided on a temporary basis, for example on land acquired for development; for persons taking up employment; accommodation provided while works are undertaken; or other cases where there are specific short term arrangements.⁷²
- (10) Contracts relating to accommodation provided by registered social landlords which is not social accommodation, ⁷³ for example accommodation provided to "key workers" (or to other persons who would not have priority or qualify for accommodation under the landlord's normal allocation rules).
- (11) Contracts relating to premises intended for transfer.⁷⁴
- 3.27 As with the list of exceptions to the scheme as a whole, the appropriate authority can amend this list of special cases by order (although the National Assembly for Wales can do so only if it has not made an order under clause 9).⁷⁵

Conversion of standard contracts to secure contracts

- 3.28 It will be realised, from the list set out above, that there are circumstances where community landlords have power to make standard contracts with people who, in the ordinary course of events, might expect to be provided with accommodation under a secure contract. The Bill makes specific provision for the conversion of certain standard contracts into secure contracts. There are three situations where this can happen:
 - (1) supported standard contracts;
 - (2) probationary standard contracts; and
 - (3) prohibited conduct standard contracts.
- 3.29 In each of these cases the policy issue is similar. We want community landlords to give those whose ability to shoulder the full responsibilities of a secure contract may be in doubt the opportunity to prove themselves before they acquire secure status. At the same time, we do not want people to be left indefinitely living in premises under a standard contract.
- 3.30 The person, who starts in supported accommodation, should have the incentive of being able to obtain a secure contract within a reasonable time period. The person on probation should also know that the period of probation is finite, and that promotion to a secure contract can be achieved within a defined time frame. Similarly, the person demoted to a standard contract because they have broken the prohibited conduct term of the contract should, if they improve their behaviour, be able to regain their secure status.

⁷² Sch 2 paras 11 to 14.

⁷³ Sch 2 para 15.

⁷⁴ Sch 2 para 16.

⁷⁵ Sch 2 para 17.

⁷⁶ Cls 94 to 107.

3.31 The details relating to each of these situations vary, but in essence, they all provide that, unless the community landlord takes positive steps to keep the contract-holder on a standard contract on grounds specified in the Bill, they will automatically move from a standard to a secure contract. The periods after which this takes place have been chosen to reflect a reasonable period within which the behaviour of the contract-holder can be assessed, at the end of which it is reasonable to expect the relevant landlord to make up its mind.

Private landlords

- 3.32 Contracts made by private landlords will be standard contracts unless the landlord gives a notice in writing that the contract is a secure contract.⁷⁷
- 3.33 A contract adopted by a private landlord continues to be of the same type as it was before the contract was transferred to the landlord.⁷⁸

THE WRITTEN STATEMENT OF THE CONTRACT

- 3.34 Once made, the landlord must provide the occupier with a written statement of the contract. There are two reasons for this.
 - (1) The whole point of the consumer protection approach is to ensure that both parties have a document setting out their respective rights and obligations.
 - (2) If the relationship breaks down and court or other dispute resolution proceedings are in contemplation, the written statement is evidence of what the parties agreed.
- 3.35 The written statement must be provided by the landlord no later than two weeks from the date on which the contract-holder was entitled to take occupation of the premises.⁷⁹ The contract-holder also has the right to ask for a further written statement at any time.⁸⁰

Content of occupation contracts

- 3.36 Occupation contracts contain four classes of matters or terms.81
 - (1) key matters;82
 - (2) fundamental terms;83

⁷⁷ CI 10(1).

⁷⁸ Cls 10(2) and (3).

⁷⁹ Cls 24(1) and 235.

⁸⁰ Cl 24(3). The landlord may make a reasonable charge for providing a copy in response to such a request: cl 24(4). The written statement must be provided within two weeks of the date of the request or, where a charge is made, the date on which the contract-holder pays the fee: cl 24(5).

⁸¹ Cl 25.

⁸² CI 27.

⁸³ As defined in cls 11 and 14 to 18.

- (3) supplementary terms;84 and
- (4) additional terms.

In order to be complete, a written statement of the contract must set out all of the above as well as the names of the parties.

Key matters

- 3.37 The key matters are defined as:85
 - (1) the premises;
 - (2) the effective date;86
 - (3) the amount of rent or other consideration;
 - (4) the rental periods.87
- 3.38 In the case of standard contracts, it is also a key matter whether the contract is periodic or made for a fixed term. Where the contract is for a fixed term, the key matters include the period of the fixed term. Where a standard contract specifies periods during which the contract-holder is not entitled to occupy the premises, the periods of non-occupation must also be set out as a key matter.
- 3.39 Key matters are exempt from challenge under the unfair terms regulations⁹¹, because they are "core terms" for the purposes of the Unfair Terms in Consumer Contracts Regulations 1999 (in that they define the main subject matter or relate to the adequacy of the price). 92

These may be prescribed by the appropriate authority: cl 21. If so, they are deemed compliant with the unfair terms regulations (this term is defined in para 1.36 above): cl 23(1).

⁸⁵ CI 27(1).

The effective date is the date on which the contract-holder is entitled to begin occupying the premises to which the contract relates: cl 235.

Rental period is the period in respect of which a rent payment falls to be made, eg a week or a month: cl 238.

⁸⁸ Cl 27(2)(a).

⁸⁹ CI 27(2)(b).

Ol 27(2)(c): the reason for this provision is explained at para 3.21. The ways in which this term may be expressed are set out in cl 3(4).

⁹¹ This term is defined in para 1.36 above.

See the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083) reg 6(2).

Fundamental terms⁹³

- 3.40 The most important terms the fundamental terms incorporate fundamental provisions in the Bill. 94 Other important terms supplementary terms incorporate supplementary provisions set out in regulations made under powers contained in the Bill.
- 3.41 A fundamental provision may, with agreement of both parties, not be incorporated as a term, if the effect is to benefit the contract-holder. The parties may also agree that a fundamental provision may be incorporated as a term of the contract with modifications, but again only if the modification operates in favour of the contract-holder. Other fundamental provisions can be omitted or incorporated with modifications if this is a necessary consequence of the parties' omission or modification of a particular fundamental provision.
- 3.42 The fundamental provisions relating to prohibited conduct, obtaining an agreement by making a false statement, survivorship and the death of the contract-holder cannot be omitted or incorporated with modifications.⁹⁸
- 3.43 The details of the fundamental provisions differ in relation to each type of contract. They fall into three main categories.
 - (1) Fundamental provisions which apply to all occupation contracts. ⁹⁹ These include, for example, provisions about the termination of contracts, and conduct which is prohibited by the contract.
 - (2) Fundamental provisions which apply specifically to secure contracts. These include, for example, a provision allowing for the transfer of a secure contract to a potential successor. 101
 - (3) Fundamental provisions which apply specifically to standard contracts. These include, for example, provisions about termination of contracts for serious rent arrears.

⁹³ In Renting Homes (2003) Law Com No 284 we referred to these as "compulsory-minimum" and "special" terms.

⁹⁴ See also cl 20.

⁹⁵ Cl 11(2). Eg the parties may agree that the landlord will not use one of the available grounds for possession, and thus omit that ground from the terms of the contract.

⁹⁶ Cl 11(3).

OI 12. For example, if the fundamental term incorporating the fundamental provision allowing for mandatory possession on the grounds of serious rent arrears (cl 187) was omitted from a standard contract, the fundamental term incorporating the provision restricting the use of that possession ground (cl 188) would also have to be omitted.

⁹⁸ Cl 11(4). The terms are considered further below in Part 9 (prohibited conduct) and at paras 11.2 and 11.3 (obtaining a contract by deception), paras 7.4 to 7.7 (survivorship) and paras 4.15 to 4.17 (death of contract-holder).

⁹⁹ CI 14.

¹⁰⁰ CI 15.

¹⁰¹ CI 131.

¹⁰² CI 16.

The detail of these fundamental provisions is discussed, in context, below in Parts 4 to 11.

3.44 Fundamental terms are mandatory statutory provisions and as such are not subject to the unfair terms regulations. 103

Supplementary terms

- 3.45 In addition to fundamental provisions, the appropriate authority may prescribe supplementary provisions. These deal with all the practical matters that one would expect to find in an occupation contract (for example an obligation on the part of the contract-holder to pay the rent) but which do not need the same degree of legislative backing as the fundamental provisions.
- 3.46 Before prescribing a supplementary provision, the appropriate authority must have regard to whether, assuming it was incorporated into the contract as a term without modification, it would be fair for the purposes of the unfair terms regulations. ¹⁰⁵ If the provision is incorporated into the contract unmodified, it will not be subject to the unfair terms regulations. ¹⁰⁶
- 3.47 The parties are free to agree that a supplementary provision should not be incorporated as a term. They may also agree to incorporate the provision with modifications. If they do so, the resulting term may be subject to challenge as unfair. If the term is held to be void or invalid (under the unfair terms regulations or for any other reason), the contract is treated as incorporating the provision without modification. The provision without modification.

Additional terms

3.48 These are any other express terms of the contract. Additional terms must be fair and transparent, in accordance with our consumer protection approach.

Model contracts

3.49 For the recommended scheme to work, it is essential that landlords have easy access to contracts that meet the statutory requirements. This is to be achieved through the creation of model contracts. Assuming that the terms as regards key matters are in plain intelligible language, the model contracts are not subject to the unfair terms regulations.

CI 13 and the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083), reg 4(2).

Cl 21(2), read together with cls 228 and 238. In Renting Homes (2003) Law Com No 284 these were described as "default" terms.

¹⁰⁵ Cl 23(2): a provision that was manifestly unfair would be challengeable by way of judicial review.

¹⁰⁶ CI 23(1).

¹⁰⁷ Cl 21(3). In this case the written statement must contain a statement to this effect: cl 25(3)(b). This is to avoid subsequent arguments about whether the term was included in the agreement or not.

¹⁰⁸ CI 21(4).

¹⁰⁹ CI 23(3).

- 3.50 The Bill provides that the appropriate authority may prescribe model contracts as it sees fit. 111 Where a landlord adopts the relevant model contract, it is not essential for the landlord to provide a personalised version of the whole agreement. Completion of a front page sheet setting out the key matters and a written statement of any additional terms will suffice. The precise form of the model contracts, and any other explanatory material, will be prescribed by the appropriate authority. Two illustrative model contracts are provided in Appendix B.
- 3.51 The Bill gives the power to the appropriate authority¹¹² to prescribe model contracts for different descriptions of occupation contracts as it sees fit. The following are descriptions of contracts that the appropriate authority may wish to prescribe:
 - (1) secure community landlord;
 - (2) secure private landlord;
 - (3) standard periodic;
 - (4) standard fixed term (less than seven years);
 - (5) standard fixed term (seven years or more);
 - (6) standard supported.
- 3.52 These model contracts could be used, as their name suggests, for normal types of contract. The vast majority of occupation contracts will be (1), (3) or (4); the other models could be made available for those who need them. Nothing prevents the appropriate authority from prescribing special model contracts to meet particular variations of the basic contract descriptions.

Contents of model contracts

- 3.53 A model contract for an occupation contract of a particular description is a written statement that:
 - (1) incorporates as fundamental terms without modification all the fundamental provisions¹¹³ applicable to a contract of that description; and
 - (2) incorporates as supplementary terms without modification all the supplementary provisions applicable to a contract of that description which have been prescribed by regulations.¹¹⁴

¹¹⁰ Cls 25(2)(d) and (5).

¹¹¹ CI 35.

¹¹² The Secretary of State, or the National Assembly for Wales: cl 228.

¹¹³ Fundamental provisions are considered above, at paras 2.12 and 3.40 to 3.44.

¹¹⁴ Supplementary provisions are considered above, at paras 2.13 and 3.45 to 3.47.

Landlords' own contracts

3.54 The scheme does not require landlords to use the model contracts. But any written statement of the contract must still set out the fundamental terms of the contract (incorporating the applicable fundamental provisions set out in the Act), and the supplementary terms of the contract (incorporating the applicable supplementary provisions set out in regulations). Any supplementary terms which incorporate supplementary provisions with modifications will have to comply with the consumer law principles set out in the unfair terms regulations. We expect that most landlords will find it convenient to use the model contracts.

ENFORCEMENT

- 3.55 There must be means to ensure landlords comply with these essential measures relating to the provision of a written statement of the contract. Reflecting the widely held views of consultees, we have concluded that criminal sanctions are not appropriate in this context. Instead, the Bill contains a number of non-criminal measures designed to ensure compliance by the landlord.
 - (1) No term of the occupation contract is enforceable against the contract-holder until the written statement has been provided, or, if earlier, the effective date. Thus until the written statement is provided (or the contract-holder becomes entitled to occupy the premises), the contract works only one way.
 - (2) Until the written statement is provided, the contract-holder may, by notice given to the landlord, terminate the contract before the effective date. 116 On giving such notice, the contract-holder ceases to have any liability under the contract, and is entitled to the return of any deposit, rent or other consideration that may have been paid. 117
 - (3) The contract-holder may apply to the court for a declaration as to the terms of the contract. The court may attach a statement of the occupation contract to its declaration, or order the landlord to provide a written statement.¹¹⁸

¹¹⁵ Cl 28. The effective date is defined in cl 235.

We did consider whether in every case there should be a cooling off period before an occupation contract could come into effect. Although this is a feature of some branches of consumer law, we concluded that in this context it would be impractical, not least because there are occasions where a contract needs to be concluded quickly.

CI 156(3). These rules do not affect any rights under the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000 No 2334): cl 152(1)(b).

¹¹⁸ Cl 29.

- (4) Unless the failure to provide the written statement is the fault of the contract-holder, the contract-holder is entitled to compensation. The amount of compensation is a payment equivalent to each day's rent, 119 starting with the date on which the contract-holder's right to occupy began and ending on the day when the written statement was provided. This is subject to a maximum amount, the equivalent to two months' rent. 120 The contract-holder may seek enhanced compensation (up to double) from the court, where they can prove that the refusal of the landlord to provide the written statement was wilful. 121 Because this right to compensation does not arise until the expiry of a period of two weeks starting with the effective date, while the right to terminate early (referred to in sub-paragraph (2)) is only available before the effective date, these remedies are mutually exclusive.
- (5) If the written statement is either incomplete, or incorrect, the contract-holder has the right to apply to the court for a declaration. The contract-holder may also ask the court to order compensation to be paid, where the court finds that the failure to complete or the incorrectness was the result of wilful default by the landlord. The contract-holder can apply to the court for an order increasing the amount of compensation.
- (6) Where compensation is to be paid, the contract-holder may obtain satisfaction by setting off the compensation owed against rent. 124

Procedural sanction

3.56 In addition, where the landlord under a standard contract fails to provide a written statement of the contract, we recommend a procedural sanction. This will delay the ability of the landlord to take advantage of the notice-only ground for possession. Thus, where a landlord fails to provide a written statement of the agreement within two weeks from the effective date, they will not be able to make a claim for possession until six months after the date on which the written statement of the contract is provided to the contract-holder.¹²⁵

MODIFYING AND VARYING THE CONTRACT

Modification

3.57 We have discussed above the circumstances in which fundamental and supplementary provisions may be incorporated as terms of the contract with modifications. 126

¹¹⁹ Cls 34(1) and (2).

¹²⁰ CI 30(2).

¹²¹ Cls 34(3) and (5).

¹²² Cls 31 and 32.

¹²³ Cls 31(9), 32(7) and 34(4).

¹²⁴ CI 66.

¹²⁵ Cls 177(1) and (2).

¹²⁶ Paras 2.15 to 2.19, 3.41 and 3.47.

Variation

3.58 In addition the Bill provides that terms in a contract, once agreed and operative, may be varied. This will be important in many cases, particularly with secure contracts. Apart from anything else, landlords will want to ensure rent levels can be adjusted to match inflation. But there may be other reasons why it becomes necessary to amend the contract. The Bill contains detailed provisions for varying the terms not only of secure contracts, but also periodic and fixed term standard contracts. 128

Secure contracts

3.59 The terms of secure contracts cannot be varied, save as provided for by the Bill. 129

KEY MATTERS - RENT

3.60 The landlord may vary the rent by giving at least two months' notice, 130 stating the new rent. 131 The notice must specify a date on which the new rent is to take effect. The first notice of increase may specify any date. 132 Subsequent notices must specify a date which is not less than one year after the last date on which a new rent took effect. 133

FUNDAMENTAL TERMS

- 3.61 Fundamental terms may be varied by agreement between the landlord and the contract-holder, so long as the result of the variation is not to reduce the degree of protection afforded to the contract-holder as compared with the fundamental provision which the term incorporates.¹³⁴ For example, a landlord may vary the terms so as to exclude one or more of the grounds on which possession proceedings may be taken.
- 3.62 This does not apply: 135
 - (1) to the fundamental terms relating to prohibited conduct; 136
 - (2) to the fundamental term which prohibits the making of false statements to secure the occupation contract; 137

^{127 &}quot;Variation" includes the addition and removal of terms: cl 93.

¹²⁸ Rented Homes Bill Part 3, Ch 1.

¹²⁹ CI 79.

¹³⁰ CI 80(2).

¹³¹ CI 80(1).

¹³² CI 80(3)(a).

¹³³ CI 80(3)(b).

¹³⁴ CI 81(3).

¹³⁵ Cl 81(2). This is similar to the rule relating to the modification of fundamental provisions: see above, at para 3.41.

¹³⁶ As defined in cl 51. Prohibited conduct is discussed below in Part 9.

¹³⁷ CI 64.

- (3) to the fundamental terms on survivorship; 138
- (4) to the fundamental terms relating to the death of the contract-holder. 139
- 3.63 If the parties to the contract cannot agree to the variation of a fundamental term, the term cannot be varied.

SUPPLEMENTARY AND ADDITIONAL TERMS

- 3.64 Supplementary and additional terms can also be varied by agreement between the landlord and the contract-holder. 140
- 3.65 Further, these terms may be varied after the landlord has given notice to the contract-holder. This must be preceded by a preliminary notice, which gives details of the proposed variation, and time for the contract-holder to comment. 142
- 3.66 The notice of variation must specify the variation and the date on which it is to take effect. The landlord must also provide the contract-holder with such information as the landlord considers necessary to explain the nature and effect of the variation. Under our consumer protection approach, varied terms could be challenged for unfairness.
- 3.67 A written statement, either of the variation itself, or of the whole occupation contract as varied, must be provided within two weeks of the date of the variation of the contract.¹⁴⁵

Standard contracts

- 3.68 Similar provisions enable the terms of both periodic standard contracts¹⁴⁶ and fixed term standard contracts to be varied.¹⁴⁷ This is subject to the over-riding provision that certain terms of an occupation contract cannot be varied.¹⁴⁸
- 3.69 There is no specific provision relating to the varying of the rent of a fixed term standard contract the parties can agree to make provision, or accept that it is in the nature of a fixed-term that there need be no variation. If they do not, this is not an issue on which Parliament should intervene.

¹³⁸ CI 111.

¹³⁹ CI 159.

¹⁴⁰ CI 82(1)(a).

¹⁴¹ Cl 82(1)(b).

¹⁴² Cls 82(2) and (3).

¹⁴³ CI 82(4).

¹⁴⁴ CI 82(6).

¹⁴⁵ Cls 83(1) and (2).

¹⁴⁶ Cls 84 to 88.

¹⁴⁷ Cls 89 and 90.

¹⁴⁸ See above, at paras 2.17 and 3.62.

3.70 Where a fixed term standard contract expires, it is deemed to become a periodic standard contract by operation of law. 149 In this case, the relevant rent variation terms apply to the new periodic contract. 150

Variation by Act of Parliament

3.71 The terms of any occupation contract may also, of course, be varied by or as a result of any enactment.¹⁵¹ Our contracts provide a way for Parliament to respond to emerging public concerns in a flexible and straightforward way. For example, though this is currently not the case, it might be envisaged that one day a Government might wish to make the installation of a fire alarm a term of any occupation contract. This provision allows this to be achieved by statutory amendment.

Enforcement

3.72 Given the importance of the landlord providing the contract-holder with a written statement of any variation, the Bill provides for the payment of compensation for failure to do this, on bases similar to those provided for failure to provide a written statement of the contract. 152

CONVERSION OF EXISTING TENANCIES AND LICENCES TO OCCUPATION CONTRACTS

- 3.73 One of the historic causes of complexity in housing law is the tendency, when new legislation is passed, to leave existing legislation in place and not clear the decks. We have sought to avoid this result. The Bill provides that:
 - (1) On the day on which the new regime comes into effect the appointed day existing tenancies or licences that are secure, assured, assured shorthold or other defined forms of tenancies cease to be such. Any such tenancy or licence due to come into effect after the appointed date does not take effect as such but as an occupation contract.¹⁵³

¹⁴⁹ CI 165(2).

¹⁵⁰ CI 165(4) provides that the fundamental provisions applicable to periodic standard contracts are incorporated as terms of the new contract without modification.

¹⁵¹ Cls 79(b), 84(b) and 89(1)(b).

¹⁵² CI 92.

CIs 218 and 219. Special arrangements have been made in relation to agreements falling within the Rent Act 1977 (cl 221) and the Rent (Agriculture) Act 1976 (cl 222). The reasons for this are discussed above, at paras 2.5 and 2.6.



(2)

PART 4 TERMINATION OF OCCUPATION CONTRACTS

INTRODUCTION1

- 4.1 At present, tenancy agreements may make provision for termination of the agreement. Nevertheless, whatever the agreement says, the tenant cannot be evicted unless statutory criteria ("grounds for possession") are proved to the satisfaction of a court.² But there is no guarantee that the tenant will know from the agreement what the true legal position is. In many cases, they cannot find it out without a great deal of research or advice.
- 4.2 Part 6 of the Bill sets out fundamental provisions relating to the termination of occupation contracts, to be incorporated into the contract as fundamental terms. Thus, the circumstances in which the contract may be terminated are set out in the contract itself without the need to refer to other sources of information. This increased transparency is an important result of our consumer protection approach.
- 4.3 The discussion is divided into three sections:
 - (1) general rules;
 - (2) termination by the landlord; and
 - (3) rules applying specifically to occupation contracts where there are joint contract-holders.

GENERAL RULES

- 4.4 The discussion of the general rules falls under four heads:
 - (1) fundamental provisions applying to all occupation contracts;
 - (2) fundamental provisions applying to secure and standard periodic contracts:
 - (3) other provisions; and
 - (4) abandonment.

Fundamental provisions applying to all occupation contracts

- 4.5 The following fundamental provisions are incorporated as terms of all occupation contracts.
 - Termination of agreements is discussed in Part 9 of Renting Homes (2003) Law Com No 284.
 - CI 192 limits the courts power to order possession to certain grounds for possession. Some of these grounds are mandatory in which case the court will have no choice but to order possession if it believes the ground has been made out. Others are discretionary. The court will have to be satisfied not only that the ground is made out but also that it is reasonable to order possession.

Termination before the effective date

- 4.6 The effective date of an occupation contract is the date on which the contract-holder is entitled to begin occupying the premises.³ A landlord and contract-holder can enter into an occupation contract where the effective date of the contract is some time after the date on which the contract is agreed. To give a common example, a student may, in February, enter into a contract to rent accommodation for an academic year starting in September. The effective date is months after the date of the agreement.
- 4.7 It is a fundamental term that, during this period, the contract can be terminated only by the contract-holder. The contract holder is entitled to terminate the contract by giving notice to the landlord, where the landlord has failed to give the contract-holder a written statement of the agreement. Where such notice is validly given, the contract-holder ceases to have any liability under the contract, and becomes entitled to the return of any deposit, rent or other consideration paid in advance to the landlord.

Termination on or after the effective date

- 4.8 On or after the effective date, the occupation contract may only be brought to an end:
 - (1) in accordance with fundamental terms of the contract which incorporate fundamental provisions in part 6 of the Bill, or other terms included in the contract in accordance with part 6 of the Bill; or
 - (2) in accordance with an enactment, including the consumer protection regulations.⁷

Joint contract-holders

- 4.9 At present, where there is a joint tenancy agreement, the law provides that the contract is brought to an end where only one of the parties gives notice to quit to the landlord. The procedure is often used in cases of marital/partnership breakdown. The spouse/partner who has left the premises gives notice to quit to the landlord. This terminates the joint agreement, and leaves the party left behind with no rights to remain in the premises.
- 4.10 Often this may lead to a desirable outcome. For example, a local authority family dwelling should not remain occupied by the remaining partner, living there alone, when the premises would be better utilised accommodating a family. This outcome may be even more desirable where the partner who has left has been driven from the home by domestic violence.
 - ³ Cl 235.
 - ⁴ Cl 156(1)(a).
 - The contract-holder's notice must be given under cl 156(2). The written statement of the agreement is required by cl 24.
 - 6 CI 156(3).
 - Cl 152(1)(b). The consumer protection regulations are defined in cl 236(2) as the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000 No 2334).
 - ⁸ Hammersmith and Fulham LBC v Monk [1992] 1 AC 478.

- 4.11 However, reaching this result by this means is unsatisfactory. While, in the examples given, there may be general agreement that the outcome is fair, there are circumstances where the interests of a joint contract-holder are unfairly damaged by the act of another. Landlords must be able to seek possession in such cases; but they should do so in transparent fashion, not by the utilisation of arcane principles of common law. We set out below how landlords can achieve the same outcome, while providing the party left behind with a chance to argue the point.⁹
- 4.12 Thus the new scheme provides that joint contract-holders cannot, acting by themselves, bring the contract to an end, unless they act jointly with all the other contract-holders.¹⁰

Agreement

4.13 There is no reason why parties to a contract cannot agree that the contract is terminated. If they all agree, the contract ends when the contract-holder gives up possession of the premises, in accordance with the agreement.¹¹

Repudiation by the landlord

4.14 If the landlord repudiates the contract (such as by failing to repair premises that had become unfit and behaving in such a way as to suggest that the landlord was not bound by the covenant to repair¹²) and as a result the contract-holder gives up possession of the premises, the contract ends when possession is given up.¹³

Death of the contract-holder

4.15 At present, general landlord and tenant law provides that where the tenant dies, (assuming there are no other tenants entitled to remain in possession) the tenancy nevertheless continues until the former tenant's personal representatives or the landlord formally end the tenancy. This rule causes considerable confusion in practice and can lead to unfairness, particularly if, as a result, the landlord pursues a claim for unpaid rent for the period between the death and the date of notification. We think clearer rules are needed, which maintain an appropriate balance between the interests of the family of the deceased, and those of the landlord.

⁹ See paras 4.82 to 4.83 below.

¹⁰ CI 155.

¹¹ CI 157.

¹² The facts in *Hussein v Mehlman* [1992] 2 EGLR 87.

¹³ CI 158.

- 4.16 We recommend that where a sole contract-holder dies, the contract ends either one month after the death of the contract-holder; or earlier if the landlord is given notice of the death.¹⁴ Notice of the death can be given to the landlord either by the personal representatives of the deceased contract-holder, or by the permitted occupiers of the premises aged 16 and over, acting together.¹⁵ The requirement for the occupiers to act together is to prevent one unfairly stealing a march on the others.
- 4.17 There are two exceptions to these general rules.
 - (1) If, at the time of the death of the contract-holder, one or more persons are qualified to succeed the contract-holder, the contract does not come to an end.¹⁶
 - (2) If, at the date of the contract-holder's death, a family property order¹⁷ has been made by a court which requires the contract-holder to transfer the contract to another, and the order has effect, the contract does not come to an end.¹⁸ If, after the contract-holder's death, the order ceases to have effect, and there is no person qualified to succeed the contract-holder, the contract ends when the order ceases to have effect, or, if later, at the time set out in paragraph 4.16 above.¹⁹

FIXED TERM STANDARD CONTRACTS

4.18 In the case of fixed term standard contracts (only), on the death of a sole contract-holder, there may still be an asset – the remainder of the term of the contract – which the contract-holder may wish to leave to another by will. In this case, the Bill provides a means whereby the balance of a fixed term standard contract may be transferred to another person in the course of administration of the deceased person's estate, if the contract contained a term providing for this to happen. Where this happens, the rules set out above (paragraphs 4.15 to 4.17) do not apply.²⁰

¹⁴ CI 159(1).

¹⁵ Cl 159(2). The position where there is a surviving joint contract-holder, or where the rules relating to succession to the contract apply are discussed below in Part 7.

¹⁶ Cl 159(3). The right of succession is discussed below in Part 7.

¹⁷ Defined in cl 237.

¹⁸ Cl 159(4).

¹⁹ CI 159(5).

²⁰ CI 133.

- 4.19 Similarly, on the death of a joint contract-holder, a fixed term standard contract may provide that the joint contract-holder's interest in the contract may be transferred to another person in the course of administration of the deceased person's estate.²¹ If it does so, it must also provide that such a transfer cannot take place unless, before his or her death, the joint contract-holder has notified the other joint contract-holder(s).²² Further, it must also provide that the transferee is not entitled to occupy the premises without the consent of the other joint contract-holders.²³
- 4.20 Transfers are discussed more generally at paragraphs 6.36 to 6.60 and 6.74 to 6.76.

Fundamental provisions applying to secure and periodic standard contracts

Contract-holder's notice

- 4.21 At present, an occupier under a periodic tenancy or periodic licence must give at least four weeks notice of their intention to terminate the tenancy.²⁴ In Renting Homes²⁵ we suggested that this four week rule should be retained as a statutory minimum.
- 4.22 We have changed our views on this. We now recommend that any minimum period should be set out as a supplementary term in the agreement. We recommend that the appropriate authority should prescribe a supplementary provision that will provide for a one month minimum, but this will be able to be modified or varied by the parties. Where a contract-holder is determined to leave the contract, it is better for the contractual term to be flexible, to encourage the contract-holder to act in accordance with it, rather than be inflexible, which may simply encourage the contract-holder to walk away from the agreement. Any modified or varied term must be fair.
- 4.23 Both secure and periodic standard contracts will contain a fundamental term that the contract-holder can give the landlord written notice of intention to give up possession of the premises on a date specified in the notice.²⁷
- 4.24 If the contract-holder gives up possession of the premises on or before the date specified in the notice, the contract ends on the date specified.²⁸
- 4.25 If the contract-holder gives up possession after that date, but in connection with the notice:

²¹ Cl 136(1).

²² Cl 136(2).

²³ Cl 136(3).

²⁴ Protection from Eviction Act 1977, s 5.

²⁵ (2003) Law Com No 284, para 9.110 onwards.

²⁶ CI 172.

²⁷ CI 167.

²⁸ CI 170(1).

- (1) the contract ends on the day the contract-holder gives up possession of the premises: ²⁹ or
- (2) if the case goes to court, and the court makes a possession order, the contract ends on the date determined in accordance with clause 154 (see paragraph 4.56 below).
- 4.26 If the contract-holder withdraws the notice before the contract comes to an end, and the landlord does not object in writing before the end of a reasonable period, the contract continues to have effect.³⁰
- 4.27 In order to recover possession from a contract-holder who does not move out, the landlord is able to make a claim to the court for recovery of possession.³¹ If the ground is made out, the court must order possession.³² Before starting proceedings, the landlord must give a possession notice to the contract-holder which specifies this ground for possession.³³ The landlord can start the actual claim proceedings on the same day.³⁴
- 4.28 On the "use it or lose it" principle, it is specifically provided that a landlord cannot make a claim for possession more than six months after the date on which the possession notice has been given.³⁵ In addition, a landlord cannot give a possession notice specifying the contract-holder's notice ground more than two months after the date specified in the contract-holder's notice as the date on which the contract-holder would give up possession of the premises.³⁶

FIXED TERM STANDARD CONTRACTS

4.29 A contract-holder under a fixed term standard contract does not have a statutory right to terminate the contract. Such a contract may contain a term which enables the contract-holder to terminate the contract before the end of the fixed term (a "contract-holder's break clause"). Where such a term exists, the contract-holder may give a notice in writing in accordance with this term. Again a landlord cannot give a possession notice more than two months after the date specified in the contract-holder's notice as the date on which the contract-holder would give up possession of the premises.³⁷

²⁹ Cl 170(2)(a).

³⁰ CI 170(3).

³¹ CI 168(1)

³² Cl 168(2).

³³ CI 169(1).

³⁴ Cl 169(2).

³⁵ CI 169(3).

³⁶ CI 169(4).

This is the result of the interaction of cls 171(2) and 169(4).

Other provisions

Death of the landlord

- 4.30 In general we have sought to ensure that our scheme applies to all occupation contracts, irrespective of whether they are tenancies or licences. Nonetheless, the lease-licence distinction remains important in a number of circumstances. The death of a landlord is one of them.
- 4.31 Where a landlord dies, the obligations under any occupation contracts, which are legally tenancies, transfer to those entitled under the landlord's estate under the normal principles of the law of succession. For the avoidance of doubt, the Bill specifically provides that where the contract is a licence, the licence comes to an end on the death of the landlord.³⁸

Expiry of fixed term

- 4.32 It has long been the policy of the Rent Act and Housing Acts that when a fixed term tenancy ends, it is transformed by operation of statute into a statutory periodic tenancy, unless a new fixed term has been agreed and taken effect. This is a sensible policy, as it reflects most people's expectations of what should happen on the expiry of the fixed term. We have retained this principle in the present Bill, adapted to fit the scheme we recommend.
- 4.33 On expiry of the fixed term, the following possibilities are contemplated.
 - (1) The landlord and contract-holder may agree to enter into a new contract relating to the premises (or substantially the same premises), which follows on the expiry of the old contract.³⁹
 - (2) If there is no such agreement, the landlord and contract-holder are deemed to have entered a new periodic standard contract in relation to the premises. It follows on immediately from the expiry of the fixed term contract. The rental period is the same as that for which rent was paid under the fixed term contract. All the fundamental and supplementary provisions applicable to a periodic standard contract are incorporated without modification. Subject to these points, the terms of the new contract are the same as those under the fixed term contract.⁴⁰
- 4.34 In order to protect the position of the contract-holder, the Bill provides that if, before the new occupation contract comes into effect, the contract-holder enters an obligation to do something that will cause the new contract to come to an end, the obligation is unenforceable. Similarly if the contract-holder gives notice or any other document which would cause the new contract to come to an end, the notice or document are to be of no effect.⁴¹

³⁸ Cl 164.

³⁹ Cl 165(6).

⁴⁰ Cls 165(1) to (5).

⁴¹ CI 165(7).

Surrender and transfer

- 4.35 We wanted, as far as possible, to avoid the complexity of the rules relating to surrender and transfer found in landlord and tenant law. Indeed, the principal reason for recommending a new procedure relating to abandoned premises is the complexity of that law and the fact that many people may think they have abandoned their obligations under the agreement when, in law, they have not. Thus the common law rules on surrender and transfer do not apply to occupation contracts. Clause 152 of the Bill provides the only ways in which an occupation contract can be ended, namely, in accordance with:
 - (1) terms included in the contract in accordance with part 6 of the Bill (including fundamental terms incorporating fundamental provisions relating to termination); or
 - (2) an enactment (including in particular the Rented Homes Bill and the Consumer Protection (Distance Selling) Regulations 2000.⁴²

Clause 152 therefore means that other methods of ending contracts which would otherwise have been available at common law are not available in the case of occupation contracts.

Rescission and frustration

4.36 Nonetheless clause 152 does provide that any right of the landlord or the contract-holder to rescind the contract (for example for misrepresentation or duress) is not affected; nor is the operation of the law of frustration.⁴³

Abandonment

4.37 One issue which emerged strongly from our consultation was the lack of any specific provision to deal with the not uncommon situation where a person who has been occupying premises simply walks away from their contractual obligations.

⁴² SI 2000 No 2334.

⁴³ Cl 152(2).

4.38 We noted in Renting Homes that there was an important balance to be struck.⁴⁴ On the one hand, where an occupation contract has been broken, the landlord should not be put to disproportionate trouble and expense to regain possession of their premises. On the other hand, the law should not make it so easy to do this that the unscrupulous landlord could circumvent the normal legal restrictions relating to regaining possession of premises. We were quite clear that the present law (under which the occupier, who leaves without giving the landlord notice of their intention to end the agreement, may remain liable under its terms, although in reality it may not be worth the landlord's time and effort to bring proceedings against the delinquent occupier) did not achieve the appropriate balance. The current law (relying on concepts such as implied surrender) is unfair on landlords as it is often unclear. Our recommendations offer a better balance, giving the landlord clearer procedures, while maintaining safeguards for the occupier.

Securing the premises

4.39 Where a landlord under an occupation contract which contains a term requiring the contract-holder to occupy the premises as their only or principal home believes that the contract-holder has abandoned the premises, the landlord can enter the premises subject to the contract to make them secure or to safeguard their contents and any fixtures or fittings. In so doing, the landlord may use reasonable force 45

Recovery of possession

- 4.40 Possession may be regained by a landlord who follows the following process, as set out in the Bill.⁴⁶
 - (1) In order to recover possession, the landlord must give the contract-holder a written warning notice which:
 - (a) states that the landlord believes the contract-holder has abandoned the premises;
 - (b) requires the contract-holder to inform the landlord within the warning period⁴⁷ if he/she has not abandoned the premises; and
 - (c) tells the contract-holder that the landlord intends to bring the contract to an end if satisfied at the end of the warning period that the premises have been abandoned.⁴⁸
 - (2) During the warning period, the landlord must make such inquiries as are necessary to satisfy him or herself that the contract-holder has abandoned the premises.⁴⁹

^{44 (2003)} Law Com No 284.

⁴⁵ CI 163.

⁴⁶ CI 160.

⁴⁷ Four weeks: cl 160(8).

⁴⁸ Cl 160(3).

- (3) At the end of the warning period the landlord may bring the contract to an end by giving notice in writing to the contract-holder. The contract ends at that point. The landlord may then recover possession, as against the contract-holder, without court proceedings.⁵⁰
- (4) The landlord must give copies of any warning notice, or notice terminating the contract to any lodger or sub-holder of the contract-holder.⁵¹

DISPOSAL OF PROPERTY

4.41 The appropriate authority may by regulations provide for the safeguarding and disposal of property – other than the landlord's – found on the premises when the contract has been brought to an end.⁵²

CONTRACT-HOLDER'S REMEDIES

- 4.42 The contract-holder may, within six months from the date on which they were given the notice ending the contract, apply to court on one of the following grounds:
 - (1) that the landlord had failed to give a warning notice;
 - (2) that the landlord had failed to make the appropriate inquiries;
 - (3) that the contract-holder had not abandoned the premises and the failure to respond (or to respond adequately) to the warning notice was justified; or
 - (4) that when the landlord gave the notice ending the contract, the landlord did not have reasonable grounds for concluding that the contract-holder had abandoned the premises.⁵³
- 4.43 If the court finds that any one or more of these grounds are made out, it may either:
 - (1) make a declaration that the notice ending the contract is of no effect and that the contract continues to have effect; or
 - (2) order that the landlord provide suitable alternative accommodation to the contract-holder.

It may also make any other order it thinks fit.54

⁴⁹ CI 160(4).

⁵⁰ CI 160(5) to (7).

⁵¹ Cl 160(9).

⁵² CI 161.

⁵³ Cl 162(1) and (2).

CI 162(3). Sch 5 applies to determine whether accommodation is a suitable alternative: cl 162(4).

TERMINATION BY THE LANDLORD

- 4.44 Our recommendations regarding the termination of occupation contracts by the landlord largely reflect the current legal position. In order to terminate, the landlord must first give a notice setting out their intention to seek possession of the premises; second the landlord must ask the court for an order for possession. Where the ground for possession relied on is discretionary, the court can only make an order where it decides it would be reasonable to do so. Where the ground is mandatory, the court must order possession and has only very limited power to postpone the effect of the order.
- 4.45 Even though our recommendations broadly reflect the current position, there are important changes of detail.
 - (1) Long statutory lists of grounds for possession set out in the Housing Acts 1985 and 1988 are replaced by much shorter lists.
 - (2) The details of the grounds for possession are set out as terms in the contract, not in a separate body of statute law.
 - (3) Greater emphasis is given to the estate management grounds for possession.
 - (4) There is rationalisation of the periods of notice which the landlord must give before starting court proceedings for possession.
 - (5) We have adopted a general principle of "use it or lose it". If proceedings are not started within a defined period, the possession notice lapses.
 - (6) The discretion of the court is structured. 55
 - (7) The date on which any possession order brings an occupation contract to an end is different, to remove the problem of the "tolerated trespasser".
 - (8) The law relating to forfeiture, re-entry and notice to quit does not apply to occupation contracts.

Fundamental provisions relating to all contracts

4.46 As with the present law, there are two classes of grounds on which a landlord may terminate the contract and seek an order of possession from the court: discretionary grounds and mandatory grounds.

Discretionary grounds

- 4.47 Instead of long lists of discretionary grounds set out in legislation, the Bill incorporates fundamental terms in all occupation contracts providing that a landlord may seek to bring a claim to recover possession of premises (a "possession claim") on two discretionary grounds:
 - (1) breach of contract;

⁵⁵ This is discussed in Part 5.

(2) one of the estate management grounds.⁵⁶

Mandatory ground

4.48 In addition, there is one mandatory ground which applies to all types of occupation contract.⁵⁷ This is the where the contract-holder gives the landlord notice to terminate the contract⁵⁸ but fails to give up possession of the premises.⁵⁹

Procedure - the possession notice

- 4.49 Any possession claim (except for claims under the notice-only ground applicable to periodic standard contracts, or where the landlord has given notice to end a fixed term standard contract under clause 180) must be preceded by notice of intention to bring the claim the "possession notice". ⁶⁰ The notice must specify:
 - (1) the ground(s) on which the landlord seeks to rely;
 - (2) particulars of the ground(s);
 - (3) the date after which the landlord can start the claim.⁶¹
- 4.50 Where the ground relied on is the contract-holder's notice ground, special rules apply. 62

The possession claim

- 4.51 As a general rule, a possession claim cannot be brought before one month from the date on which the possession notice was given to the contract-holder.⁶³
- 4.52 There are two exceptions to this. A possession claim may be made on the same day that the possession notice is given where the ground (or one of them) specified in the notice is:
 - (1) a breach of the fundamental term relating to prohibited conduct;⁶⁴ or
 - (2) the contract-holder's notice ground. 65

⁵⁶ Cls 183 and 185. Sch 6 sets out the estate management grounds, which are discussed in detail, below at paras 4.69 to 4.83.

⁵⁷ Other mandatory grounds apply to periodic standard contracts.

⁵⁸ Discussed above, at paras 4.21 to 4.28.

⁵⁹ Cls 168 and 195(2)(a).

⁶⁰ Cls 153(2), 169(1), 184(1), 186(1) and 188(1). For the powers of the court in cases where the landlord fails to give the possession notice, see below at para 5.6.

⁶¹ CI 153(2).

⁶² See above, at paras 4.27 and 4.28.

⁶³ Cls 184(3), 186(2)(a) and 188(2)(a).

⁶⁴ Cl 184(2). Prohibited conduct is defined in cl 51 discussed below in Part 10.

⁶⁵ Cl 169(2), discussed above, at paras 4.21 to 4.28.

4.53 In accordance with the "use it or lose it" principle, there are fundamental terms providing that a possession claim cannot be brought more than six months from the date on which the possession notice was given. 66 Once that time has elapsed, proceedings cannot be brought until after a new possession notice is given.

Effect of possession order

Removing the tolerated trespasser

- 4.54 One of the problems with the current law is that, where a suspended possession order is made, and the tenant breaks one of the terms of that order (such as to pay arrears of rent), this brings the tenancy to an end, by operation of law. In practice, the former tenant often carries on living in the premises. The former tenant then enters a form of legal limbo living there, but with no specific contractual entitlement to be there.
- 4.55 The courts have dealt with this by creating a new form of legal status the "tolerated trespasser". ⁶⁷ In legal logic, this is an impossibility; a trespasser by definition has no rights to be on the land and therefore cannot be tolerated. We want to abolish this troublesome concept.
- 4.56 The Bill provides that, where a court has made a possession order, the contract comes to an end:
 - (1) where the contract-holder gives up possession of the premises on or before the date specified in the order, on that specified date;
 - (2) where the contract-holder gives up possession of the premises after the date specified in the order but before the order is formally executed, on the date the contract-holder gives up possession;
 - (3) where the contract-holder does not give up possession of the premises until the order is executed, on the date when the order is executed. 68
 - (4) where the court makes a possession order against joint contract-holders, and it is a condition of the order that the landlord offers a new contract of the same premises to one or more (but not all) of them, the occupation contract in respect of which the possession order is made comes to an end immediately before the effective date of the new contract.⁶⁹

⁶⁶ Cls 169(3), 184(4), 186(2)(b) and 188(2)(b).

⁶⁷ Burrows v Brent LBC [1996] 4 All ER 577, by Lord Browne-Wilkinson at 584.

⁶⁸ Cl 154(1).

⁶⁹ Cl 154(2) and (3). Further principles relating to the termination of occupation contracts with joint contract-holders are discussed below at para 4.84 onwards.

Fundamental provisions relating only to standard contracts

Landlord's notice

- 4.57 An essential feature of the present law is that a private landlord may bring an assured shorthold tenancy to an end, merely by issuing a notice to that effect. The ability of the landlord to do this is irrespective of any fault on the part of the tenant. This principle is brought into the present Bill.
- 4.58 The landlord under a periodic standard contract may give the contract-holder written notice that he/she must give up possession of the premises on the date specified in the notice. The date specified must be at least two months from the date on which the notice was given.⁷⁰ This simplifies the present law, which requires the period of a notice also to be linked to a rental period.⁷¹

4.59 The contract ends:

- (1) where the contract-holder gives up possession of the premises on or before the date in the notice, on the date specified in the notice;⁷²
- (2) where the contract-holder gives up possession of the premises after that date, but in connection with the notice, on the day the contract-holder gives up possession of the premises;
- (3) where the landlord obtains a court order for possession, on the date determined by clause 154 as the date on which the contract ends.⁷³
- 4.60 If the landlord's notice is withdrawn before the contract ends, and the contract-holder does not object in writing before the end of a reasonable period, the notice ceases to have effect.⁷⁴

SPECIAL RULES RELATING TO FIXED TERM CONTRACTS

- 4.61 In relation to fixed term standard contracts, two different landlord's notice grounds are available:
 - (1) The landlord may serve a notice before or on the last day of the fixed term requiring the contract-holder to give up possession of the premises on a date specified in the notice.⁷⁵
 - (2) The contract may contain a "landlord's break clause" allowing the landlord to serve a notice requiring the contract-holder to give up possession on a specified date before the end of the fixed term.⁷⁶

⁷⁰ Cl 173 and 174.

⁷¹ Housing Act 1988, s 21.

⁷² CI 179(1).

⁷³ Cl 179(2). Cl 154 is discussed above, at para 4.56.

⁷⁴ CI 179(3).

⁷⁵ CI 180.

⁷⁶ CI 182.

- 4.62 If the landlord has given a notice under paragraph 4.61(1) above, but the fixed term contract has ended and become a periodic contract⁷⁷ the landlord can nevertheless pursue a possession claim based on the notice which was given before the fixed term came to an end.⁷⁸ In this situation, the landlord may continue to rely on events that occurred while the fixed term contract was in force.⁷⁹
- 4.63 The same rules apply to notices given by the landlord at the end of the fixed term or under the break clause as apply to a landlord's notice under a periodic standard contract.⁸⁰

Mandatory grounds

- 4.64 In addition to the grounds for possession available generally, landlords under standard contracts have two other mandatory grounds for possession available to them. They are:
 - (1) where the landlord has given a landlord's notice to which the contractholder has not responded by voluntarily giving up possession of the premises;⁸¹ and
 - (2) where the contract-holder is in serious arrears of rent.82

Possession claim - time restrictions

- 4.65 A claim for possession under the landlord's notice ground, either under a periodic standard contract, or in relation to a fixed term standard contract, cannot be made before the end of the period of the notice, which must be at least two months.⁸³
- 4.66 Applying the principle of "use it or lose it", a claim for possession cannot be brought more than four months after the end of the two-month period of the notice.⁸⁴

⁷⁷ Under cl 165, discussed above, at paras 4.32 to 4.34.

⁷⁸ Cl 181(1).

⁷⁹ Cl 181(3).

⁸⁰ Cls 181(2) and 182(2).

⁸¹ Cls 175 and 195(2)(b).

Cls 187 and 196. Serious rent arrears are defined by reference to the rental period. Where rent is payable monthly at least two months rent must be unpaid on the date the landlord gives the possession notice, and on the date on which the court hears the possession claim arising from that notice: cls 187(2) and (3). Cl 187(2) specifies the level of arrears required on those dates where the rental period is a week or fortnight (at least eight weeks' rent unpaid), a quarter (at least one quarter's rent unpaid) and a year (at least three months rent unpaid). This mirrors the Housing Act 1988, sch 2, part 1, ground 8.

⁸³ Cls 176(a) and 182(2).

⁸⁴ CI 176(b).

4.67 A landlord under a standard contract who seeks to use the landlord's notice ground, but has failed to provide a written statement of the contract within two weeks from the effective date of the contract, 85 may not make a possession claim until the end of a period of six months from the date on which the written statement was given to the contract-holder. 86

Forfeiture, notice to quit and re-entry

- 4.68 Under landlord and tenant law, the most common means of bringing fixed term tenancies to an end is through application of the law of forfeiture or re-entry. Periodic tenancies are brought to an end by notice to quit. In line with our general aim of reducing the dependency of the law of residential lettings on principles of landlord and tenant law, the Bill specifically provides that:
 - (1) a landlord under an occupation contract may not rely on any provision in a contract for re-entry or forfeiture in relation to the premises subject to the contract:
 - (2) a landlord under an occupation contract may not rely on any enactment or rule of law on re-entry or forfeiture in relation to any premises subject to the contract;
 - (3) a landlord may not serve any notice to quit the premises subject to the contract; and
 - (4) any provision in an occupation contract for re-entry, forfeiture or notice to quit is of no effect.⁸⁷

Estate management grounds

Introduction

4.69 Existing schemes of statutory protection contain provisions which provide opportunity for landlords to provide suitable alternative accommodation to tenants. Because most private tenancies currently operate under the assured shorthold tenancy regime, and in future will be standard contracts, in practice private landlords do not need particular assistance with estate management. They can regain possession of their premises with relative ease.

⁸⁵ See cl 24 discussed above, at paras 3.34 and 3.35.

⁸⁶ Cls 177 and 182(2).

⁸⁷ CI 166. The Law Commission is currently reviewing the law of forfeiture of tenancies and is expecting to publish a Report and Bill on Termination of Tenancies for Tenant Default later this year. The project is of particular importance in relation to commercial tenancies and long residential tenancies.

4.70 For social landlords and others who provide accommodation with long term security of tenure, currently afforded by the secure and assured tenancy regimes, in future by the secure contract, the situation is different. Accommodation provided with the assistance of public funding represents a substantial social investment that must be properly managed in the public interest, as well as in the private interest of the people occupying the premises. It is obviously important that contract-holders under secure contracts have their accommodation rights properly protected. But ensuring that accommodation rights are properly protected is not the same as ensuring that any particular contract-holder should be entitled to go on residing in any particular home indefinitely.

4.71 To give two obvious examples:

- (1) where a contract-holder is head of a family with a number of children, it is right they should be allocated a family home; but when the children have left home and a partner has died, it is a poor use of public resource if the accommodation continues to be occupied by the sole remaining occupant;
- (2) where accommodation has been converted to special use by a disabled person, it is a poor use of public resource if when the disabled person no longer needs that unit of accommodation another who had been living with the disabled person continues to reside there.
- 4.72 In practice, community landlords keep these matters under review and are often able to negotiate transfers of accommodation to ensure a proper match between occupant and accommodation. Nevertheless, there are occasions on which good estate management needs to be underpinned by statutory provisions. Our scheme provides that one of the grounds on which a community landlord may seek possession arises from their need to use their housing stock efficiently. This is balanced with the need to provide security and respect for home and family life, as well as avoiding disrupting the sustainability of communities by unnecessarily moving those who have created an established community.
- 4.73 We could have taken a broad approach to this and simply allowed the court to make a possession order where "suitable alternative accommodation" is available to the contract-holder, and where the court considers it reasonable to make an order. This is in essence the position that currently applies to landlords of assured tenancies. Alternatively, we could have taken a more structured approach, based on the position currently applicable to secure tenancies. This defines more precisely the circumstances in which possession may be sought against an existing occupier. Before the court to the court to make an order. This is in essence the position that currently applies to landlords of assured tenancies.

⁸⁸ Housing Act 1988, sch 2, part 2, ground 9.

⁸⁹ Housing Act 1985, sch 2, parts 2, 3 and 4.

- 4.74 The overall thrust of our recommendations relating to the development of the secure contract has been to align assured tenancies with secure tenancies. We therefore think that the circumstances in which a secure contract may be terminated on estate management grounds should be set out clearly, but with some flexibility to cover cases where there is a substantial estate management reason which does not fall precisely into another specific category. For a landlord to be able to use the estate management grounds:
 - (1) "suitable alternative accommodation" must be available; and
 - (2) in addition, being a discretionary ground for possession, a court must be satisfied that it is reasonable to make any order for possession.⁹⁰
- 4.75 If a court makes an order on an estate management ground (but no other ground), the landlord must pay to the contract-holder a sum equal to the reasonable expenses likely to be incurred by the contract-holder in moving from the original premises. ⁹¹ This does not apply where the ground is one of the two "redevelopment" grounds (see below, paragraph 4.79). ⁹²

The estate management grounds

- 4.76 The Bill sets out the detailed circumstances in which the estate management grounds come into operation. There are nine such grounds set out in schedule 6, part 1 of the Bill. They may be grouped into the following categories:
 - (1) redevelopment grounds (grounds A and B);
 - (2) special accommodation grounds (grounds C to F); and
 - (3) under-occupation grounds (grounds G and H).
- 4.77 In addition, however well considered legislation may be, there will always be circumstances which fall outside specific instances set out in a list. There is therefore a final, more general ground "where it is desirable for some other substantial estate management reason that the landlord should obtain possession of the premises" (ground I). Were this ground to be utilised, it would clearly be necessary for the landlord to demonstrate and the court to accept that the particular circumstances in which possession was sought were closely analogous to the specific grounds listed in the schedule.
- 4.78 The details of the grounds are set out in the Bill. Here we summarise their principal features.

THE REDEVELOPMENT GROUNDS

- 4.79 There are two such grounds:
 - (1) ground A applies where a landlord intends to redevelop the premises and cannot achieve this without first obtaining possession of the premises;

⁹⁰ Cls 185(2)(a) and 200(2). We recommend that the discretion be structured: see Part 5.

⁹¹ CI 185(3).

⁹² Cl 185(4).

(2) ground B applies where the premises are located in an area which is the subject of an approved redevelopment scheme.⁹³

THE SPECIAL ACCOMMODATION GROUNDS

- 4.80 There are four such grounds:
 - (1) ground C applies where the landlord is a charity and the contract-holder's continued occupation would conflict with the objects of the charity;
 - (2) ground D applies to accommodation adapted for the physically disabled, where there is no longer such a person living in the accommodation;
 - (3) ground E applies to accommodation specifically provided for those difficult to house, where there is no such person living in the accommodation, or that person has been offered a secure contract to occupy other premises;
 - (4) ground F applies to accommodation designed for persons with special needs, where there is no longer such a person living in the premises.

THE UNDER-OCCUPATION GROUNDS

- 4.81 We considered whether there should be a general ground to enable a landlord to seek possession on the basis that accommodation was under-occupied. In the event we concluded that this was not necessary, not least because of rules contained in the housing benefit scheme which have the effect of putting pressure on occupiers in these circumstances to scale down the size of their accommodation.⁹⁴
- 4.82 We recommend two grounds should fall into this category. In both cases, the current accommodation must be more extensive than is reasonably required by the contract-holder.
 - (1) Ground G applies where a "reserve successor" succeeds to the property and the landlord gives a possession notice more than six months but less than 12 months after the contract-holder's death. (These time periods (set out in clause 186(4)) are designed: to enable the successor to continue in the premises for a reasonable period after the death; to give the landlord a chance to move the new contract-holder after the period of mourning has elapsed; but to limit the window of opportunity available to the landlord so that any threat of proceedings can be lifted if nothing is done by the anniversary of the original contract-holder's death).

See also cl 189. Detailed provisions relating to the approval of a redevelopment area are set out in the Bill in sch 6 part 2.

The amount payable by way of housing benefit is reduced in circumstances where the extent of the accommodation is greater than that required by the occupier: see Rent Officers (Housing Benefit Functions) Order 1997 (SI 1997 No 1984) art 3 and sch 1, part 1 – power to make size and rent determinations.

⁹⁵ Defined below, at paras 7.20 to 7.22.

- (2) Ground H applies where a joint contract-holder has withdrawn from the contract or been excluded from the contract, and either the accommodation is more extensive than the remaining contract-holders need, or (where the landlord is a community landlord) the remaining contract-holder(s) do not meet the landlord's criteria for allocating housing accommodation. A landlord seeking to use this ground must serve the requisite possession notice within six months from the date on which the joint contract-holder withdrew or was excluded.⁹⁶
- 4.83 Both these cases could involve some quite difficult choices in balancing the public and private interest. Thus in determining whether or not it is reasonable for the judge to make an order for possession in such a case, there are specific provisions relating to how the judge's discretion should be structured in such cases.⁹⁷

JOINT CONTRACTS - TERMINATION

- 4.84 Our general objective in relation to joint contracts is that each joint contract-holder should as far as possible be treated as an individual. We have therefore made special provision to deal with a number of issues that arise in practice where the present law is unclear or unsatisfactory. The topics we consider here are:
 - (1) termination by the joint contract-holder;
 - (2) termination by the landlord;
 - (3) termination by other joint contract-holders.
- 4.85 The objective of the provisions is to enable all parties landlords and other joint contract-holders to know where they stand in relation to their rights and obligations.

Termination by the joint contract-holder

4.86 The following rules adapt for joint contract-holders the rules, discussed above, which relate to sole contract-holders.

⁹⁶ CI 186(5).

⁹⁷ Sch 7 paras 11 and 12. Discussed in detail in Part 5 below.

⁹⁸ See paras 4.21 to 4.29.

Secure and periodic standard contracts

- 4.87 All secure and periodic standard contracts contain a fundamental term that a joint contract-holder may withdraw from the contract by giving notice a withdrawal notice to the landlord. The notice must specify the date the withdrawal date after which he/she intends no longer to be bound by the contract. The joint contract-holder must give a written warning to the other joint contract-holders when giving the withdrawal notice to the landlord, and must attach a copy of the withdrawal notice.
- 4.88 On receipt of the notice the landlord must, as soon as reasonably practicable after receiving the withdrawal notice, warn the other contract-holders about this. The landlord must write to the others, attaching a copy of the withdrawal notice. 101 We are imposing warning requirements on both the landlord and the joint contract-holder seeking to withdraw in order to offer the remaining joint contract-holders the fullest opportunity to seek a replacement for the departing joint contract-holder to take over that person's share of the rent.
- 4.89 The joint contract-holder's rights and liabilities under the contract cease on the withdrawal date, though this does not remove any rights and liabilities accruing before that date. 102

Fixed term standard contracts

4.90 A fixed term standard contract may include a term permitting the contract-holder to bring the contract to an end before the completion of the fixed term by giving the landlord written notice. ¹⁰³ It may also provide that where one or more joint contract-holders (but not all) gives notice in writing, it is to be treated as a withdrawal notice. In such a case, the landlord must – as above – warn the other joint contract-holders in writing. The treatment of the rights and liabilities of the withdrawing contract-holder are also as set out in the previous paragraph. ¹⁰⁴

⁹⁹ Cl 112(1).

CI 112(2). Where one or more (but not all) joint contract-holders have given notice under cl 167 (which is for use by a single contract-holder) this is to be treated as a withdrawal notice: cl 112(6).

¹⁰¹ CI 112(4).

¹⁰² CI 112(5).

¹⁰³ CI 171.

¹⁰⁴ CI 114.

Termination by the landlord

- 4.91 A landlord may believe that a joint contract-holder who, as a term of the contract, is required to occupy the premises as their only or principal home, 105 does not in fact occupy the premises and does not intend to occupy them. In this case, the landlord may bring their rights and obligations to an end in accordance with the following procedure. This procedure is, in effect, an alternative to the use of possession proceedings, to be used in situations similar to those where a sole contract-holder has abandoned premises. 107
- 4.92 The landlord must first give the relevant joint contract-holder an (initial) notice in writing which:
 - (1) states that the landlord believes the joint contract-holder does not occupy and does not intend to occupy the premises;
 - (2) requires the joint contract-holder to inform the landlord in writing, within four weeks, if they intend to occupy the premises; and
 - (3) tells the joint contract-holder that a failure to respond will result in the landlord taking steps to terminate their interest under the contract. 108
- 4.93 During the four-week warning period, the landlord must make such inquiries as are necessary to satisfy him or herself that the joint contract-holder does not occupy the premises and does not intend to do so. 109
- 4.94 If at the end of the period the landlord is so satisfied, the landlord may bring the joint contract-holder's rights and obligations under the contract to an end by sending a (final) notice to that effect. The rights and obligations cease eight weeks later, though no right or liability accruing before that date is removed or waived. It

JOINT CONTRACT-HOLDER'S REMEDIES

- 4.95 During the eight week period following service of the final notice, the joint contract-holder may apply to the court for a declaration that the final notice is of no effect. The grounds on which the court may make such an order are that:
 - (1) the landlord failed to give the initial notice;
 - (2) the landlord failed to make the necessary inquiries;

¹⁰⁵ CI 115(2).

CI 115(1). These provisions are analogous to the provisions relating to abandonment, where the premises have been left completely empty, though here the remaining joint contract-holders remain in the premises.

¹⁰⁷ For abandonment, see above, at paras 4.37 to 4.43.

¹⁰⁸ Cls 115(3) and (4).

¹⁰⁹ CI 115(5).

¹¹⁰ Cl 115(6). The landlord must send a copy of both the initial notice and the final notice to the other joint contract-holders: cl 115(8).

¹¹¹ Cls 115 (7) and 111(3).

- (3) the joint contract-holder occupied or intended to occupy the premises and the failure to respond to the initial notice was justifiable; and
- (4) when the landlord gave the final notice, the landlord did not have reasonable grounds for being satisfied that the joint contract-holder did not, and did not intend to, occupy the premises.¹¹²

If the court finds that one of these grounds is made out, it may rescind the order and declare that the contract continues to have effect. It may also make any other order that it thinks fit.¹¹³

Prohibited conduct

- 4.96 In addition to removing a joint contract-holder who appears to have walked away from the agreement, the Bill enables a landlord to take action against a joint contract-holder who is in breach of the prohibited conduct¹¹⁴ term in the agreement.¹¹⁵ Unlike the position just discussed, where the landlord does not need a court order to bring the joint contract-holder's rights and obligations to an end, here proceedings analogous to possession proceedings are required.
- 4.97 In common with other possession claims, the landlord must first give the joint contract-holder notice in writing which:
 - (1) states that the landlord believes the joint contract-holder has broken the prohibited conduct term;
 - (2) specifies the particulars of the breach; and
 - (3) states that the landlord may apply to the court for an order bringing the joint contract-holder's rights and obligations to an end. 116

The landlord may apply to the court within six months from the date on which the notice was given to the joint contract-holder. 117

- 4.98 The court may make the order applied for if it would have done so, had the two following circumstances been satisfied:
 - (1) the joint contract-holder was in fact a sole contract-holder; and
 - (2) the landlord had made a possession claim against the joint contractholder on the ground of breach of the prohibited conduct term of the agreement.¹¹⁸

¹¹³ CI 116(3).

¹¹² CI 116.

¹¹⁴ See Part 9 below.

¹¹⁵ CI 119(1).

¹¹⁶ Cl 119(2). A copy of the notice must be given to any other joint contract-holders: cl 119(3).

¹¹⁷ CI 119(4).

¹¹⁸ Cls 119(5) and (6).

4.99 If the court makes the order, it must specify the date on which the joint contract-holder's rights and obligations end. This does not remove any right or waive any liability accruing before that date. This procedure would enable a community landlord, for instance, to evict a man who has been violent to his wife or partner (a breach of the prohibited conduct term), without also having to evict the victim.

Exclusion by another joint contract-holder

- 4.100 Finally, where a joint contract-holder has disappeared, the other joint contract-holders may want to determine whether or not that person is still a party to the contract. The Bill provides that where a joint contract-holder (C) believes another joint contract-holder (J) (who as a term of the contract is required to occupy the premises as their only or principal home):¹²¹
 - (1) does not occupy the premises; and
 - (2) does not intend to occupy them,

then J's rights and obligations may be brought to an end by C. 122

- 4.101 The procedure for achieving this is very similar to the procedure that must be followed by the landlord (see paragraphs 4.91 to 4.94 above) and is as follows.
 - (1) C must give J an initial notice which:
 - (a) states C's belief that J no longer occupies and does not intend to occupy the premises;
 - (b) requires J within four weeks to inform C if J intends to occupy the premises; and
 - (c) tells J that if at the end of the warning period C is satisfied that J does not occupy, and does not intend to occupy, the premises, J's rights and obligations may be brought to an end. 123
 - (2) C must give a copy of the notice to the landlord and any other joint contract-holders. 124
 - (3) During the four week period, C must make such inquiries as are necessary to satisfy himself that J does not occupy the premises and does not intend to occupy them.¹²⁵

¹²⁵ CI 117(5).

¹¹⁹ CI 119(7).
120 CI 111(3).
121 CI 117(2).
122 CI 117(1).
123 Cls 117(3) and (10).
124 CI 117(4).

4.102 At the end of the four week period, C may apply to the court for an order bringing J's rights and obligations under the contract to an end. If the court is satisfied that, indeed, J does not and does not intend to occupy the premises, the court may make the order. This must specify the date on which J's rights and obligations terminate. The order does not remove any right or waive any liability accruing before that date. The court may not make an order if it is satisfied that the reason that J does not occupy and does not intend to occupy the premises is attributable to C or another joint contract-holder breaching certain parts of the prohibited conduct term. The court may not make an order if it is

JOINT CONTRACT-HOLDER'S REMEDIES

- 4.103 J can seek a remedy from the court within six months of the date on which the order is made. J may apply to the court for a declaration that the final notice is of no effect. The grounds on which the court may make such an order are:
 - (1) that C failed to give the initial notice;
 - (2) that C failed to make the necessary inquiries;
 - (3) that J occupied or intended to occupy the premises and the failure to respond to the initial notice was justifiable; and
 - (4) that when C gave the final notice, C did not have reasonable grounds for being satisfied that J did not, and did not intend to, occupy the premises.

If the court finds that one of these grounds is made out, it may rescind the order and declare that the contract continues to have effect. It may also make any other order that it thinks fit. 129

¹²⁶ Cls 117(6), (7) and (9).

¹²⁷ Cl 111(3).

¹²⁸ CI 117(8).

¹²⁹ CI 118.

PART 5 POWERS OF THE COURT

INTRODUCTION

- 5.1 The last Part considered the rules relating to the termination of occupation contracts. This Part deals with the powers of the court¹ in relation to possession claims. For the most part, the recommended scheme replicates the effect of the current law. There are however two important reforms we recommend.
- 5.2 First, we received widespread criticism both in submissions to the Commission and in comments made at public meetings about judicial inconsistency. There was considerable feeling that too often it took too long for a party to proceedings to get a final order from the court. Given the complexity and variety of circumstances that come to court, especially in possession proceedings, it is unreasonable to expect complete uniformity and predictability of outcome. Nonetheless we think that there is a case for providing judges with some additional framework within which to exercise their discretion. This Part sets out our recommendations on structured discretion.
- 5.3 Second, we floated some radical ideas about the possible abolition of suspended possession orders and their replacement with hearings more focussed on the real issues landlords were usually concerned about, in particular the payment of arrears of rent. Reaction to these ideas was generally hostile, though some consultees saw the logic of what we were proposing. Here we recommend a power to set up pilot studies for dealing with rent cases, to test whether a new approach might in fact work.
- 5.4 Since we published Renting Homes² it was agreed that we should undertake a more wide-ranging review of housing problems and disputes. We have recently published an Issues Paper on these matters. ³ This new project does not remove the need to implement the recommendations in this Part.

POSSESSION CLAIMS

5.5 The basic outline of the law on the powers of the court in possession claims follows existing legislation. As noted, the principal change we recommend is that, when exercising their discretion, the approach to be adopted by judges should be structured, as currently happens in nuisance and anti-social behaviour cases. The structuring of discretion is discussed below.⁴

Cl 231(1) defines court as a county court or the High Court. In practice, the vast majority of housing possession cases are dealt with in the county court. The Bill also provides that provisions in this Act are subject to s 1 of the Courts and Legal Services Act 1990, which deals with the allocation of business between the High Court and county courts: cl 231(2). Power to make rules of court is also conferred: cl 231(3).

² (2003) Law Com No 284.

Housing: Proportionate Dispute Resolution: An Issues Paper (2006) available on the Law Commission website at http://www.lawcom.gov.uk/docs/issues_paper.pdf.

⁴ See below, at paras 5.31 to 5.42.

The possession notice

5.6 The court cannot normally entertain a claim for possession unless the landlord has first given a possession notice. The court has power to dispense with the notice requirement if it thinks this would be reasonable. This replaces and widens the present "just and equitable" test, which is not currently applicable in every case.

Deemed possession claims

- 5.7 There is no notice requirement in cases described as "deemed possession claims". These arise where the court has granted the landlord an injunction against the contract-holder for breach of the prohibited conduct term and the landlord now claims there has been a breach of the injunction. 10
- 5.8 Should the landlord decide to take proceedings for breach of the injunction, they are entitled to include in those proceedings a claim for possession. ¹¹ If the landlord does this, the proceedings will be treated as a claim for possession in which the landlord relies on the breach of contract ground. ¹² However, in these cases, the landlord cannot use the injunction proceedings to seek possession on a quite different factual basis. The landlord may only rely on facts that were relied on when the initial injunction was sought, and the facts alleged to constitute the breach of the injunction. ¹³

Possession orders

- 5.9 We have already noted that the number of grounds for possession set out in the Bill is much smaller than the long lists of grounds for possession that are currently set out in the Housing Acts 1985 and 1988 (as amended). In the recommended scheme there are just six, which cover all occupation contracts:
 - (1) breach of contract;¹⁵
 - (2) the estate management grounds; 16

⁵ Cl 190(1). Possession notices are discussed above, at para 4.49.

⁶ Cl 190(2).

We think that a test of reasonableness is simpler and achieves much the same outcome. The principal exception to the "just and equitable" rule is that currently in cases brought under ground 8 – the mandatory ground available to landlords under assured tenancies, where they are seeking possession on the basis of more than 2 months' rent arrears – courts cannot dispense with the notice requirement.

⁸ Cls 190(3)(b) and 191.

Discussed below in Part 9.

¹⁰ Cl 191(1).

¹¹ Cl 191(2).

¹² Cl 191(3). The breach of contract ground is discussed at para 4.47.

¹³ Cl 191(4).

¹⁴ See above, at para 4.45(1).

¹⁵ Cl 183.

¹⁶ CI 185.

- (3) contract-holder's notice;¹⁷
- (4) landlord's notice;¹⁸
- (5) landlord's notice in connection with the end of a fixed term; and
- (6) serious rent arrears. 19
- 5.10 Any order for possession of premises subject to an occupation contract must be made on one or more of these grounds.²⁰ The court cannot make an order for possession on a ground not specified in the original possession notice,²¹ though the court may allow the ground(s) specified in that notice to be altered or added to at any time before the court makes the possession order.²²

Special conditions

5.11 Each of the six grounds for possession has special conditions attached to them.

Breach of contract

- 5.12 A court may not make an order for possession on the ground of breach of the contract unless it considers that it is reasonable to do so.²³ This retains the key feature of the present law, judicial discretion, though in future the discretion will be structured.²⁴
- 5.13 It is often assumed that if a person is not in breach at the time of any hearing, the court will not make an order for possession. While this may be the practice of some judges, we do not think this should be regarded as, effectively, a rule of law. To counter this suggestion, the Bill specifically provides that the court has power to make an order even though the contract-holder ceased to be in breach before the landlord made the possession claim.²⁵ This is designed to deal, for example, with the person who frequently pays the rent late, thus imposing additional burdens on the landlord, but who always pays in the end.

¹⁷ CI 168.

¹⁸ Cl 175.

¹⁹ CI 187.

²⁰ Cl 192(1).

²¹ Cl 192(2).

²² Cl 192(3).

²³ Cl 199(2).

²⁴ Cl 199(4) and sch 7; see below, at paras 5.31 to 5.42.

²⁵ Cl 199(3).

Estate management grounds

- 5.14 Where possession is sought on the estate management grounds, the court must not only consider that it is reasonable to make the order²⁶ but also be satisfied that suitable alternative accommodation is available, or will be available when the order takes effect.²⁷ Detailed guidance on what constitutes suitable alternative accommodation is set out in the Bill.²⁸
- 5.15 The provisions relating to suitable alternative accommodation are similar to the current law. There is one important change. The Bill provides that there are circumstances in which, when a possession order is made on an estate management ground, the landlord should pay the contract-holder a sum of money to meet the expenses of removal.²⁹ The Bill provides that, if the sum to be paid cannot be agreed between the landlord and the contract-holder, it is to be determined by the court.³⁰ The Bill also provides that the sum is recoverable from the landlord as a civil debt.³¹

Contract-holder's notice

5.16 If a contract-holder gives notice that they wish to terminate the contract, but fails to give up possession of the premises, the landlord may take proceedings for possession in reliance on the contract-holder's notice. The landlord must still give the normal possession notice to the contract-holder.³² But if the court is satisfied that the ground is made out, the court is obliged to make an order for possession.³³ In other words, this is a mandatory ground for possession.

Landlord's notice

5.17 Any landlord under a periodic standard contract, which incorporates the relevant fundamental provisions relating to the landlord's notice,³⁴ may seek possession on this ground. In other words, the procedure currently available to private landlords letting under assured shorthold tenancies is extended to all circumstances in which a standard contract has been made incorporating these fundamental provisions. In this case, no separate possession notice need be served. If the court is satisfied that the ground is made out, the court must make the order for possession.³⁵

The same principles relating to the structuring of the court's discretionary power apply in this context as well; cl 200(3) referring to sch 7. See below, at paras 5.31 to 5.42.

²⁷ Cl 200(2).

²⁸ Cl 72(3) and sch 5.

Discussed in the estate management grounds: see above, at para 4.75.

³⁰ Cls 185(3) and 200(6)(a).

³¹ CI 200(6)(b).

Discussed above, at paras 4.27 and 4.28.

³³ Cls 168(2) and 195(1) and (2)(a).

³⁴ Cls 173 to 179.

³⁵ Cls 175(2), 195(1) and (2)(b).

5.18 Likewise, where a fixed term standard contract incorporates a landlord's break clause, no separate possession notice need be served. If the court is satisfied that the ground is made out, it must make the possession order.³⁶

Landlord's notice in connection with end of fixed term

5.19 Where the landlord under a fixed term standard contract gives the contract-holder notice before or on the last day of the fixed term, requiring the contract-holder to give up possession of the premises on a date specified in the notice, and the contract-holder does not give up possession, the landlord may bring a possession claim on that ground. If the court is satisfied the ground is made out, it must make a possession order.³⁷

Serious rent arrears

5.20 Where a landlord under a standard contract makes a possession claim on the ground of serious rent arrears, ³⁸ and the court is satisfied that the contract-holder is in serious rent arrears, as defined, the court must make an order for possession. ³⁹

REVIEWABLE LANDLORDS

- 5.21 The four previous rules are subject to a very important exception. Where the landlord is in a class of public bodies whose actions may be subject to judicial review, the contract-holder may during the possession proceedings⁴⁰ apply to the county court for a review of the landlord's decision to seek possession on one of the notice grounds or the serious rent arrears ground.⁴¹ The court hearing the application may confirm or quash the landlord's decision.⁴² If it quashes the decision, it may also set aside the possession notice and dismiss the proceedings for possession, and make any order the High Court can make when making a quashing order on an application for judicial review.⁴³
- 5.22 These are decisions that a tenant could challenge now by way of judicial review in the Administrative Court. Allowing the challenge to be made in the county court means that the same court can consider both the judicial review and the possession proceedings at the same time. It also avoids the expense of proceedings in the Administrative Court. It builds on procedural precedents already set in the context of reviews of decisions relating to homelessness determinations.

³⁶ Cls 175(2), 182(2) and 195(1) and (2)(b).

³⁷ Cl 175(4) and 195(1) and (2)(c).

³⁸ Discussed above, at para 4.64(2).

³⁹ Cl 196(2). Serious rent arrears are defined in cl 187, discussed above, at para 4.64(2).

⁴⁰ No application can be made if an order for possession has been made: cl 197(6).

⁴¹ Cls 197(1) and (2).

⁴² Cl 197(3). The principles to be used in reaching this decision are those used by the High Court in judicial review cases: cl 197(4).

⁴³ Cl 197(5).

POWERS OF THE COURT

Discretionary grounds

- 5.23 In deciding possession claims on discretionary grounds, the Bill gives broad powers to the court. These are essentially the same as those that exist under the current law, subject to new rules on the structuring of discretion.
- 5.24 The court has power:
 - (1) to adjourn proceedings;
 - (2) to postpone possession dates;
 - (3) to stay or suspend the execution of an order for possession;
 - (4) to impose conditions regarding payment of rent arrears and future rent; and
 - (5) to impose any other conditions it thinks fit.44
- 5.25 If the contract-holder complies with the conditions, the court also has a discretion to discharge the possession order.⁴⁵
- 5.26 The one innovation in the Bill is that, in deciding whether to adjourn, postpone, stay or suspend which can only occur when the court thinks it reasonable the principles relating to the structuring of discretionary decisions also apply to these decisions. 46

Mandatory grounds

5.27 Where a court is required to make an order for possession, the date for giving up possession can be no later than 14 days after the date on which the order was made, unless there is exceptional hardship, in which case the order may be postponed for no more than six weeks after the date of the making of the order. The giving up of possession may be postponed by the possession order or by suspending or staying execution of the possession order. This restates the current law. 47

Deception

5.28 Where the court is satisfied that a possession order has been obtained by misrepresentation or concealment of material facts, it may order the landlord to pay the contract-holder sufficient compensation for damage or loss sustained by the contract-holder as a result of the making of the order.⁴⁸

⁴⁴ Cls 201(1) to (5).

⁴⁵ Cl 201(6).

⁴⁶ Cl 201(7) and see sch 7.

⁴⁷ Cl 198. Housing Act 1980, s 89.

⁴⁸ Cl 194. This provision repeats the current law applicable to assured tenancies: Housing Act 1988, s 12.

Persons with "home rights"

- 5.29 A person with home rights under the Family Law Act 1996 (as amended)⁴⁹ is entitled, so long as they remain in occupation, to be a party to proceedings for possession, or to proceedings connected with an order for possession.⁵⁰ This could apply, in theory, to any possession proceedings.
- 5.30 In addition, such a person may, in their own right, seek an adjournment, postponement, stay or suspension.⁵¹ This provision can only apply where the grounds on which the court would make an order for possession were discretionary.

STRUCTURED DISCRETION

- 5.31 We received a large number of comments, both in written evidence, and at public meetings, on judicial inconsistency, particularly in the context of possession proceedings. The extent of this was hard to quantify not least because a degree of inconsistency must be expected where judges are required to exercise discretion. Nevertheless, it was an issue we concluded needed to be addressed.
- 5.32 In the specific context of orders for possession on the ground of nuisance the Court of Appeal had already undertaken this task.⁵² We concluded that this process should be taken further, and that there was a case for structuring judicial discretion more broadly.
- 5.33 Although the Law Commission is now engaged on a wider review of disputeresolution in the context of housing problems, our recommendations relating to the structuring of discretion are an important reform, the introduction of which should not be delayed.
- 5.34 The Bill sets out provisions to structure the courts' discretion to make an order for possession, when their decisions are based on the test of reasonableness. ⁵³ The principles apply not only when an order is being contemplated, but also where the judge is deciding whether to adjourn proceedings, or postpone the giving up of possession. ⁵⁴

⁴⁹ Cl 193(2). Such a person is defined in the Family Law Act 1996, s 30(2) as a spouse or civil partner who (a) if in occupation, has a right not to be evicted or excluded from the dwelling-house or any part of it by the other spouse or civil partner except with the leave of the court given by an order under s 33; or who (b) if not in occupation, has a right with the leave of the court so given to enter into and occupy the dwelling-house.

⁵⁰ Cl 193(1)(a).

⁵¹ Cl 193(1)(b).

See Gil v Baygreen Properties [2002] EWCA Civ 1340, [2003] HLR 119. See too the Anti-Social Behaviour Act 2003, s 16.

⁵³ Sch 7.

⁵⁴ Sch 7 para 1(b).

Relevant circumstances

5.35 The key concept used is "relevant circumstances". In deciding whether it is reasonable to make an order or decision, the court must consider whether it is reasonable to make it, having regard to the relevant circumstances. The court is required to take into account general relevant circumstances, together with those relating to the contract-holder, those relating to the landlord, and those relating to others.

General relevant circumstances

- 5.36 The general relevant circumstances to be taken into account are:
 - (1) the nature, frequency or duration of the breach or breaches of the contract; the more serious, the more often or the longer the breach(es), the more reasonable it will be to make the order sought;
 - (2) the degree to which the contract-holder (or a permitted occupier of the premises such as a co-resident, lodger or sub-holder) is responsible for the breach; it is less reasonable to make an order where someone else is responsible for the breach;
 - (3) the likelihood of a recurrence of the breach; and
 - (4) any action to end the breach or prevent a recurrence by the landlord before the possession claim was made. ⁵⁶
- 5.37 Relevant circumstances may also include whether the landlord has offered or undertaken to offer a new occupation contract (whether for the same or other premises) to one or more persons living in the premises.⁵⁷ Thus, if a landlord has offered a new occupation contract to a person driven from her home by a violent partner, this will be relevant to the question of whether or not possession should be ordered against the violent partner. However, it is specifically provided that whether a person will be assisted by a housing authority under the provisions of Part 7 of the Housing Act 1996 (which deals with applications for assistance by the homeless) is not a relevant circumstance.⁵⁸

Relevant circumstances regarding the contract-holder

- 5.38 As regards the contract-holder, the court is required to consider:
 - (1) the probable effect of making a possession order on their private and family life or the private and family life of any permitted occupiers; and

⁵⁵ Sch 7 para 2.

⁵⁶ Sch 7 para 3.

⁵⁷ Sch 7 para 4.

Sch 7 para 5. This is to make clear that it is not the function of the court to second guess the homelessness decision that should properly be made by a local authority in such cases.

(2) where the court may decide to suspend execution of a possession order, the likelihood that the contract-holder will comply with any terms imposed by the court.⁵⁹

Relevant circumstances regarding the landlord

- 5.39 As regards the landlord, the court must consider:
 - (1) the probable effect of not making an order on the landlord's interests, including their financial interests;
 - (2) where the landlord is a community landlord, the probable effect of not making the order on the landlord's ability to fulfil its housing functions, including the assistance of others in need of accommodation.⁶⁰
- 5.40 In addition, where a landlord has issued a management code⁶¹ the court may also consider whether the landlord has taken this into account when it made its claim for possession in relation to the premises.⁶²

Circumstances regarding other persons

- 5.41 The court may also take into account:
 - (1) the effect of making an order for possession on contract-holders and permitted occupiers who occupy other premises of the landlord;
 - (2) persons who have asked the landlord to provide them with housing accommodation (that is persons on the housing waiting list); and
 - (3) others living, visiting or otherwise engaging in lawful activity in the locality or who wish to do so;⁶³ and
 - (4) where possession is sought for breach of the prohibited conduct term, 64 the general public interest in restraining the conduct prohibited by that term. 65

Special cases

5.42 There are two special cases, arising in the context of the estate management grounds for possession, in which particular circumstances are to be taken into account.

⁵⁹ Sch 7 para 6.

⁶⁰ Sch 7 para 7.

⁶¹ Discussed below, at para 11.8.

⁶² Sch 7 para 8.

⁶³ Sch 7 para 9.

⁶⁴ See above, at para 4.96.

⁶⁵ Sch 7 para 10.

- (1) Where, wholly or partly relying on ground G,⁶⁶ the landlord seeks possession against a contract-holder who is a successor, the relevant circumstances also include:
 - (a) the age of the contract-holder;
 - (b) the period during which that person occupied the premises as their only or principal home; and
 - (c) any financial support given by the contract-holder to their predecessor. 67
- (2) Where, wholly or partly relying on ground H,⁶⁸ the landlord seeks possession following the departure of a joint contract-holder, the relevant circumstances include:
 - (a) the age of the remaining contract-holder(s); and
 - (b) the period during which the remaining joint contract-holder or holders occupied the premises as their only or principal home. ⁶⁹

RENT ARREARS CASES

5.43 Although not, perhaps, strictly dealing with claims for possession, this is the appropriate place to consider other powers of the court in relation to rent arrears cases.

Abolition of distress for rent

5.44 Following an earlier Report from the Law Commission,⁷⁰ we recommend that where premises are subject to an occupation contract, no distress for the rent may be levied. However, this does not apply to distress levied under County Courts Act 1984 section 102.⁷¹

Pilot schemes

- 5.45 The Bill gives the Secretary of State power to establish pilot schemes in relation to rent cases.⁷² The scheme may consist of:
 - (1) a new action for the recovery of rent arrears the rent arrears claim;

⁵⁶ See above, at para 4.82(1).

⁶⁷ Sch 7 para 11.

⁶⁸ See above, at para 4.82(2).

⁶⁹ Sch 7 para 12.

Distress for Rent (1991) Law Com No 194.

Cl 70. This deals with claims for rent where goods are seized in execution.

Cls 206(1) and (2). Rent cases are those where the landlord is only relying on the breach of contract ground, and the only breach is failure to pay the rent. The case is also a rent case if, but for the pilot scheme, the landlord could have made a possession claim: cl 206(3). The power to implement the scheme is in cl 207. This includes, subject to consultation with the National Assembly for Wales, power to extend a pilot scheme to courts in Wales.

- (2) provision for a possession claim in a rent case to be treated as a rent arrears claim;
- (3) provision for the court to adjourn proceedings on a possession claim, subject to issuing a warning to the contract-holder on the consequences of not paying the rent;
- (4) provision for the court to adjourn proceedings on a possession claim, subject to an order directing the contract-holder to pay the rent and arrears (if any).⁷³
- 5.46 Each pilot must be reviewed.⁷⁴ No pilot may be established more than three years after the commencement date, and must be time limited.⁷⁵ While the Secretary of State has power to end a scheme at any time,⁷⁶ he also has power to make the scheme permanent and generally applicable.⁷⁷

⁷³ Cl 206(4).

⁷⁴ CI 208.

⁷⁵ The details are in cl 209.

⁷⁶ Cl 209(3).

⁷⁷ CI 210.

PART 6 DEALING

INTRODUCTION

- 6.1 We have been very conscious of the need for our scheme to reflect the varieties of ways in which people actually live their lives. It needs to recognise the realities resulting from the formation and break down of relationships. A contract-holder may want to bring a new person into the agreement. People may want companionship, or someone to help pay the rent, so may want to share their accommodation with others, or take in a lodger. People may want to move around the country and exchange the premises where they currently live for another. At the same time we accept that landlords must be able to retain a sensible degree of control over the property they are letting.
- 6.2 Because periodic standard contracts can be ended on the landlord's notice ground, private landlords retain a high degree of control. The situation is less clear-cut for community landlords who rent on secure contracts. They must be able to ensure that the people living in their accommodation have the requisite degree of housing need. At the same time, contract-holders under secure contracts must have an appropriate degree of autonomy in their use of the accommodation.
- 6.3 This Part considers the extent to which contract-holders may "deal" with their contracts. As with many other aspects of the scheme, these provisions build on the current law which applies to the secure tenants of local authorities. We have taken the opportunity to rationalise the law, and to clarify the powers of community landlords to control the circumstances in which they will permit dealing in social housing. There are therefore important amendments to the current position noted in the discussion.

ADDING A CONTRACT-HOLDER TO THE CONTRACT²

- 6.4 It is a fundamental term of all occupation contracts that a contract-holder may, but only with the consent of the landlord,³ add another person to the contract. The person added becomes entitled to all the rights and subject to all the obligations of the contract from the date they are added.⁴
- 6.5 The addition of a contract-holder to the contract is of no effect unless:
 - (1) it is made in a written document⁵; and

Discussed above, at paras 4.57 to 4.63.

Adding a contract-holder was discussed in Part 11 of Renting Homes (2003) Law Com No 284.

Provisions relating to landlord's consent are discussed below, at paras 6.61 to 6.76.

⁴ CI 108

⁵ Cl 215(2). Cl 215(3) gives the appropriate authority power to prescribe a form for the document.

(2) the document is signed by each individual and executed by each corporation which is party to the transaction.⁶

The addition of a new contract-holder to the contract may also be effected by an electronic document that complies with prescribed formalities.⁷

DEALING

- 6.6 Dealing is the term used in the Bill to describe the circumstances we are considering. Dealing is defined to include:
 - (1) creating a tenancy or a licence which confers the right to occupy the premises;
 - (2) transferring; and
 - (3) mortgaging or otherwise charging.8
- 6.7 The starting point is that a contract-holder may not deal with the occupation contract or the whole or any part of the premises, save as provided for by the contract, or in accordance with a family property order. Similarly, joint contract-holders may not deal with the contract, or their rights and obligations under it, or the premises or any part of the premises save as provided for by the contract, or in accordance with a family property order. 10

Impact on the landlord

6.8 The current law is very unclear as to when a landlord becomes bound by an action taken by a tenant. Our scheme makes this clear. Quite simply, the landlord is not bound if a contract-holder or joint contract-holder deals with the contract except in a way permitted by the contract or in accordance with a family property order. Indeed the Bill makes clear that a contract-holder who attempts to deal in ways not permitted by the contract or a family property order is in breach of the contract, which will expose them to the risk of possession proceedings on the breach of contract ground.

PERMITTING A PERSON TO OCCUPY AS A LODGER¹³

6.9 Currently, secure tenants of local housing authorities have an absolute right to take in a lodger. This is the one issue on which the consent of the landlord is not required. In accordance with our landlord-neutral approach, we recommend that this right be extended to all secure contracts.

⁶ Cl 110.

⁷ Referred to in cl 215.

⁸ Cl 120(4).

⁹ Cl 120(1). Family property order is defined in cl 237.

¹⁰ CI 120(2).

¹¹ CI 120(3).

¹² Cl 120(3)(b).

Lodgers are discussed in Part 12 of Renting Homes (2003) Law Com No 284.

- 6.10 It is a fundamental term in every secure contract that the contract-holder can allow another to reside in the premises as a lodger. If there is room, more than one lodger may be possible.¹⁴ This is not subject to obtaining consent from the landlord.¹⁵
- 6.11 The right to occupy is personal to the lodger. The landlord never takes over any responsibility for or obligation to a lodger. If the contract-holder's contract ends, for example because the contract-holder dies, or has a possession order made against him or her, so too does the right of the lodger to remain in the premises.
- 6.12 For standard contracts, we recommend that the right of a contract-holder to take in a lodger should be included as a supplementary term of the contract. Such a term should require the contract-holder to seek the consent of the landlord, which the landlord may reasonably withhold. 17

CREATING A SUB-OCCUPATION CONTRACT¹⁸

- 6.13 The current law is that a lease may forbid the tenant from granting a sub-tenancy (either at all or without the requisite consent). Granting a sub-tenancy without consent is a breach of the terms of the lease, which may give the landlord the right to forfeit the lease, but the sub-tenancy will be effective, subject to what is said below about the effect if the head lease is terminated.
- 6.14 Under our recommended scheme, there is no fundamental provision, and thus no fundamental term, relating to the ability of a contract-holder to enter into a sub-occupation contract. At most there will be a supplementary term to deal with this. We have included in the model contracts appended to this Report a supplementary term permitting sub-occupation, subject to the consent of the landlord. We have given the landlord an absolute right to refuse to permit sub-occupation: their consent is not subject to the reasonableness requirements which apply, for example, to consent to permit a contract-holder under a standard contract to have a lodger.
- 6.15 The Bill deals with a number of complex consequences that can arise where this form of dealing is permitted. The legislation is drafted in terms of the simple model of head contract and sub-occupation contract. A definition section makes it clear that the same principles apply to a chain of sub-occupation contracts.²⁰

Where the contract has a supplementary term limiting the number of persons who can reside in the premises, the total must not exceed that number.

¹⁵ Cl 122.

¹⁶ See eg term 77 of the draft standard contract attached to this Report.

¹⁷ As to landlord's consent, see below, at paras 6.61 to 6.76.

¹⁸ Sub-occupation is discussed in Part 12 of Renting Homes (2003) Law Com No 284.

¹⁹ As to landlord's consent, see below, at paras 6.61 to 6.76.

²⁰ See cl 130.

- 6.16 A sub-occupation contract will be effective as between the contract-holder and the sub-occupier, even if it was entered into without the landlord's consent (where the landlord's consent was required). Where a sub-occupation contract is entered into without the landlord's consent, where consent was required, the contract holder is in breach of the contract.²¹ The landlord could make a possession claim on this ground.²² A sub-occupation contract entered into otherwise than in accordance with the head contract (for instance without the landlord's consent, where this was required under the terms of the head contract) does not bind the head landlord.²³
- 6.17 Where a tenant grants a sub-tenancy, the basic principle at common law is that they cannot grant a greater interest than they have.²⁴ This means that they cannot grant a sub-tenancy for longer than the head tenancy. At common law, if a tenant under a fixed term tenancy purports to grant a sub-tenancy that is equal to or longer than the length of their tenancy, the grant of the sub-tenancy is treated as an assignment of the tenancy to the sub-tenant. For the purpose of our scheme, we think that contract-holders should decide whether a dealing is to be a transfer (under which the transferee is normally expected to pay the rent to the landlord directly) or a sub-occupation contract (where rent under the suboccupation contract is normally be paid to the contract-holder, who remains liable to pay the rent under their own occupation contract to the (head) landlord). Where the contract-holder under an occupation contract (the head contract) enters into a sub-occupation contract, and the term of the sub-occupation contract ends at the same time as the term of the head contract, the suboccupation contract takes effect as such and not as a transfer to the sub-holder.²⁵
- 6.18 Under our scheme, it will also be possible for a contract-holder to grant a suboccupation contract giving greater security than the contract-holder has, where the landlord consents to this. This will only be possible if the contract-holder and landlord had modified or varied the relevant supplementary term in the model contract to permit this. Assuming that the supplementary term had been modified:²⁶
 - a contract-holder under a standard periodic contract could grant a secure sub-occupation contract, or a fixed term standard sub-occupation contract; or
 - (2) a contract-holder under a fixed term standard contract could grant a suboccupation contract for a fixed term longer than the unexpired period of the head contract.

²¹ CI 120(3).

²² Cl 183.

²³ Cl 120(3).

This principle was modified to some degree by the decision of the House of Lords in Bruton v London and Quadrant [2000] 1 AC 406, in which a mere licensee was held to have granted a sub-tenancy (although not an estate in land).

²⁵ Cl 123.

As compared with term 78 in the draft standard periodic contract, and term 75 in the draft secure contract in Appendix B to this Report.

Failure to comply with conditions

- 6.19 We considered, however, that it would be overly harsh to the sub-holder if the head landlord was not bound at all where he or she had given consent to the sub-occupation contract, but with conditions, and the conditions had not been met. In this situation, the sub-occupation contract is still treated as properly made.²⁷ If the contract-holder has purported to create either a secure contract or a standard fixed term contract, in breach of the landlord's consent conditions, then as between the contract-holder and sub-holder, the contract will indeed be a secure contract or standard fixed term contract, but the head landlord may elect to treat the sub-occupation contract as a periodic standard contract only.²⁸ The standard periodic sub-occupation contract thus created has the following characteristics:
 - (1) all the fundamental and supplementary provisions applicable to a periodic standard contract are incorporated without modification (including the provisions for the landlord's notice-only possession ground);
 - (2) any terms of the secure or fixed term standard contract that are incompatible with the standard periodic contract are of no effect;
 - (3) otherwise the terms of the contract are the same as those of the secure or standard fixed term contract.²⁹
- 6.20 This "election" by the landlord only really has a practical effect when the head occupation contract ends, and the contract-holder's rights and obligations under the sub-occupation contract are transferred to the head landlord as described in paragraph 6.23 below. The obvious consequence of this provision is that, once the head contract has ended and where the landlord is the direct landlord of the (former sub) contract-holder, the landlord can quickly assert control over the property through the availability of the landlord's notice ground for possession.³⁰

²⁷ Cls 124(1) and (2).

²⁸ Cl 124(3). If the landlord does so elect, the sub-occupation contract is also treated as a standard periodic contract in any question arising between the sub-holder and any person other than the contract-holder: cl 124(4).

²⁹ Cl 124(5).

³⁰ See above, at paras 4.57 to 4.60.

Termination of head contract

- 6.21 At common law, the basic principle that a tenant cannot grant a greater interest than they have means that if the head lease falls, the sub-lease also falls. The effects of the common law are modified where the sub-lease is an assured tenancy: if the head lease comes to an end, the sub-tenant is treated as having an assured tenancy as against the head landlord.³¹ Under current law if the tenant surrenders the head lease to the landlord, the effect is that the tenant drops out and the lease is thereafter treated as being between landlord and (sub) tenant.³² If the head lease is forfeited during the period of the sub-tenancy, the sub-tenant can apply for relief against forfeiture.³³
- 6.22 Under our recommended scheme, if the occupation contract is ended for whatever reason, a sub-occupation contract *may* be of some effect as between sub-occupier and (head) landlord. What, if any effect, it has, as between the sub-occupier and (head) landlord will depend on whether the sub-occupation agreement was entered into:
 - (1) with the landlord's consent (where this is required), and in accordance with any conditions imposed by the landlord on giving his consent;
 - (2) with the landlord's consent, but the contract-holder did not comply with all the conditions imposed by the landlord on giving his consent; or
 - (3) without the landlord's consent (where this is required), or otherwise not in accordance with the head contract.

6.23 Where:

- (1) a contract-holder has properly entered into a sub-occupation contract with a sub-holder;³⁴ and
- (2) the head contract comes to an end after its effective date; and
- (3) the sub-occupation contract is in existence immediately before the head contract ends,

the sub-occupation contract continues.³⁵ The contract-holder's rights and obligations under the sub-occupation contract are transferred to the head landlord.³⁶ These rules do not, however, apply if the head contract is a fixed term standard contract which ends at the end of the fixed term.³⁷

³¹ Housing Act 1988, s 18(1).

Law of Property Act 1925, s 139.

³³ Law of Property Act 1925, s 146(4).

The sub-occupation contract is still treated as having been entered into "properly" for this purpose where the contract-holder has not complied with the conditions subject to which the landlord gave consented to sub-occupation: see cl 124(2).

³⁵ Cls 125(1) and (2)(a). This does not apply where the head contract was a fixed term contract which comes to an end on the expiry of the fixed term: cl 125(4).

³⁶ CI 125(2)(b).

³⁷ Cl 125(4).

- 6.24 The policy objective is to ensure that head landlords do not find themselves taking over responsibility for any arrangement to which they have not consented. Thus.
 - (1) the operation of the rules set out in the previous paragraph do not affect the ability of the head landlord to elect to treat the sub-occupation contract as a standard periodic contract where the sub-occupation contract was entered into in breach of one of the conditions imposed by the landlord when consenting to the sub-occupation;³⁸
 - (2) the head landlord is not liable to the sub-holder for any breach of the sub-occupation contract by the contract-holder;³⁹
 - (3) the sub-holder is not liable to the head landlord for any breach of the suboccupation contract before the head contract ended;⁴⁰ and
 - (4) the head landlord may be liable to the sub-holder (or vice versa) for any breach of the sub-occupation contract continuing after the head contract has ended.⁴¹
- 6.25 Where, however, the sub-occupation contract was entered into improperly (for example, the contract-holder should have obtained the head landlord's consent to sub-occupation, but failed even to ask for the head landlord's consent), the head landlord does not step into the contract-holder's shoes, and is not bound by the sub-occupation contract.

Extended possession order

- 6.26 There may be circumstances where a contract-holder has properly entered a sub-occupation contract, where the contract-holder's (head) landlord claims possession against the contract-holder. In such a case, the head landlord may also apply for an order for possession against the sub-holder. This may be particularly necessary where, for example, the landlord is aware that both the contract-holder and the sub-holder are not behaving in accordance with their contracts (for example using the premises for unlawful purposes).
- 6.27 The court may only consider making an order against the sub-holder an extended possession order where

CI 126(1). See above, at para 6.19. Even though the contract-holder, in breach of a landlord's consent condition, may have granted a fixed term standard contract or secure contract, when the (former head) landlord steps into the contract-holder's shoes at the end of the head contract, they can treat the sub-occupation contract as a periodic standard contract. This means they can seek to recover possession of the premises on the notice-only basis.

³⁹ Cl 126(2).

⁴⁰ Cl 126(3).

⁴¹ Cl 126(4). These last two provisions do not affect any power conferred on the head landlord by the sub-occupation contract: cl 126(5).

⁴² Cl 127(1).

⁴³ CI 127(2).

- (1) it has decided to make a possession order against the contract-holder;⁴⁴ and
- (2) it would have made a possession order against the sub-holder, had a claim for possession been brought by the contract-holder against the sub-holder.⁴⁵
- 6.28 In deciding whether or not to make the extended possession order, the court may take into account whether the head landlord had given the sub-holder any notice of their intention to apply for an extended possession order, and the length of any such notice. 46

Exclusion of contract-holder

- 6.29 There may also be circumstances in which a contract-holder has quite properly entered into a sub-occupation contract with a sub-holder, but where the contract-holder has disappeared.⁴⁷ This may make it hard for the sub-holder to ensure that their landlord (the original contract-holder) fulfils the landlord's obligations under the sub-occupation contract, for example to repair the property. Indeed, in such a case the head landlord will also find it hard to enforce the obligations of the contract against the contract-holder.
- 6.30 In such a case, and by analogy with our recommendations on abandonment,⁴⁸ the sub-holder may give the contract-holder a notice in writing which
 - states the belief of the sub-holder that the contract-holder no longer considers him or herself a party to the original contract and the subcontract;
 - (2) requires the contract-holder to tell the sub-holder, within four weeks, ⁴⁹ if he or she still regards him or herself as a party to one or both of the contracts; and
 - (3) informs the contract-holder that after the warning period is over, the original contract may be brought to an end and the rights and obligations under the sub-occupation contract may be transferred to the head landlord.⁵⁰

⁴⁴ CI 127(3).

⁴⁵ Cl 127(4).

⁴⁶ CI 127(5).

⁴⁷ Cls 128(1) and (2).

⁴⁸ See above, at paras 4.37 to 4.43.

⁴⁹ This is called the warning period, which starts with the day on which the notice is given to the contract-holder: cl 128(9).

⁵⁰ CI 128(3).

- 6.31 A copy of the notice must also be given to the head landlord.⁵¹ During the warning period, the sub-holder must undertake any necessary inquiries to satisfy himself that the contract-holder no longer considers himself to be a party to the contract.⁵²
- 6.32 At the end of the warning period, the sub-holder may apply to the court for an order that the original contract has come to an end and that the rights and obligations of the contract-holder as landlord under the sub-occupation agreement are transferred to the head landlord.⁵³ If the court is satisfied that the contract-holder no longer considers him or herself a party to both contracts, it may make the order applied for. This must specify the date from which the head contract is treated as having come to an end.⁵⁴
- 6.33 The court may not make the order in favour of the sub-holder where, had a claim for possession been brought against the sub-holder by the contract-holder, the court would have made a possession order against the sub-holder. 55

Excluded contract-holder's remedies

- 6.34 As the consequences of such an order for the original contract-holder could be serious, the scheme provides a right of appeal. Where an order has been made, the original contract-holder may, within six months, apply to the court to rescind the order, declare that the sub-occupation contract continues, and make such other order as it thinks fit.⁵⁶
- 6.35 The grounds on which the contract-holder may apply to the court are:
 - (1) that the sub-holder failed to give the requisite notice;
 - (2) that the sub-holder failed to make the appropriate inquiries;
 - (3) that the contract-holder did consider him or herself still to be a party to one or both of the contracts and that the failure to respond (or to respond adequately) to the notice was justified; or
 - (4) that the sub-holder did not have reasonable grounds for being satisfied that the contract-holder considered him or herself not to be a party to either of the contracts.⁵⁷

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<sup>51</sup> Cl 128(4).
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⁵² CI 128(5).

⁵³ CI 128(6).

⁵⁴ CI 128(7).

⁵⁵ Cl 128(8).

⁵⁶ Cls 129(1), (2) and (4).

⁵⁷ Cl 129(3).

TRANSFERRING THE CONTRACT58

- 6.36 Long leaseholders, whose interest in land is akin to that of the owner-occupier, need to be able to deal with that interest. Otherwise they would find themselves trapped. The transfer of leases from one tenant to another is achieved by the process of assignment, usually for a premium. This is a key feature of the law of landlord and tenant.
- 6.37 In the rental market, these considerations are less important. Landlords enter into agreements with particular individuals on the basis that those individuals will meet the obligations of the tenancy (such as to pay the rent) or, in the case of social housing, have a proven social need for that accommodation. Landlords must control the identity of the tenant in a way that does not apply with long leaseholders. For this reason, as noted at the start of this Part, the starting point for our scheme is that contract-holders cannot deal with their contracts, other than as permitted by their contracts (or in accordance with family property orders).
- 6.38 Nevertheless, current law provides for some circumstances in which rights under a tenancy may be transferred. We have adapted these to our recommended scheme. We think they strike the right balance between the interests of the landlord and the contract-holder.
- 6.39 As regards formalities, we think that the formalities of assignment are too complex to fit into our consumer approach. Similarly, in relation to licences, where transfer depends on contractual principles of novation and the assignment of benefits of contracts, the rules are complex and poorly understood. Thus we have created a process of transfer which is set out in the Bill.

Transfer to potential successor⁵⁹

- 6.40 At present, secure tenants are able to assign their secure tenancy to a potential successor.⁶⁰ This enables a frail parent to transfer their secure tenancy to a member of the family before going into residential care.
- 6.41 In accordance with the principle of landlord-neutrality, we think this right should apply to all secure contracts, not just those entered into by local authorities. The Bill provides that, subject to the consent of the landlord, it is a fundamental term of a secure contract that any sole contract-holder can seek to transfer their contract to a person or persons who would have the statutory right to succeed if the current occupier died. This also enables a contract-holder to pass their contract on to a carer-successor.

Transferring rights of occupation is discussed in Part 13 of Renting Homes (2003) Law Com No 284.

⁵⁹ CI 131. The right of succession, and the definition of who can be a successor, is discussed below, at paras 7.8 to 7.30.

⁶⁰ Housing Act 1985, s 91(3)(c).

⁶¹ Landlord's consent is discussed below, at paras 6.61 to 6.76.

⁶² Cl 131.

- 6.42 At present any succession, and thus any transfer, must be to a single person. In our scheme, joint succession is possible. Thus, any transfer can be to all the potential successors who wish to be included in the transfer.⁶³
- 6.43 The principle of survivorship applies to joint contract-holders. Nevertheless, if they all act together, they can apply to transfer the agreement to a potential successor. Again, any transfer is subject to obtaining the landlord's consent.⁶⁴
- 6.44 It is only necessary for a contract-holder to use the right to transfer to a potential successor where he or she does not intend to remain as an occupier. Otherwise they can seek to add a potential successor to the contract as a joint contract-holder.
- 6.45 A landlord may well be reluctant to give consent if they fear losing control of the premises for a substantial period. To address this, we accept that the giving of consent may be subject to conditions. Specifically, we recommend that a landlord can impose a condition that consent is subject to the contract-holder giving up their right of succession.⁶⁵

Transfer to another secure contract-holder — exchanges

- 6.46 At present, secure tenants are able to seek permission to exchange their tenancy with another secure tenant or with an assured tenant of a registered social landlord. This gives some flexibility to both landlords and tenants. It is a right that tenants appreciate. We think it should be retained in the recommended scheme.
- 6.47 Currently, the right to ask to exchange is done by an assignment of the tenancy from one qualifying tenant to another, who also wants to exchange. There can either be a direct swap, or a circle of three or more, all of whom want to transfer, but the last tenant must move into the property vacated by the first. This "mutuality condition" results in inflexibility. We recommend that it be relaxed. In future it will be possible for there to be a simple chain of transfers, where there is potentially a void at both ends. This will encourage mobility and choice-based letting.

⁶³ CI 131(2)(b).

⁶⁴ Cl 131(4). Consent, and its reasonableness, is discussed below, at paras 6.61 to 6.76.

⁶⁵ Sch 4 para 9.

⁶⁶ Housing Act 1985, ss 91(3)(a) and 92, and sch 3 (as amended).

6.48 The right to ask to exchange an occupation contract extends to all secure contracts made by community landlords. All such contracts have a fundamental term that the contract-holder may seek to transfer the contract to another person. The other person must also be a contract-holder under a secure contract from a community landlord who, immediately before the transfer, will cease to be the contract-holder under that contract. No transfer can take place without the consent of the landlord.

Transfer of fixed term standard contracts

- 6.49 Where parties enter into a fixed term contract, their contractual obligations persist, unless the contract provides otherwise, for the full term of the contract. In some cases, peoples' circumstances may change. Thus the contract itself may enable the parties to escape from their obligations in defined circumstances. Any such provision will have to be agreed between the landlord and the contract-holders. They will not arise from any statutory fundamental or supplementary provision. A landlord who agrees to the inclusion of such a clause is entitled to make any escape route from the contract subject to their giving consent.
- 6.50 The Bill contains two provisions that relate to these possible circumstances.
 - (1) A fixed term standard contract may provide that if there are joint contract-holders, one or more of them may require the other joint contract-holder(s) to join in a transfer of the contract to another person. To In such a case, the joint contract-holder(s) wishing to transfer the contract may seek a court order that the other contract-holders join in the transfer. The court may make such order as it thinks fit.
 - (2) A fixed term standard contract may provide that a joint contract-holder may transfer their rights and obligations under the contract to another, without joining all the other joint contract-holders. In such a case, the contract must provide that such a transfer may not be made unless the transferor gives notice of the proposed transfer to the other joint contract-holders. This is to prevent any change in the liabilities of the remaining joint contract-holders occurring without notice. Furthermore, the transferee is not entitled to occupy the premises without the consent of the other joint contract-holders.

Community landlord is defined at cl 226.

⁶⁸ CI 132(2).

⁶⁹ CI 132(1).

⁷⁰ Cl 134(1).

⁷¹ Cl 134(2).

⁷² CI 134(3).

⁷³ Cl 135(1).

⁷⁴ CI 135(2).

⁷⁵ CI 135(3).

6.51 The Bill also contains provisions dealing with the transfer of a fixed-term standard contract on the death of the contract-holder. These are discussed in Part 7.

FORM AND EFFECT OF TRANSFER

Form

- 6.52 Under current law, a tenancy can only be assigned by deed, even where the original tenancy did not have to be granted by deed. If no deed is used, a contract to assign a tenancy may be enforceable in equity, but only if it complies with the requirements of the Law of Property (Miscellaneous Provisions) Act 1989, section 2. It must be in writing, signed by both parties and containing all the terms of the contract (subject to the possible effect of equitable estoppel). We do not regard the requirement for a deed as appropriate in the context of residential renting.
- 6.53 The Bill provides that any transfer by a contract-holder or a joint contract-holder must be made in writing,⁷⁸ signed by each of the parties to the transfer.⁷⁹ If the contract requires the consent of the landlord, the landlord must be a party to the contract.⁸⁰ These rules do not apply to transfers in the course of the administration of the contract-holder's estate.⁸¹

Effect

- 6.54 If transfer of an occupation contract is made in compliance with the terms of the contract and the formalities set out in the preceding paragraphs, on the date of the transfer:⁸²
 - (1) the transferee becomes entitled to all the rights and subject to all the obligations of the contract-holder under the contract; and
 - (2) the contract-holder ceases to be entitled to any rights or subject to any obligations under the contract.⁸³

⁷⁶ Cls 133 and 136.

Law of Property Act 1925, s 54(2) allows the creation, but not the assignment, by parol of certain short leases. See *Crago v Julian* [1992] 1 WLR 372 on whether the Law of Property Act 1925, s 53(1)(a) can enable assignment by writing without a deed.

⁷⁸ Electronic writing may be used: cl 215(4). The appropriate authorities are given power to prescribe the form to be used.

⁷⁹ Cl 137(2). Cl 140(2) specifically disapplies the Law of Property Act 1925, s 52 from occupation contracts.

⁸⁰ CI 137(3).

⁸¹ CI 137(6).

The date of the transfer is the day agreed by the transferor and the transferee as the day on which the transfer takes effect: cl 138(5).

⁸³ CI 138(1).

- 6.55 The same principles apply where the transferor is a joint contract-holder. This is subject to the qualification that, where a fixed-term standard contract is transferred either while the contract-holder is alive, or following the contract-holder's death, the transferee is not entitled to occupy the premises without the consent of the other joint contract-holders.⁸⁴
- 6.56 Rights and liabilities accruing before the transfer date are not affected by the process of transfer.⁸⁵

Unauthorised transfer

- 6.57 In accordance with our aim of ensuring that a landlord does not end up with a contract-holder they have not consented to, the Bill provides that a transfer that does not comply with the formal requirements is of no effect. The landlord is not bound by any purported transfer or other dealing by a contract-holder which required, but did not have, the landlord's consent. The landlord can take proceedings against a purported transferee who will have no legal entitlement to occupy the premises as against the landlord. Alternatively, the landlord can agree to enter into an agreement with the purported transferee; but this is entirely a matter for the landlord.
- 6.58 An exception is provided where the transfer is not in accordance with what the contract permits (whether or not the formalities requirements have been complied with). 88 If the landlord accepts payments from the transferee in respect of the transferee's occupation of the premises, while
 - (1) knowing that the transfer was made otherwise than in accordance with the contract; or
 - (2) when the landlord ought reasonably to have known that the transfer was made otherwise than in accordance with the contract

the transfer has effect as follows.⁸⁹ The transfer becomes binding on the landlord two months after the day on which the landlord first accepted payments from the transferee.⁹⁰

- 6.59 This will not happen if, within the two month period the landlord either:
 - (1) takes steps to end the occupation contract; or
 - (2) brings proceedings to evict the transferee as a trespasser or otherwise shows an intention to treat the transferee as a trespasser.⁹¹

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<sup>84</sup> CI 138(3), applying cls 135(3) and 136(3).
<sup>85</sup> CI 138(4).
<sup>86</sup> CI 137(5).
<sup>87</sup> CI 120(3).
<sup>88</sup> CI 139(1).
<sup>89</sup> CI 139(2).
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Cls 139(2) and (4).

Landlord and Tenant (Covenants) Act 1995

- 6.60 If the occupation contract is a tenancy, the Bill provides that the Landlord and Tenant (Covenants) Act 1995 does not apply to:
 - (1) any transfer by a contract-holder of the contract, the premises or any part of the premises, or any transfer by a joint contract-holder of any of those things or of their rights and obligations under the contract, or
 - (2) any transfer which would be treated by that Act as a transfer of the premises. 92

LANDLORD'S CONSENT⁹³

- 6.61 As noted above, where a contract-holder seeks permission to deal with the contract, landlords often have good reason either to refuse consent or to give consent subject to conditions. Where the contract requires that the landlord's consent be obtained before something can be done, including dealing with the contract, the Bill sets out a general rule. That rule is that while the landlord may give consent subject to conditions, ⁹⁴ he or she may not unreasonably refuse consent (or give consent subject to unreasonable conditions) ⁹⁵. The rule applies unless the contract:
 - (1) explicitly excludes the clause setting out the general rule;
 - (2) makes inconsistent provision with the general rule; or
 - (3) provides that if the landlord does not give or refuse consent, they are to be treated as having refused it. ⁹⁶
- 6.62 A request for consent must be in writing.⁹⁷ Before reaching a decision, the landlord may ask for further information, but this must be within 14 days of the request for consent being made by the contract-holder.⁹⁸

⁹¹ Cl 139(5).

⁹² CI 140(3).

Consent requirements are discussed in Part 10 of Renting Homes (2003) Law Com No 284.

⁹⁴ CI 74(4).

⁹⁵ Cl 74(5).

⁹⁶ Cls 74(1) and (2).

⁹⁷ Cl 74(3).

⁹⁸ Cl 74(6). A request for information for which it is unreasonable to ask is deemed not to have been made: cl 74(7).

- 6.63 Once a request is made, the landlord should respond; the contract-holder should not be left in the dark. Failure to give or refuse consent in writing by the end of two months from the day on which the request was made, or from the day on which the further information which the landlord requested is provided, is treated as the giving of consent without conditions.⁹⁹
- 6.64 In accordance with our general policy of transparency, if the landlord gives consent subject to conditions, the landlord must provide written notice of the conditions at the time the consent is given. Failure to do this is also treated as giving consent without conditions.¹⁰⁰
- 6.65 Where consent is refused, or granted subject to conditions, the person who made the request may ask for a statement of reasons. To encourage landlords to respond, if the statement is not forthcoming within two months, the landlord is treated as having given consent without conditions.¹⁰¹

Reasonableness

- 6.66 In the same way that guidance is provided to judges when they are required to make decisions based on reasonableness, 102 so too the Bill provides guidance to landlords on reasonableness in this context. 103 This guidance must be applied sensibly to the individual case; they are not rigid rules. The purpose is to help landlords understand that the Bill does not prevent them from making sensible decisions, and to help contract-holders appreciate that not every request is going to be met positively.
- 6.67 The provisions on reasonableness relate both to the reasonableness of a refusal by the landlord, and the reasonableness of any condition imposed by a landlord. The factors set out in the schedule include the following general matters:
 - (1) the status of the occupation contract;
 - (2) the premises;
 - (3) the circumstances of the contract-holder; and
 - (4) the circumstances of the landlord.

The schedule also sets out special factors which apply where the contract-holder seeks consent to adding a joint contract-holder, transferring a contract to a potential successor, or transferring a contract to a secure contract-holder.

⁹⁹ Cls 74(8) and (9).

¹⁰⁰ CI 74(10).

¹⁰¹ Cls 74(11) and (12).

¹⁰² See paras 5.31 to 5.42 as to reasonableness in the context of possession claims.

¹⁰³ Sch 4.

¹⁰⁴ Sch 4 para 1.

The status of the occupation contract¹⁰⁵

6.68 It is relevant to know whether steps have been taken by any party to bring the contract to an end, or whether something has been done by any party which might cause the contract to end. Thus, for example, it will be more reasonable to refuse consent where a term of the contract has been broken and possession proceedings are in contemplation than where that has not happened.

The premises 106

6.69 It is relevant to consider the size and suitability of the premises; whether the act for which consent is required will lead to premises becoming overcrowded, or under-occupied, or not being suitable to the needs of the person who will occupy the premises; and whether if the transaction were to take place one of the estate management grounds for possession would become available to the landlord. Thus it would not be reasonable to expect an able-bodied person to be given consent to take over a contract for premises adapted for the disabled.

The circumstances of the contract-holder 107

6.70 It is relevant to consider the probable effect of the transaction on the lives of the parties to the transaction, and others who occupy the premises. It is also relevant to consider whether or not the contract-holder is in breach of the contract. In such a case, it may be reasonable to impose a condition that the breach must cease. Thus it might be reasonable to provide that rent arrears must be paid off as a condition to the giving of consent.

The circumstances of the landlord 108

6.71 It is relevant to consider the financial interests of the landlord; where the landlord is a community landlord, the impact of any transaction on its ability to perform its housing functions; any rules or other criteria the landlord may have about its allocations policies; or whether the transaction accords with its management code. It is specifically provided that a local authority will act reasonably if it refuses consent to a transaction (other than a transfer to a potential successor or secure contract-holder) that would result in a person ineligible for an allocation of housing becoming a contract-holder.

The proposed joint contract-holder¹⁰⁹

6.72 Where a contract-holder seeks consent to add another to the contract it is relevant for the landlord to consider whether the proposed newcomer is suitable (including their past record of contract compliance); whether the proposed newcomer is a member of the contract-holder's family; whether they may become the sole contract-holder and whether they might (if they did not become a contract-holder) become a successor to the contract.

¹⁰⁵ Sch 4 para 2.

¹⁰⁶ Sch 4 para 3.

¹⁰⁷ Sch 4 paras 4 and 5.

¹⁰⁸ Sch 4 paras 6 and 7.

¹⁰⁹ Sch 4 para 8. As to succession rights see Part 7 below.

6.73 We recognise that, in this latter case, the result may be that the landlord could lose control of the premises for some considerable time. (If the newcomer succeeded to the contract, a right of succession would be used up. But if the newcomer is made a joint contract-holder, they can become sole contract-holder by survivorship without using up a right of succession. On that person's death succession is still possible and the contract may continue.) We therefore recommend that, in such a case, it is reasonable for the landlord to impose a condition whereby the newcomer to the contract would be treated as a priority successor or reserve successor, thereby foregoing their entitlement to pass the contract on to another on their death. We think this strikes a sensible balance. The newcomer is assisted to acquire the premises they are currently seeking which may be their most pressing concern, while the landlord does not lose the ability to regain possession of the premises beyond a reasonable period.

Transfer to a potential successor¹¹¹

6.74 Similarly, the Bill provides that in considering whether to give consent to transfer to a potential successor, the landlord should be able to impose a condition that the potential successor is to be treated as a priority successor or reserve successor, thus precluding the possibility of a further right of succession on the potential successor's death.

Transfer to a secure contract-holder

- 6.75 Where consent to a transfer of a secure contract is sought from a community landlord, two particular provisions are set out in the Bill. First, where the transfer is part of a series of transactions, it is reasonable to impose a condition that the transfer may only take place if the whole series of transactions goes ahead.¹¹²
- 6.76 Second, if the person to whom the transfer is to be made is already a priority or reserve successor in relation to their current contract, it is reasonable to impose a condition requiring that the transferee be treated as having the same status in relation to the contract transferred to him or her.¹¹³

¹¹⁰ Sch 4 paras 8(4) to (6).

¹¹¹ Sch 4 para 9.

¹¹² Sch 4 paras 10(2) and (3).

¹¹³ Sch 4 paras 10(4) and (5).

PART 7 SURVIVORSHIP, SUCCESSION AND RELATED MATTERS

INTRODUCTION

- 7.1 What happens to an occupation contract when a contract-holder dies is an emotional and difficult issue, particularly where the contract-holder leaves a spouse, partner or other person with whom the deceased has been living. There are difficult questions of balance to be resolved. On the one hand, there is a perfectly understandable desire to offer protection to those who are bereft. Eviction of the recently bereaved is seen as heartless and unacceptable. On the other hand, where a consequence of the death of an occupier is that accommodation is no longer being used as effectively as it might be (for example, where a dwelling adapted for the needs of a disabled person no longer accommodates a person with a disability), wider social policy considerations may indicate that landlords should be able to move a person affected to more appropriate accommodation.
- 7.2 Current law responds to these issues by prescribing circumstances in which a person may succeed to a tenancy. But the succession rules differ, depending on the identity of the landlord. They also fail to cover some situations where succession rights might be thought appropriate. We recommend rationalisation of the current law.
- 7.3 We have two principal objectives: first, in line with our recommendations for the creation of a single social tenancy, to create a level playing field for all social landlords; second, to provide landlords with the opportunity to manage their estate as effectively as possible in line with the need not to treat the recently bereaved insensitively. This Part considers four issues which may arise on the death of a contract-holder:
 - (1) survivorship;
 - (2) succession rights;
 - (3) the transfer of fixed term standard contracts; and
 - (4) the estate management ground for possession.

SURVIVORSHIP1

7.4 Before turning to the details of succession, it is important to remember that our scheme provides that, where there are joint contract-holders, the rights of a joint contract-holder who dies² pass to the survivor in accordance with the principle of survivorship.

Survivorship is discussed in Parts 11 and 14 of Renting Homes (2003) Law Com No 284.

The same principle applies where a joint contract-holder does not die but leaves the contract.

- 7.5 Thus, subject to the point made in the following paragraph, it is a fundamental term of all occupation contracts that whenever a joint contract-holder ceases to be a party to the contract, the remaining joint contract-holder(s) automatically become fully entitled to all the rights under the contract, and liable to perform fully all the obligations under the contract.³ The departed joint contract-holder is not entitled to any right nor liable to any obligation once they have left the contract.⁴ They neither lose any right nor waive any liability accruing before they left the contract.⁵
- 7.6 These principles do not apply where the rights and obligations of a joint contract-holder under an occupation contract are transferred, following death or indeed while the joint contract-holder is still alive.⁶
- 7.7 In many cases, therefore, spouses and partners can take advantage of the contract to pass their rights in the contract to their survivor. Rights of survivorship take precedence over any statutory scheme for succession.

SUCCESSION RIGHTS⁷

Introduction

- 7.8 Succession rights have long been an integral feature of housing law, but they have become very complex. Complexity has arisen:
 - (1) through the proliferation of statutory schemes, each with different succession rights;
 - through the interface of contract, property and statutory provisions which provide for different consequences on the death of an occupier; and
 - (3) as the result of statutory silence on a number of issues which are significant in practice, the obvious example (until recently when the Civil Partnership Act 2004 came into force) being the application of the current rules to same sex couples.

The Bill provides a single statement of succession rights that applies to all occupation contracts.8

7.9 We recommend measures which reflect the contemporary social reality of the family in a manner that is consistent with the Human Rights Act 1998 and the Civil Partnership Act 2004.

³ Cl 111(1). Cls 131 to 139 provide for transfers: see paras 6.36 to 6.60 and 6.74 to 6.76 above.

⁴ Cl 111(2).

⁵ Cl 111(3).

⁶ Cl 111(4).

Succession rights are discussed in Part 14 of Renting Homes (2003) Law Com No 284.

Save fixed term standard contracts with their own terms allowing the transfer of the contract on death: see below, at paras 7.31 to 7.33.

- 7.10 Following a development in Scotland, we also want to recognise demands placed upon relatives or others who look after elderly, ill or disabled people. It is often easier to provide the level of care required if the carer moves into the home of the vulnerable person. Many carers find it impossible to maintain their own home if they do this. Our recommendations recognise the reality of the sacrifices that carers make by protecting the position of unpaid carers who give up their own home to care for another in that other person's home.
- 7.11 At present, the succession rights for secure tenants in the Housing Act 1985 preclude succession to a spouse being followed by a succession of another member of the family, even if that person has lived with the tenant for all of their life. We think this is too restricted.
- 7.12 Some community landlords are concerned that the effect of these recommendations will unnecessarily restrict their ability to rent to those most in housing need. We think these fears are unlikely to be realised in practice. In Scotland, where similar rules have existed since 2001, experience is that relatively few social tenancies pass under the succession rules. Further, we recommend the estate management ground for possession (see below). In addition, it is known that under the present more restrictive rules, where succession is a genuine issue, it can generate significant levels of complaint to Members of Parliament. Our recommendations strike a better balance between the legitimate concerns of community landlords and the needs of individual occupiers.

The passing of the contract on death

- 7.13 Our scheme recognises the possibility of passing a contract on to one's children, though ensuring that this is done within sensible constraints of estate management. We believe that it should be possible to protect the normal expectations of a family within rented housing, that the partner and then a child of the family, if they have not set up home elsewhere, should be able to succeed to the occupation contract.
- 7.14 To achieve this outcome, the scheme provides a limited number of ways in which an occupation contract can be passed to another person following the death of a contract-holder. Subject to two exceptions, we recommend that our scheme of statutory succession should be the only way that someone can succeed to an occupation contract.

7.15 The two exceptions are:

- (1) where there is a surviving joint contract-holder, when the right to occupy passes by operation of the principle of survivorship;⁹ or
- (2) where there is a fixed term agreement, which, if the contract specifically provides for it, can be transmitted by will or intestacy.¹⁰

⁹ Discussed above, at paras 7.4 to 7.7.

¹⁰ See cls 133 and 136 discussed below, at paras 7.31 to 7.33.

7.16 The right to succeed arises on the death of a sole contract-holder under a secure contract, a periodic standard contract, or a fixed term standard contract which contains no provision for transmission by will or intestacy. For the right to be exercised, there must be at least one person qualified to succeed.¹¹

Persons qualified to succeed

- 7.17 A person is qualified to succeed if they are either:
 - (1) a priority successor; or
 - (2) a reserve successor. 12
- 7.18 If the current contract-holder is a priority successor, then there is a further right of succession to a reserve successor.¹³ If the current contract-holder is a reserve successor, then no other person is qualified to succeed.¹⁴

PRIORITY SUCCESSOR

- 7.19 A priority successor is a spouse or partner of the contract-holder¹⁵ who occupied the premises subject to the occupation contract as their only or principal home at the time of the contract-holder's death.¹⁶ No person can be a priority successor where the contract-holder who died was a priority successor.¹⁷
 - (1) If for example Alan was the original sole contract holder, married to Barbara, and Barbara was living in the premises at the time of Alan's death, then Barbara would be the priority successor. Barbara then becomes the contract-holder.
 - (2) Charles subsequently moves in with Barbara and lives with her as if they were husband and wife. On Barbara's death, Charles could not be a priority successor, because Barbara had been a priority successor in relation to the occupation contract.

RESERVE SUCCESSOR

- 7.20 A reserve successor is a person who is not a priority successor of the contract-holder and who is either a carer, ¹⁸ or who meets:
 - (1) the family member condition; and

¹¹ Cl 141(2). See below where more than one person qualifies to succeed, at para 7.27.

¹² Cl 142(1)(a).

¹³ This is the effect of cl 142(1)(a).

¹⁴ Cl 142(2).

Defined by cls 230(1)(a) and (b) as: spouse, or civil partner, or persons living together as husband and wife, or as civil partners.

¹⁶ CI 144(1).

¹⁷ Cl 144(2).

¹⁸ See below, at para 7.23.

(2) the basic residence condition (unless they are a spouse, civil partner, or lived with the contract-holder as if they were husband and wife or civil partners).¹⁹

In addition, a reserve successor must occupy the premises at the time of the contract-holder's death as their only or principal home.

- 7.21 The *family member condition* is that the person must be a member of the contract-holder's family.²⁰ If the contract-holder was a priority successor, a person also meets the family member condition if they are a member of the family of the person the current contract-holder succeeded.²¹
- 7.22 The *basic residence condition* is that, throughout the period of 12 months ending with the contract-holder's death, the person lived with the contract-holder or occupied the premises subject to the occupation contract.²² If the contract-holder was a priority successor, the period of residence includes living with the person the current contract-holder succeeded.²³
 - (1) In the example given in paragraph 7.19 above, Charles would be a reserve successor on Barbara's death. Charles would become the new contract-holder, even if he had not lived with Barbara or at the premises for as long as 12 months when Barbara died, as long as he was living there on Barbara's death. On Charles's death, there could be no more successions in respect of the contract.
 - (2) Debbie is the original contract-holder, living with her civil partner Emma, and Emma's daughter Fiona. On Debbie's death, Emma would be a priority successor, and become the contract-holder. When Emma dies, Fiona had been living with Debbie and Emma throughout the period of 12 months ending with Emma's death. Thus, Fiona would be a reserve successor, and become the contract-holder. There could be no more successions in respect of the contract on Fiona's death.

Carers

- 7.23 A carer can also be a reserve successor.²⁴ To be a reserve successor, the carer must:
 - (1) meet the carer condition;
 - (2) meet the carer residence condition;

¹⁹ CI 145(1).

²⁰ Defined by cl 230.

²¹ Cl 145(4).

²² Cl 145(3).

²³ Cl 145(4).

A carer is a person who provides or intends to provide a substantial amount of care for another on a regular basis, but does not provide the care, nor will provide the care because of a contract of employment or any other contract: cl 146(5). The mere fact that the carer is provided with board and lodging does not mean the person provides care because of a contract: cl 146(6).

- (3) occupy the premises as their only or principal home at the time the contract-holder died; and
- (4) not be a priority successor of the contract-holder.²⁵
- 7.24 The *carer condition* is that the person must have been caring for the contract-holder, or a member of the contract-holder's family who was living with the contract-holder when the care was provided, at any time in the period of 12 months ending with the death of the contract-holder.²⁶
- 7.25 The *carer residence condition* is the same as the basic residence condition,²⁷ with the added element that the carer must have no other premises they are entitled to occupy as a home.

George is an elderly and frail sole contract-holder of a housing association flat. Henry, his neighbour, moves in with George to care for him. On doing so, Henry has to give up the flat he had been renting from the housing association (as the occupation contract contained a term requiring Henry to occupy it as his only or principal home). On George's death, 15 months later, Henry is a reserve successor to the contract of George's flat. There could be no more successions to the contract on Henry's death.

EXCLUSIONS

- 7.26 Two classes of person cannot be a successor:
 - (1) a person who has not reached the age of 16 on the date the contract-holder died;²⁸ and
 - (2) a person who has occupied under a sub-occupation contract in the twelve months before the contract-holder's death.²⁹

A person who has occupied under a sub-occupation contract can be a successor if they are a priority or reserve successor who is the contract-holder's spouse or civil partner (or lives with the contract-holder as if they were husband and wife or civil partners), and the sub-occupation contract ended before the contract-holder's death.³⁰

More than one qualified successor

7.27 It may well happen that more than one person comes within the definition of priority or reserve successor.³¹ In this case the following rules apply.

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    CI 146(1).
    CI 146(2).
    CI 146(4). The basic residence condition is discussed above, at para 7.22.
    CI 142(3).
    CI 142(4).
    CI 142(5).
    CI 143(1).
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- (1) If there is only one priority successor, that person succeeds.³²
- (2) If there are two or more priority successors, they can agree who the new contract-holder(s) shall be. If they cannot agree, or do not notify the landlord of an agreement within a reasonable time, the landlord selects the new contract-holder(s).³³
- (3) If all those qualified are reserve successors, they can agree who the new contract-holder(s) shall be. If they cannot agree, or do not notify the landlord of an agreement within a reasonable time, the landlord selects the new contract-holder(s).³⁴

Where the landlord has made a selection, those not accepted may appeal to the court within four weeks from the date of the selection.³⁵ The court must determine the appeal on the merits and not simply by way of review.³⁶

Effect of succession

- 7.28 A successor who was the only person qualified to succeed, or the only priority successor (where the other persons qualified to succeed were reserve successors), becomes entitled to the rights and subject to the obligations under the contract, from the relevant date.³⁷ A new contract-holder selected by agreement among the qualified successors or by the landlord becomes entitled to the rights and subject to the obligations under the contract from either the relevant date, or the day of the agreement or landlord's selection, whichever is later.³⁸
- 7.29 We have decided to make succession automatic where there is a single successor to improve certainty for all parties and because we felt it would deal most easily and efficiently with the overwhelming majority of situations. However, we recognise that there may be problems with automatically vesting the contract: the potential successor may not wish to become a contract-holder; there may be more than one potential successor and they may not wish to take on the contract jointly; or the priority successor may not wish to become a contract-holder whilst a potential reserve successor does. In the first of these cases, the successor can terminate the contract if they do not wish to be bound by it. We have provided mechanisms to deal with the other two potential difficulties.

³² CI 143(2).

³³ Cl 143(3).

³⁴ Cl 143(4).

³⁵ Cls 143(5) to (7).

³⁶ Cl 143(8).

CI 147(1). The relevant date is the day on which the contract would have ended under clause 159 if no-one had been qualified to succeed. The date the contract would have ended if no-one had been qualified to succeed is one month after the contract-holder's death, or if earlier, the date when the landlord was notified of the contract-holder's death by authorised persons.

³⁸ CI 147(2).

7.30 Where a person succeeds to the contract because they were the only priority successor, and within six months from the contract-holder's death decides to end the contract, the other persons qualified to succeed the original contract-holder are given an opportunity to succeed.³⁹ The landlord who receives a notice from the successor that they want to end the contract, or agrees with the successor to end the contract, is required to give notice to other occupiers of the premises and to any potential successors whose address the landlord knows.⁴⁰ The same rules governing who actually succeeds where there are several persons qualified to succeed apply, save that the person who did succeed first time round (and no longer wants to be the contract holder) is treated as if they were not qualified to succeed.⁴¹ In this case the "relevant date" is the date on which the contract would otherwise have ended under the original successor's notice or agreement with the landlord to end the contract.⁴²

THE TRANSFER OF FIXED TERM STANDARD CONTRACTS

- 7.31 A fixed term standard contract may provide that, on the death of a sole contract-holder, the contract may be transferred to another person in the course of the administration of the estate.⁴³
- 7.32 A fixed term standard contract may also provide that, on the death of a joint contract-holder, the contract may be transferred to another person in the course of the administration of the estate.⁴⁴ In this situation, therefore, although the principle of survivorship may apply by default, it need not do so if other arrangements have been made.
- 7.33 Where a joint contract-holder wants to make other arrangements, however, the contract must also provide that, before their death, the joint contract-holder gives notice to the other joint contract-holders that such a transfer will be made. The contract must also provide that the transferee is not entitled to occupy the premises without the consent of the other joint contract-holders.

³⁹ Cl 148.

⁴⁰ CI 150.

⁴¹ Cls 148(3) to (5).

⁴² Cl 149(3).

CI 133(1). In such a case, the normal rules in cl 159 on what happens on the death of the contract-holder do not apply: cl 133(3). Further, the rules on succession (see above, at paras 7.8 to 7.30, and cl 141) do not apply: cl 133(2).

⁴⁴ CI 136(1).

⁴⁵ CI 136(2).

⁴⁶ CI 136(3).

THE ESTATE MANAGEMENT GROUND FOR POSSESSION

- 7.34 Whilst concerned to produce a modern system of succession rights, we must also take account of the need for social landlords to be able to use their housing stock efficiently and for the social purposes for which it was provided. We therefore recommend that social landlords should have available to them a ground for seeking possession based on under-occupation of the home following the death of the contract-holder (ground G in schedule 6 to the Bill). The ground is based on the current ground 16 of schedule 2 to the Housing Act 1985. It is only available where the successor is not a priority successor.
- 7.35 Proceedings, including the giving of notice of intention to take proceedings, cannot be commenced until six months after the death of the original contract-holder. Proceedings have to be started no later than 12 months after that date. Thus a relatively limited window of opportunity is created for landlords wanting to use this ground. The court must determine that it is reasonable to make the order sought. In addition, the social landlord is required to ensure that suitable alternative accommodation is provided. 48

⁴⁷ CI 186(4).

⁴⁸ The ground is discussed in more detail above: paras 4.82(1) and 5.42(1).

PART 8 REPAIRS

INTRODUCTION1

- 8.1 One of the principal objectives of housing law is to provide a legal framework within which those who rent homes can be assured that they have reasonable conditions in which to live. For many years the law has imposed obligations on landlords to keep the structure of their buildings in proper repair.
- 8.2 In 1996, the Law Commission undertook a comprehensive review of this area of law.² The Report made four principal recommendations.
 - (1) Where a landlord lets residential property for a period of less than seven years, it will be an implied term of the lease that the landlord will ensure that the property is fit for human habitation both at its commencement and throughout the duration of the lease.
 - (2) On the grant of the lease, the parties should make express provision in order to allocate the responsibility for the repair of the property. In the absence of any such express provision, the repairing burden should fall on the landlord.
 - (3) Repairing obligations (whether owed by landlord or tenant) should be capable of enforcement by specific performance.
 - (4) Those in lawful occupation or possession of property belonging to another should be subject to a code of basic obligations as to the manner in which they treat the premises.

The Government still has them under consideration.

- 8.3 There has been one significant development in the law. The single test of fitness for human habitation found in the Housing Act 1985 has been replaced, under the Housing Act 2004, by a more flexible set of principles, designed to relate the degree of hazard present in accommodation to those who are actually going to reside in it.
- 8.4 As we had undertaken a major review of the law, we did not specifically consult on the issues surrounding repairing covenants for Renting Homes. We noted that the approach adopted in our earlier Report broadly complemented the consumer protection approach adopted in Renting Homes.³ In particular, our earlier recommendation that accommodation should be fit to live in at the start of an agreement exactly matched our current thinking.

Repairs are discussed in Part 8 of Renting Homes (2003) Law Com No 284.

² Landlord and Tenant: Responsibility for State and Condition of Property (1996) Law Com No 238.

^{3 (2003)} Law Com No 284.

8.5 Occupation contracts must contain fundamental terms relating to repairing obligations. The question is the degree of detail we should recommend at this stage.

FUNDAMENTAL TERMS

- 8.6 With these points in mind, the Bill, as currently drafted, imposes two broad obligations on landlords.⁴ The approach is to restate existing law, and our previous recommendations for reform of the law, adapted to meet the needs of our scheme.
- 8.7 First, we recommend that landlords must ensure that there is no category 1 hazard⁵ on the premises subject to the contract.⁶ This adapts the recommendation made in Landlord and Tenant: Responsibility for State and Condition of Property⁷ relating to unfitness for human habitation, to accommodate the change in the law introduced by the Housing Act 2004.
- 8.8 Second, they must keep in repair the structure and exterior of the premises, and keep in repair and proper working order the service installations in the premises. This test restates in modern form the test which currently appears in the Landlord and Tenant Act 1985 section 11. This obligation will apply to all periodic occupation contracts, and fixed term standard contracts for a term of less than seven years. Unlike section 11, it will therefore extend to licences as well as leases.
- 8.9 Each of these tests is to be applied flexibly. The Bill therefore provides that:
 - (1) both tests are adapted where the premises form part only of a building;
 - (2) the standard of repair is that which is reasonable having regard to the age and character of the premises and the period during which they are likely to be available for occupation as a home;⁹
 - (3) the landlord must make good any damage caused by works and repairs needed to comply with these obligations, 10 and may not impose any obligation on a contract-holder who enforces or relies on the landlord's obligations; 11

These apply to all occupation contracts, save fixed term contracts for seven years or more: cl 43(1).

⁵ As defined in the Housing Act 2004: cl 43(7).

⁶ Cl 43(1).

⁷ (1996) Law Com No 238.

⁸ Cl 43(2). Service installations are those for the supply of gas, water, electricity, sanitation, space heating and heating water: cl 43(7).

⁹ Cl 43(4).

¹⁰ CI 43(5).

¹¹ CI 43(6).

(4) The landlord complies with the repairing obligations if they carry out the necessary works or repairs within a reasonable time after the day on which they become aware that the works or repairs are necessary.¹²

Limits

- 8.10 Notwithstanding their generality, these rules are subject to a number of limitations.
 - (1) There is no liability if a category 1 hazard is incapable of removal by the landlord at reasonable expense.¹³
 - (2) The landlord is not required to rebuild or reinstate premises or any part of them where destruction or damage is caused by fire, storm, flood or other inevitable accident.¹⁴
 - (3) The landlord is not obliged to keep in repair anything the contract-holder is entitled to remove from the premises (for example, an electric fan heater). 15
 - (4) The landlord is not obliged to carry out works or repairs to other parts of the building unless the disrepair or failure to keep in working order affects the contract-holder's enjoyment of the premises or the common parts which the contract-holder is entitled to use.¹⁶
 - (5) The landlord is not liable if the existence of the category 1 hazard or the disrepair or failure of a service installation is wholly or mainly attributable to lack of care¹⁷ by the contract-holder or a permitted occupier of the premises.¹⁸
 - (6) The landlord's obligations to repair do not arise until the landlord is aware that works or repairs are necessary. 19

¹² CI 46(2).

¹³ CI 44(1).

¹⁴ Cls 44(2)(a) and (4). Where the premises are part only of a building, the landlord is not required to rebuild or reinstate any other part of the building in which they have an estate or interest, where the damage or destruction is similarly caused: cl 44(3).

¹⁵ CI 44(2)(b).

¹⁶ CI 44(5).

Lack of care means a failure to take proper care of the premises or the common parts that the contract-holder is entitled to use: cl 45(3).

¹⁸ Cls 45(1) and (2).

Cl 46(1). This restates the current law on the need for the landlord to have notice of the want of repair. If a landlord transfers their interest in the premises to another, and before the transfer the original landlord is aware that works or repairs are necessary, the new landlord is treated as becoming aware of the need on the date of the assignment, but not before: cls 46(3) and (4).

Access

- 8.11 The landlord may enter premises at any reasonable time to inspect the condition and state of repair of the premises or to carry out works or repairs.²⁰ At least 24 hours' notice must be given.²¹
- 8.12 The landlord is not liable where the works have to be carried out in another part of the building to which, after making a reasonable effort to do so, the landlord cannot get access.²²

Parties to proceedings

8.13 In addition to the contract-holder, permitted occupiers may also bring proceedings²³ against the landlord for breach of the repairing obligations.²⁴

Enforcement

- 8.14 A general provision empowers a court, in any proceedings for breach of a repairing obligation under an occupation contract, to order specific performance of the obligation. This overrides any equitable rule limiting the application of the remedy.²⁵
- 8.15 For these purposes, the repairing obligation includes not only the landlord's obligations set out above, but any other obligations to repair, or to keep or deliver up in repair, or to maintain, renew, construct or replace any property, and obligations to keep any property fit for human habitation however expressed.²⁶

Waste and tenant-like user

8.16 Common law principles relating to waste and tenant-like user do not apply to occupation contracts.²⁷ Obligations to be imposed on the contract-holder are set out as supplementary or additional terms in the contract. By definition they cannot conflict with the fundamental terms discussed above.

²⁰ Cl 47(1).

²¹ Cl 47(2).

²² Cls 47(3) and (4).

Limited to proceedings in respect of personal injury or loss of or damage to personal property: cl 48(3).

CI 48. A lodger must be allowed to reside in the premises in accordance with the occupation contract and a sub-holder must have a sub-occupation contract made in accordance with the terms of the original occupation contract: cl 48(2). This formulation is designed to avoid some of the issues that can arise from the application of the principle of privity of contract.

²⁵ Cl 49(1).

²⁶ CI 49(2).

²⁷ CI 50.

IMPROVEMENTS

8.17 Tenants of local authorities have for some years had a right to improve their property. We understand that the statutory provisions conferring this right have not worked well in practice. We have not included specific provision in the Bill on any right to improve as we consider that the appropriate authority may wish to look more closely at the underlying policy.

PART 9 PROHIBITED CONDUCT AND ANTI-SOCIAL BEHAVIOUR

INTRODUCTION1

- 9.1 Landlords have long sought to use tenancy agreements to control some forms of tenant behaviour. Terms in agreements prohibiting the playing of music after certain hours are common. In addition, many leases have contained covenants prohibiting the use of premises for criminal or immoral purposes.
- 9.2 In recent years, new social issues have come to public attention which have effectively extended the range of situations in which the law has sought to control the behaviour of tenants. Perhaps the clearest example is that of domestic violence. In addition to the development of general rules of law designed to prevent domestic violence and deal with the consequences of domestic violence, there has for many years been available a ground for possession enabling landlords to seek possession against a tenant found to have committed domestic violence.
- 9.3 In our original Consultation Paper² we made a number of proposals relating to the regulation of occupier behaviour which proved very controversial. We were particularly criticised for linking proposals for the reform of housing law to broader issues relating to the control of anti-social behaviour. In the light both of these criticisms, and the fact the Government policy relating to anti-social behaviour has developed rapidly, we have modified our approach.³ This approach builds on the current law, but seeks to rationalise and clarify it.
- 9.4 In essence, we recommend that:
 - (1) all occupation contracts should contain a prohibited conduct term;
 - (2) breach of the term will justify the institution of possession proceedings in the normal way;
 - (3) landlords can also seek injunctions for breach of the term;

Anti-social behaviour is discussed in Part 15 of Renting Homes (2003) Law Com No 284.

Renting Homes 1: Status and Security (2002) Law Commission Consultation Paper No 162

³ See Renting Homes (2003) Law Com No 284, Part 15.

- (4) the grant of an injunction to a community landlord can be linked with an order excluding the person injuncted from the premises, or from any area specified in the injunction,⁴ or requiring the person injuncted to exclude any other person from the premises;
- (5) similarly a power of arrest may be attached to the injunction;
- (6) injunction proceedings and possession proceedings can be dealt with together;
- (7) landlords can seek the demotion of a secure contract-holder to a standard contract as an alternative to eviction.
- 9.5 Our objective is to strike an appropriate balance between the interests of contract-holders and their families; of neighbours and others in the vicinity of the contract-holder; and of the landlord. We accept that there are circumstances in which firm and speedy action is required to stop or prevent some wholly undesirable act from taking place. At the same time, and as many emphasised in their responses to us, we want to ensure that families whose behaviour is causing distress and alarm to others can receive the assistance they need to change their behaviour to something more socially acceptable.
- 9.6 Although the Bill does not provide specifically for the repeal of any other statutory provisions, these new provisions would supersede section 153D of the Housing Act 1996 (injunction against breach of tenancy agreement), which could therefore be repealed. Clause 214 of the Bill also provides for the repeal of s 153A(4)(d) of that Act.

PROHIBITED CONDUCT

Fundamental term

- 9.7 All occupation contracts contain a fundamental term relating to prohibited conduct. There are four elements to the term.
 - (1) A contract-holder may not use or threaten to use violence against a person lawfully living in the premises,⁵ or do anything which creates a risk of significant harm to such a person.⁶
 - (2) A contract-holder may not engage or threaten to engage in conduct that is capable of causing nuisance or annoyance to:
 - (a) a person living in the locality of the premises; or
 - (b) a person engaged in lawful activity in, or in the locality of, the premises.⁷

This is similar to the power in section 153C of the Housing Act 1996, inserted by the Antisocial Behaviour Act 2003, but by requiring a risk of significant harm, as opposed to a significant risk of harm, arguably sets a higher threshold. The courts will examine applications for such exclusion orders carefully, to see whether they are proportionate in the circumstances: see Moat Housing Group v Harris and Hartless [2005] EWCA Civ 287.

⁵ CI 51(1).

⁶ Cl 51(2).

- (3) A contract-holder may not use or threaten to use the premises, or any common parts that they are entitled to use under the contract, for criminal purposes.⁸
- (4) The contract-holder may not allow, incite or encourage others who are residing in or visiting the premises to act in these ways (or allow, incite or encourage any person to act as mentioned in (3)).⁹

Unlike most other fundamental terms, this one may not be modified or varied. In addition, the appropriate authority has the power to amend the fundamental provision by order.¹⁰

Enforcement

Possession proceedings

9.8 Breach of the term can trigger proceedings for possession in the normal way. But in this case, exceptionally, proceedings can be started on the same day as the landlord gives the possession notice.¹¹

Injunction

9.9 In cases where contract-holders engage in activities in breach of the term of the contract, more immediate action may also be required. The Bill therefore enables the landlord to apply for an injunction to stop the contract-holder acting in breach of the term. The injunction may be granted for a fixed period, or until varied or discharged. An injunction may be sought *ex parte*. In such a case, the court must give the contract-holder the opportunity to make representations as soon as reasonably practicable.

Exclusion order

- 9.10 In addition to the ability of all landlords to seek an injunction for breach of the fundamental term, a community landlord or registered charity may also seek an exclusion order. This may be granted in a case where the court grants an injunction and:
 - (1) the conduct in question involves the use or threatened use of violence; or

⁷ CI 51(3).

⁸ Cl 51(4). We have dropped reference to the use of premises for "immoral purposes" on the basis that this phrase is vague and is in any event covered by the other provisions.

⁹ Cls 51(5) and (6).

¹⁰ Cl 62.

¹¹ See above, at para 4.52(1).

¹² Cls 52(1) and (2). Where there are joint contract-holders, the injunction may be applied for and granted in respect of all of them, or in respect of those specified in the application or injunction: cl 52(3).

¹³ Cl 52(4). Discharge or variation may be on application by either the landlord or the contract-holder(s) against whom the injunction was made: cl 52(5).

¹⁴ Without notice to the contract-holder: cl 52(6).

¹⁵ Cl 52(7).

- (2) there is a risk of significant harm to any person. 16
- 9.11 The exclusion order may prohibit the contract-holder against whom it is made from entering or being in:
 - (1) any premises specified in the injunction (including the premises subject to the occupation contract); or
 - (2) any area specified in the injunction.¹⁷
- 9.12 The injunction may also require the contract-holder to exclude from the premises subject to the occupation contract any person specified in the injunction.¹⁸

Power of arrest

- 9.13 Where a court grants an injunction to a community landlord or a registered charity it may also attach a power of arrest.¹⁹
- 9.14 Where a landlord has sought an ex parte injunction, in deciding whether to attach a power of arrest, the court must consider:
 - (1) whether it is likely that the landlord will be deterred or prevented from seeking the attachment of a power of arrest if the court does not attach it immediately; or
 - (2) whether the respondent is aware of the proceedings but is deliberately evading service, and the landlord or another person will be seriously prejudiced if the decision to attach a power of arrest is delayed.²⁰

If the court attaches a power of arrest at this point, the respondent must have the opportunity to make representations as soon as reasonably practicable.²¹

¹⁶ CI 53(1).

¹⁷ CI 53(2).

¹⁸ Cl 53(3).

¹⁹ Cl 54(1). The period for which this power lasts may be shorter than the period of the injunction: cl 54(2). The court has power to vary or discharge the power, on the application either of the landlord or the contract-holder: cls 54(3) to (5).

²⁰ Cls 55(2) to (4).

²¹ Cl 55(5).

- 9.15 The power of arrest may be exercised by a constable who has reasonable cause to suspect that a person is in breach of the term or in contempt of court.²² The constable must inform the landlord,²³ and bring the person before a relevant judge within 24 hours.²⁴ If an injunction was granted without a power of arrest attached, and the landlord thinks the injunction is being broken, the landlord may apply to the relevant judge to issue an arrest warrant.²⁵
- 9.16 Following arrest, the court has power to remand the respondent,²⁶ and also to remand for medical examination if it seems a medical report may be required.²⁷

Imposition of standard contract

- 9.17 Where a community landlord or registered charity has entered into a secure contract, and the contract-holder has broken the prohibited conduct term, the landlord may apply to the court for an order imposing a standard contract in place of the secure. This procedure, effectively demoting the contract-holder, may be used as an alternative to eviction where a landlord wants to work with the contract-holder to improve behaviour.
- 9.18 The court may not make this order unless it is satisfied that:
 - (1) the contract-holder is in breach of the term;
 - (2) it would have made an order for possession on the breach of contract ground in reliance only on this breach;
 - (3) the landlord will provide a programme of social support for the contractholder, designed to prevent prohibited conduct; and
 - (4) it is reasonable to make the order.²⁹

²² Cl 56(1).

²³ Cl 56(2)

²⁴ Cl 56(3). Christmas Day, Good Friday and Sundays do not count: cl 56(4). The relevant judge is a High Court judge if the injunction was granted in the High Court; otherwise any county court judge or district judge: cl 63(2).

²⁵ Cls 56(5) and (6). The warrant cannot be issued unless the landlord's application is substantiated on oath and the relevant judge has reasonable grounds for believing the person against whom the injunction was made has failed to comply with it: cl 56(7).

²⁶ Cl 57. The power to remand is subject to detailed provisions set out in sch 3 to the Bill.

²⁷ CI 58.

²⁸ Cls 59(1) and (2).

²⁹ CI 59(3).

- 9.19 Before the court can make an order under these provisions, either the landlord must have given the contract-holder notice that such an order would be sought, or the court must consider it reasonable to dispense with the notice requirement.³⁰
- 9.20 Where a standard contract is imposed by order of the court, the contract is called a "prohibited conduct standard contract". The terms of the new contract are in essence those of the secure contract subject to the necessary detailed amendments.³¹
- 9.21 Special powers are attached to a prohibited conduct standard contract designed to give the landlord and contract-holder the time to work together to improve behaviour. Thus, the prohibited conduct contract is to last for a "trial period". This is 12 months from the start of the contract, 32 unless the court orders a shorter period, 33 or unless an extension to the trial period is authorised. 4 The maximum period for the trial period is 18 months.

³⁰ Cl 60(1). The notice must give particulars of the conduct in respect of which the order is sought; and state that proceedings will not be started until after the date specified in the notice (which may be the same date as the day on which the notice was given), and will not be started more than six months after the date on which the notice was given to the contract-holder: cls 60(2) and (3).

³¹ The rules are set out in cl 61.

³² CI 103.

³³ CI 105.

³⁴ CI 104.

Promotion to a secure contract

9.22 At the end of the trial period, the prohibited conduct standard contract is automatically converted back to a secure contract.³⁵ This reflects our general view that those who would normally expect the security of a secure contract should not be exposed indefinitely to the relative uncertainties of the standard contract. Thus if the attempts of the landlord to improve behaviour appear not to be working, the landlord will have to address the question whether towards the end of the trial period it takes possession proceedings against the contract-holder, or allows the contract-holder to regain full security of tenure.

Simultaneous proceedings

9.23 There is specific provision enabling a landlord to combine proceedings for breach of an injunction and possession proceedings.³⁶ There is also provision enabling proceedings for possession to be combined with proceedings for an order to impose a prohibited conduct standard contract.³⁷

³⁵ CI 98.

³⁶ Cl 191(1).

³⁷ CI 60(4).

PART 10 SUPPORTED HOUSING

INTRODUCTION1

- 10.1 One of the biggest challenges which has faced the Commission in this project has been the creation of a legal framework for the regulation of supported housing. Supported housing comes in a wide variety of forms and types of provision, but it is all designed to provide accommodation for some of the most disadvantaged and socially excluded members of our society. This very fact creates its own challenges. Managing supported housing, difficult at the best of times, can on occasion be extremely dangerous, as occupiers under the influence of drugs or alcohol may behave erratically and threateningly.
- 10.2 Our thinking about the best way to develop this part of the law has changed dramatically during the consultation process. Initially we suggested that all projects providing an appropriate level of supported accommodation to vulnerable groups should be excluded from our proposed statutory scheme and from the Protection from Eviction Act 1977.² We also suggested that the Secretary of State could have a power to hold a list of such projects.
- 10.3 Our reason for adopting this "hands-off" approach was that we thought this would be the best way to provide a legal environment that would facilitate supported accommodation for all kinds of short-term social projects such as hostels, drug rehabilitation projects, and foyers. The statutory list would have provided a level of certainty arising from the lack of statutory protection available to such projects, overcoming current difficulties in identifying the legal status of certain projects.
- 10.4 Responses to these proposals were very critical. We were told that we had failed to appreciate the diversity of supported housing schemes, the extent to which providers were committed to giving occupiers of supported housing the most extensive security possible and the increasing professionalisation in supported housing arising from the Government's *Supporting People*³ programme.

THE NEW APPROACH

10.5 On closer investigation, we realised that the philosophy that underpins the *Supporting People* programme presented an excellent basis for developing our own ideas for the reform of the law. The legal framework we now recommend responds by providing user perspectives, clear frameworks and accountability of providers. In addition it provides for the stepped progression of clients from housing dependency towards housing independence.

¹ Supported housing is discussed in Part 16 of Renting Homes (2003) Law Com No 284.

See paras 9.101 to 9.107 of Renting Homes (1): Status and Security (2002) Law Commission Consultation Paper No 162.

³ Department of Social Security, Supporting People: A New Policy and Funding Framework for Support Services (1998).

- 10.6 Our approach⁴ now is to provide a legal framework that differentiates between types of supported accommodation. In essence, our scheme establishes three levels of legal protection for supported housing:
 - (1) agreements excluded from the scheme (very short term accommodation);
 - (2) agreements included as standard contracts; and
 - (3) agreements included as secure contracts.
- 10.7 We have also recognised that managers in the supported housing sector have specific needs for a range of measures that can be used by them in specific circumstances.
- 10.8 This approach to supported housing is much more consistent with our overall approach to the statutory scheme than our original ideas. Our new recommendations provide for as few exclusions from the scheme as possible and as few exceptions to the general requirement upon social landlords to provide housing on secure contracts as possible.

DETAILS OF OUR STATUTORY SCHEME

- 10.9 The Bill provides the first legislative recognition of the specific needs of supported housing landlords and occupiers. It provides the opportunity to escape the very real difficulties that projects are forced to deal with under the current law, given the need to choose between quite possibly legally dubious licences, on the one hand, and (for these purposes) overly-secure assured shorthold tenancies on the other.
- 10.10 Supported housing accommodation is defined in clause 234. It is based upon the link between the provision of accommodation and the provision of support services.⁵ We also recognise the importance of housing charities' work in this area, and accommodation provided by charities is therefore included in the definition alongside accommodation provided by community landlords. This means that those housing charities that are not also community landlords are able to utilise the legal tools we have designed for the management of supported housing, though they are not obliged to provide accommodation on a secure contract.

We are grateful to those representatives of supported housing who attended a seminar at the Law Commission on 9 July 2002 who helped us design the outline of the scheme which is set out in the Bill.

⁵ Cl 234(1)(c).

Exclusion of short term provision from the statutory scheme

- 10.11 Notwithstanding the general objective of including supported housing in the scheme, the draft Bill excludes supported accommodation from the scope of the scheme when it is intended to be provided for a period of four months or less. This is designed to exclude respite accommodation and accommodation provided whilst a landlord assesses the needs of a client before providing them with longer-term accommodation.
- 10.12 During this period the normal rules about, for example, the provision of a written statement of the contract will not apply. This does not mean that landlords cannot provide their clients with some statement of their rights and obligations. In practice many do, if only to make clear what the particular house rules are. For example, many schemes explicitly prohibit alcohol or drug use on the premises, and make it clear that breach of such a rule will result in loss of the accommodation.

Exclusion of supported housing accommodation from the requirement to enter into secure contracts – the enhanced management period

10.13 The scheme also enables supported housing provided by community landlords to be excluded from the general requirement that they provide accommodation under secure contracts.⁷ The exclusion is, however, time limited. Initially it lasts for up to two years, and can be extended in particular circumstances that are outlined below. During this period, the landlord will enter into a modified version of the standard contract, known as the supported standard contract.⁸ The Bill does not prevent a community landlord offering a client, who has made good progress and demonstrated a capacity to live fully independently, a secure contract before the end of the two-year period.

Tools available to the managers of supported housing

10.14 The two-year period is defined in the Bill as the enhanced management period. During the enhanced management period two specific management tools are available: exclusion and mobility.

EXCLUSION

10.15 The first of these recognises that many landlords must be able, without delay, to temporarily remove a resident who is behaving violently or in a way which endangers themselves or someone else in the accommodation. At present this is achieved in practice because supported housing managers use licences which they think – often incorrectly – entitle them to evict such a person without going to court.

⁶ Sch 1 para 13.

⁷ Sch 2 para 2.

⁸ Cls 76 to 78, 94 to 97.

⁹ Cl 95.

- 10.16 Although our scheme provides that, after the initial period of four months, residents should have the benefit of at least a standard contract, it also recognises that there are circumstances when immediate removal is the only practical option.
- 10.17 Therefore the Bill provides that it is a fundamental term of the supported standard contract that, during the enhanced management period, the landlord¹⁰ can exclude an occupier without the need for any intervention by the court. This admittedly draconian power is subject to two vital limitations. First, no exclusion can be for more than 48 hours. Second, the landlord or the designated person must reasonably believe that the occupier has acted in a particularly dangerous manner.¹¹ The landlord must give notice to the contract-holder setting out the reasons why they are required to leave, either when requiring them to leave or as soon as reasonably practicable afterwards.¹²
- 10.18 The acts which justify a temporary exclusion are:
 - (1) where the occupier has used violence against anyone on the premises;
 - (2) where the occupier does something on the premises which creates a risk of significant harm to anyone; or
 - (3) where the occupier behaves in a way which seriously impedes the ability of another resident of supported accommodation provided by the landlord to benefit from the support provided.¹³
- 10.19 We recommend (and the Bill provides for this) that this provision cannot be used more than three times in any six-month period. We thought restriction should be included to prevent abuse by the landlord. Three times in six months was the number we arrived at after discussions with providers of social housing, but the Government may see fit to increase or decrease this number. This may be a particular issue on which further public consultation will be needed.
- 10.20 Clearly there will be circumstances where the landlord will need to exclude the occupier for a period longer than 48 hours. To do this the landlord will need to go to court to obtain an injunction. For example, if the landlord decides that eviction is necessary, the landlord may seek an injunction against the occupier to last for the length of the possession notice period.

¹⁰ Or someone designated by the landlord: cl 78(7).

¹¹ CI 78.

¹² CI 78(5).

¹³ CI 78(3).

¹⁴ CI 78(6).

MOBILITY

- 10.21 Often supported housing providers have limited accommodation available, and it is essential that they can put it to the best use. To assist with this, the Bill gives power to landlords to require contract-holders to move within the building.¹⁵ For example, a room near the resident manager's room may be best used to keep an eye on a new arrival. Therefore the manager may need to move occupiers within their premises. The ability to move people can also be a useful tool in maintaining order moving residents who are in conflict, for instance, may forestall the need for one or both to be removed or evicted.
- 10.22 At present many providers seek to achieve this by using agreements that contain a "non-exclusive occupation" clause. This may suggest, at least to lawyers, that this would be more likely to result in the arrangement being a licence, not a tenancy. But in practice, such a provision is often fictitious and serves only to confuse residents.
- 10.23 Our recommendations enable providers to make sensible and considered decisions about how accommodation needs are to be managed but in an open and transparent way, rather than using arcane legal principles.
- 10.24 We accept that both these provisions enable supported housing managers to exercise powers not available to ordinary landlords. But we think that they are a proportionate response to the particular challenges of managing this class of accommodation.

Extending the enhanced management period

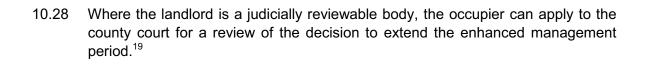
- As noted above, our recommended scheme for supported housing provides for progression from a limited period of no legal rights, to a further limited period when rights are conditional upon appropriate behaviour, and culminates in the provision of accommodation on the same basis as any other rented accommodation. It will always be open to providers to enhance occupiers' rights at any stage.
- 10.26 Nevertheless, we recognise that there will be some circumstances when the additional tools or restrictions on rights during the enhanced management period need to be available for longer than two years. Thus the scheme provides that in limited circumstances the landlord can extend the enhanced management period. This requires the service of a notice of extension upon the contract-holder at least eight weeks prior to the expiry of the enhanced management period.
- 10.27 The landlord must provide reasons for the decision to extend the period.¹⁷ In particular, they must justify the continuing need to have the power, discussed above, to temporarily exclude the particular contract-holder in question.¹⁸

¹⁵ Cl 77.

¹⁶ Cl 97. This decision will in certain circumstances be reviewable: see para 10.28.

¹⁷ CI 97(4).

¹⁸ CI 97(3).



¹⁹ CI 107.

PART 11 OTHER RIGHTS AND OBLIGATIONS

11.1 In this final Part we deal briefly with a number of other matters in the Bill, not so far discussed.

OBTAINING A CONTRACT BY MAKING A FALSE STATEMENT

- 11.2 It is a fundamental provision of all occupation contracts that if a landlord is induced to make a contract by means of a relevant false statement, the contract-holder is to be treated as in breach of the contract. Thus the landlord may take possession proceedings against him.¹ A false statement is relevant if it is made knowingly or recklessly by the contract-holder or another person acting at the contract-holder's instigation.²
- 11.3 The effect of making this a fundamental term in the contract is that the occupier is clearly put on notice that such deception may lead to loss of the home, rather than any other consequences that might flow from the more general law on deception or fraud.³ An equivalent provision has been available to landlords for some years and, while not widely used, has on occasion been very effective.

PROTECTION OF THE RIGHT TO OCCUPY4

11.4 A contract-holder has the right to occupy the premises to which the occupation contract relates. (This is the equivalent of what has traditionally been known, in landlord and tenant law, as the right to quiet enjoyment. The right to quiet enjoyment is currently implied into leases but not licences. We consider that the phrase "quiet enjoyment" is potentially misleading to contract-holders, so we do not use it in the Bill, especially as not all occupation contracts will be tenancies.) The Bill protects that right by prohibiting a landlord from doing anything that interferes with that right, or where an omission to do an act interferes with it, omitting to do that act.⁵

¹ Cl 64(1).

² Cl 64(2).

The existence of the statutory provision does not mean that use of the common law on fraud or deception is thereby prevented. There may be cases where the common law can be used. It is our view that experience of the law in practice suggests that the statutory provision we include here is an effective way of ensuring the occupier is aware of the consequences of any deception or fraud.

⁴ This is discussed in Part 8 of Renting Homes (2003) Law Com No 284.

⁵ Cl 65(1). The landlord also interferes with the contract-holder's right if a person who claims under the landlord or has an interest in the premises that is superior to the landlord's does a lawful act (or lawfully omits to do an act) that interferes with the contract-holder's right: cl 65(4).

11.5 Where a landlord reasonably exercises rights under the occupation contract, for example to gain access to the premises to assess damage or undertake repairs, the Bill provides that they do not interfere with the contract-holder's right. Nor does the landlord interfere with the contract-holder's right merely because of failure to comply with the landlord's repairing obligations.

LANDLORD'S NAME AND ADDRESS8

11.6 A fundamental term in all occupation contracts is that the landlord must, within two weeks of the effective date, give the contract-holder written notice of an address in England and Wales to which the contract-holder may send documents that are intended for the landlord. Where the landlord uses an agent, the agent's name and address must also be provided within two weeks of when the landlord starts to manage the premises through the agent. Any changes in the landlord's or contract-holder's identity are also to be notified. If the landlord fails to comply with these obligations, they are liable to pay compensation to the contract-holder. The landlord under a periodic standard contract may not make a possession claim on the landlord's notice ground at any time when they are in breach of these obligations.

JOINT AND SEVERAL LIABILITY

11.7 Wherever there are two or more joint contract-holders, the Bill specifies that liability for the performance of the contract is joint and several. This means that each contract-holder is liable for the totality of the obligations under the contract, even if one or more of a number of joint contract-holders leaves the contract. A similar principle applies where there are joint landlords. 13

⁶ Cl 65(2).

⁷ Cl 65(3).

⁸ This is discussed in Part 8 of Renting Homes (2003) Law Com No 284.

⁹ Cl 68.

¹⁰ Cl 69. Compensation is assessed on the same basis as when a landlord fails to provide the occupier with a written copy of the agreement: cl 34. Discussed above, at para 3.55.

¹¹ CI 177(3).

¹² Cl 71.

¹³ CI 72.

MANAGEMENT CODES AND CONSULTATION14

- 11.8 The Bill makes provision for a community landlord to negotiate a "management code" with the contract-holders of its properties, dealing with how the landlord intends to exercise its rights or comply with its obligations. Such a code will not come into effect until and unless it is agreed by the contract-holders or their representatives. Once a management code is agreed, it must be taken into account by the court when considering a possession action or the withholding of consent by the landlord. Thus a community landlord can require a court to have regard to its management policies, but only if it is able to get its contract-holders to sign up to them. This approach should provide a modest but significant boost to contract-holder participation.¹⁵
- 11.9 More generally, community landlords are required to make arrangements for consulting contract-holders on questions of housing management¹⁶ and to publish a statement of those arrangements.¹⁷ These arrangements, already in the existing law, are carried over into the new scheme.

TENANCY DEPOSITS

- 11.10 One issue, with which we have not been directly concerned, but which has been an important background issue during the time we have been engaged on our project has been whether and if so how to regulate tenancy deposits. After much debate, the Housing Act 2004 included provisions¹⁸ that require landlords who take deposits from assured shorthold tenants to secure those deposits in an approved tenancy deposit scheme. It is clear that regulation of the tenancy deposit scheme can be made easier through use of our recommended scheme.
- 11.11 Our Bill contains provisions dealing with tenancy deposits. The effect of them is to extend the current statutory system for the protection of deposits to all occupation contracts. ¹⁹ It is a fundamental term of all occupation contracts that if a deposit²⁰ is to be paid in connection with an occupation contract, the deposit must be dealt with in accordance with an authorised deposit scheme. ²¹ The landlord must give the contract-holder and any interested third party sufficient information ²² to enable them to ensure that the requirement has been complied with. ²³

¹⁴ This is discussed in Part 8 of Renting Homes (2003) Law Com No 284.

¹⁵ Cl 211, sch 4 para 6(8) and sch 7 para 8. The appropriate authority has the power to regulate the procedures for obtaining the agreement of contract-holders or their representatives to the management code: cls 211(3) to (5).

¹⁶ Cl 212.

¹⁷ Cl 213.

¹⁸ Ss 212 to 215 and sch 10 to the Act.

¹⁹ Part 2, ch 1, cls 36 to 42.

Defined to mean money paid as security: cl 37(4).

²¹ Deposit schemes are defined in cl 38.

²² To be defined in regulations: cl 39.

²³ Cl 37.

- 11.12 The contract-holder has the right to apply for a range of orders requiring a landlord who is in breach of the term to remedy the breach.²⁴
- 11.13 It is also a fundamental term of all occupation contracts that landlords may not require security to be given in any form other than money or a guarantee.²⁵ The contract holder has the right to apply to the county court for an order requiring the landlord to return any non-monetary security.²⁶
- 11.14 Landlords under a standard contract, who are in breach of the requirements, are unable to claim possession using the landlord's notice ground.²⁷

(Signed)

ROGER TOULSON, Chairman HUGH BEALE STUART BRIDGE JEREMY HORDER KENNETH PARKER

STEVE HUMPHREYS, *Chief Executive* 7 April 2006

²⁴ Cl 41.

²⁵ Cl 36.

²⁶ Cl 40.

²⁷ Cl 178. The landlord's notice ground is discussed above, at paras 4.57 to 4.63.

APPENDIX A RECOMMENDATIONS FOR SUPPLEMENTARY TERMS AND OTHER MATTERS

INTRODUCTION

- A.1 In the main body of this Report, we make clear that our Bill sets out the fundamental provisions that must be included, with or without modification, as fundamental terms in the agreement. These fundamental terms largely reflect existing housing rights and obligations found in the current law, but adapted to the Rented Homes scheme.
- A.2 These rights do not, however, deal with all the issues that would be expected to be dealt with in an occupation contract. We therefore recommended that a list of supplementary provisions should be prescribed in regulations which would be incorporated as supplementary terms in the agreement. Indeed, in order to ensure that the illustrative model contracts we have provided with this Report look realistic, we have incorporated into them a number of what we would expect to see as supplementary terms.
- A.3 Some supplementary terms we positively propose as part of our final recommendations. These are terms where we have considered the substance of the terms and come to a definite conclusion as to what they should be. Others will simply be the "normal" terms one would expect to find in a well drafted agreement. These will be arrived at by the appropriate authority after proper consultation with representatives of the relevant interested parties. However, because both categories are formally and legally the same, it is not possible to distinguish in our illustrative model contracts which terms fall into which category. The tables that follow set out the supplementary terms which we are specifically recommending. They are specified by reference to the term in the illustrative model contracts, where there is one.

SUPPLEMENTARY TERMS

Recommended supplementary terms for all occupation contracts

A.4 We recommend the following supplementary terms for all occupation contracts.

Recommended term(s)	Illustrative model secure contract	Illustrative model periodic standard contract
Terms dealing with the extent to which the landlord has the right to enter the premises.	terms 27 to 30, 33 to 34	terms 25 to 28, 31 to 32
The occupier may control who else occupies the premises on a non-contractual basis.	term 35	term 33
The occupier may not breach the statutory rules on overcrowding.	term 36	term 34

This means Part X of the Housing Act 1985, also s 324.		
Terms covering occupiers' responsibilities, such as occupiers' obligations relating to repairs, adapted versions of the duty to act in a tenant-like manner, and to report disrepair.	term 37	term 35
Landlord's right to carry out repairs at the contract-holder's expense where the contract-holder has failed to take care of the premises.	term 38	term 36
The landlord has a veto on the making of any sub-occupation contract.	term 75	term 78
The landlord may impose conditions on their consent to a sub-occupation contract.	term 75	term 78
A contract-holder can only grant a sub-occupation contract that is a periodic standard contract.	term 75	term 78
The landlord has the right to veto any request by a contractual occupier to transfer their rights to occupy to another, except in the case of transfer to a potential successor or transfer by way of exchange of a secure contract.	term 82	term 79

Recommended supplementary terms for all periodic occupation contracts

A.5 In addition, we recommend the following supplementary terms for all periodic occupation contracts.

Recommended term(s)	Illustrative model secure contract	Illustrative model periodic standard contract
When a periodic occupation contract ends, the landlord will refund the appropriate proportion of any pre-paid rent or other charges.	term 110	term 110
Where the occupier gives notice to terminate the agreement, the minimum notice a landlord can expect from a contract-holder is one	term 115	term 115

calendar month.		
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Recommended supplementary terms for secure contracts

A.6 Furthermore, we recommend the following supplementary term for secure contracts.

Recommended term(s)	Illustrative model secure contract
The contract-holder must occupy the premises as their only or principal home during the whole of the life of the contract. If there are joint contract-holders, at least one of them must occupy the premises as their only or principal home.	term 21

Recommended supplementary terms for standard contracts

A.7 We also recommend the following supplementary terms for standard contracts.

Recommended term(s)	Illustrative model periodic standard contract
The landlord has a veto over improvements proposed by the occupier.	terms 64 to 65
The occupier may take in a lodger subject to the consent of the landlord.	term 77
Term making provision for what happens to deposits and guarantors in the event of a transfer.	term 80

Recommended supplementary terms for fixed term standard contracts

A.8 We also recommend the following supplementary term for fixed term standard contracts.

If the contract contains a break clause, where only one of two or more joint contract-holders invokes the break clause, it will terminate only the interests in and rights under the agreement of that occupier, and not those of the other joint contract-holders.

OTHER MATTERS

Statutory Instruments relating to the model contracts

A.9 To avoid the unnecessary proliferation of model contracts, we recommend that there should be as few model contracts as possible. There should at least be one for secure contracts, one for periodic standard contracts and one for fixed term standard contracts.

- A.10 We also recommend that a specific model contract be prescribed for supported housing and for prohibited conduct standard contracts.
- A.11 The guidance booklet to be published by the appropriate authority with the model contracts should make it clear that all landlords will be able to enhance their occupation contracts in favour of the contract-holder. This guidance booklet (unlike the explanatory notes on the face of the model contracts) will not be statutory.
- A.12 We recommend that the statutory instrument which provides for the model contracts, should also contain requirements as to the layout of the contracts, to ensure that it is as user-friendly as possible.
- A.13 Information should be provided on the following matters:
 - (1) ensuring that the contract-holder is alerted to the landlord's other major duties such as the gas and fire safety statutory requirements, which should continue to operate outside the Bill. These provisions will be summarised in the guidance booklet to accompany the contract;
 - (2) explaining the effect of the fundamental term granting the landlord access to the premises to inspect and carry out repairs¹ on section 4 of the Defective Premises Act 1972, and the effect of that Act on the term's requirement for notice;
 - (3) providing brief information about the statutory small repairs procedure ("right to repair");
 - (4) alerting the contract-holder to the effect of section 27 of the Housing Act 1988 (statutory tort for unlawful eviction or harassment);
 - (5) alerting the contract-holder to check whether provisions on service and administration charges in the Landlord and Tenant Act 1985 apply;
 - (6) explaining the mandatory grounds for possession (such as for serious rent arrears) and discretionary grounds;
 - (7) explaining that the making of unauthorised transactions could result in possession proceedings being taken.

CHANGES TO CIVIL PROCEDURE RULES

- A.14 We recommend that, in relation to proceedings based on the notice-only ground for possession, the Rules Committee should reproduce the "accelerated possession procedure" which currently applies to proceedings based on section 21 of the Housing Act 1988 (see Civil Procedure Rules, rules 55.11 to 55.19).²
- A.15 Rules of court will need to be made under clause 231(3) in relation to cases affected by the pilot schemes for rent arrears.

¹ See term 29 of the draft standard contract in Appendix B to this Report.

² Renting Homes (2003) Law Com No 284, paras 3.33 and 9.100.

- A.16 The Civil Procedure Rules should be amended to provide that:
 - (1) non-contractual occupants are notified of any proceedings being brought in relation to the premises in which they are living;³ and
 - (2) any person on whom a notice is served under these provisions, and who does not have home rights, may at the court's discretion be joined in the proceedings where the court has a discretion about granting possession.⁴
- A.17 The Civil Procedure Rules should provide that notice of possession proceedings must be served on permitted occupiers over 16. However, in respect of any occupants of whom the landlord has no specific knowledge, a notice addressed to the other occupant(s) delivered at or posted up at the property should suffice.⁵
- A.18 The Civil Procedure Rules should be amended to provide that if the head landlord has given consent to a sub-occupation contract, or has included a term in the contract allowing a sub-occupation contract to be made without consent, then if the head landlord brings proceedings for possession against the original occupier (A) or if the landlord uses the abandonment procedure, the head landlord must serve notice on the sub-occupier (B), who should be entitled to be joined in the action.⁶

CHANGES TO LEGISLATION

- A.19 Although the draft Bill does not contain a schedule of repeals, we anticipate that the following changes and repeals will be needed.
 - (1) Amendments to ensure that family property orders (defined in clause 237) were available in relation to occupation contracts, for example to:
 - (a) section 30 of the Family Law Act 1996 to refer to contract-holders under the new scheme;⁷
 - (b) schedule 7 to the Family Law Act 1996 to allow courts to make orders for occupation contracts, as they can be made in relation to existing tenancies.
 - (2) Repeal legislation that deals with the legal status of tenants of residential occupation, most importantly:
 - (a) the bulk of part 1 of the Housing Act 1988 (assured and assured shorthold tenancies);
 - (b) most of part 4 of the Housing Act 1985 (secure tenancies); and

³ Renting Homes (2003) Law Com No 284, paras 3.65 and 9.54.

⁴ Renting Homes (2003) Law Com No 284, paras 9.55 and 10.79.

⁵ Renting Homes (2003) Law Com No 284, para 10.78.

⁶ Renting Homes (2003) Law Com No 284, para 12.19.

⁷ Renting Homes (2003) Law Com No 284, para 11.43.

- (c) chapters 1 and 1A of part 5 of the Housing Act 1996 (introductory tenancies and demoted tenancies):⁸
- (d) parts 1 and 7 of the Rent Act 1977, which deal with the definition of tenants protected by the Rent Acts and their security of tenure, if an order was made under clause 221 abolishing protected and statutory tenants. Parts 3, 4, 5 and 8 may also need repeal.
- (3) Repeals of the law on rent books, Landlord and Tenant Act 1985, sections 4 to 7.10
- (4) Excluding occupation contracts from the scope of section 89(1) of the Housing Act 1980.¹¹
- (5) Excluding occupation contracts from the scope of section 11 of the Landlord and Tenant Act 1985.
- (6) Amendment of sections 3 and 5 of the Protection from Eviction Act 1977 and repeal of sections 3A and 8.
- A.20 The gas and electrical appliance safety standards should continue to be set out in their own regulations.¹²

MISCELLANEOUS

A.21 If the recommendation on the abolition of the six month moratorium is accepted, we suggest that the Department for Work and Pensions might consider whether a new letting should be required to be on a six month fixed term standard contract to qualify for housing benefit.¹³

⁸ Renting Homes (2003) Law Com No 284, para 6.50.

⁹ Renting Homes (2003) Law Com No 284, para 6.52.

¹⁰ Renting Homes (2003) Law Com No 284, para 3.25 and Part 7, n 17.

¹¹ Renting Homes (2003) Law Com No 284, para 9.99.

¹² Renting Homes (2003) Law Com No 284, para 8.121.

¹³ Renting Homes (2003) Law Com No 284, para 6.16.

APPENDIX B ILLUSTRATIVE PERIODIC STANDARD CONTRACT AND ILLUSTRATIVE SECURE CONTRACT



This is a periodic standard contract giving you a right to occupy the premises for an indefinite period until this contract is brought to an end.			
Between:			(landlord)
and:			(contract-holder(s), referred to in this contract as "you")
Relating to:			(the premises)
The initial rent	is £	per week/month/	(delete as applicable)
The first paym	ent is to be made on		
and further pay	yments are to be made		
You can conta	ct the landlord		
by post:			
by telephone:		by fax:	
by email:			
You have paid	a deposit of £		
For further info	ormation about the holding	of your deposit:	
The effective of	late (when you can begin	occupying the premises) is	
Please sign be	elow as evidence of your a	greement to this contract	
Contract-holde	r(s)	Date	
Landlord		Date	

DRAFT - DO NOT USE

Do not destroy this document

This document is important. It sets out your rights and responsibilities. You are advised to read it before agreeing to it. It should be kept for the lifetime of the contract. You may need to refer to it in the future. Please see the guidance booklet provided with this contract. Further advice is available from your local citizens advice bureau, your local housing advice centre or the Rented Homes website (www.rentedhomes.gov.uk)

This contract means that:

- you cannot be evicted without a court order, unless you abandon the premises;
- before a court will make an eviction order your landlord will have to show that:
 - your landlord has given you at least two months' notice that you must move out,
 - you have broken the contract and it is reasonable to evict you,
 - you are seriously in arrears with your rent (at least two months' rent is unpaid), or
 - your landlord needs to move you, suitable alternative accommodation is available, and it is reasonable to evict you;
- you have important rights as to how you can use the premises, although some of these require the consent of your landlord;
- you are responsible for the behaviour of everyone who lives in and visits the premises;
- your landlord must give you a free written statement of your occupation contract within two weeks of the effective date: for each day it is late, you do not have to pay a day's rent, up to a maximum of two months' rent.

Many of the technical words and phrases used in this contract have a specific meaning under the Rented Homes Act 2006. Please see the guidance booklet accompanying this contract for a definition of these words and phrases.

This contract contains different types of terms. Whether a term may be left out of this contract or changed depends on which type it is. To make the contract easier to understand, symbols have been used for the different types of terms—



a fundamental term which cannot be left out of the contract or changed



a fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006



a supplementary term which can be left out of this contract or changed

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A. RENT AND OTHER CHARGES

Rent

1. You must pay the rent in full and on the dates agreed.

Right of set off

- 2. If the landlord is liable to pay you compensation under section 34 of the Rented Homes Act 2006, you may set off that liability against rent.

 Explanatory note: You need not pay a day's rent for each day the landlord does not provide you with a written statement of your occupation contract, or of a variation to it. The guidance booklet provided with this contract explains this further.
- 3. You need not pay any rent for any period during which the premises are uninhabitable. The amount of rent which you do not have to pay is to be calculated pro-rata (for every day the premises are uninhabitable you need not pay a day's rent). This term does not apply if
 - (a) the premises are uninhabitable because you did something (or failed to do something) which invalidated the landlord's insurance policy in respect of the premises, and
 - (b) the landlord has given you notice of the requirements of that policy.

Variation of rent

- 4. The landlord may vary the rent payable by giving you a notice proposing a new rent to take effect on the date specified in the notice.
- 5. The period between the day on which the notice is given to you and the specified date may not be less than two months.
- 6. Subject to that-
 - (a) the first notice may specify any date, and
 - (b) subsequent notices must specify a date which is not less than one year after the last date on which a new rent took effect.

Council tax and services

- 7. You must pay the council tax.
- 8. You must pay for all gas, electricity, water, sewage, telephone and other services supplied to the premises.
- 9. You must arrange to be billed for the taxes and services mentioned in terms 7 and 8, and you must pay the amounts in full and on time.

















A fundamental term which cannot be left out of the contract or changed

A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006

oxtimes A supplementary term which can be left out of this contract or changed

DEPOSITS

Form of security

- 10. The landlord may not require security to be given in any form other than—
 - (a) money, or
 - (b) a guarantee.

Requirement to use deposit scheme

- If you pay a deposit (or another person pays a deposit on your behalf), the deposit must be dealt with in accordance with an authorised deposit scheme.
- Before the end of the period of 14 days starting with the day on which the deposit is paid, the landlord must give you (and any person who has paid the deposit on your behalf) information—
 - (a) identifying the authorised deposit scheme which applies,
 - (b) confirming the landlord's compliance with the initial requirements of the scheme, and
 - (c) explaining your (or that person's) rights in relation to the deposit.
- 13. "Deposit" means money paid as security.

B. PROHIBITED CONDUCT

Prohibited conduct

- 14. You may not use or threaten to use violence against a person lawfully living in the premises.
- 15. You may not do anything which creates a risk of significant harm to a person lawfully living in the premises.
- 16. You may not engage or threaten to engage in conduct that is capable of causing nuisance or annoyance to a person—
 - (a) living in the locality of the premises, or
 - (b) engaged in lawful activity in the premises or in the locality of the premises.
- You may not use or threaten to use the premises, or any common parts that you are entitled to use under this contract, for criminal purposes.
- 18. You may not allow, incite, or encourage any person who is living in or visiting the premises to act as mentioned in terms 14, 15 or 16.
- 19. You may not allow, incite, or encourage any person to act as mentioned in term 17.
- A fundamental term which cannot be left out of the contract or changed
- (**) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed





























C. CONTROL OF THE PREMISES

Use of the premises by you

20. You must use the premises as a private residence and you may not run a business at the premises or allow anyone else to do so.

Protection of right to occupy

21. The landlord may not, by any act or omission, interfere with your right to occupy the premises.



22. The landlord does not interfere with your right by reasonably exercising his rights under this contract.



Explanatory note: An example would be where the landlord uses his power to reasonably inspect the premises under term 25.



23. The landlord does not interfere with your right merely because he fails to comply with his repairing obligations, which are –



- (a) his obligations to repair (or keep or deliver up in repair), or to maintain, renew, construct or replace any property, and
- (b) his obligations to keep any property fit for human habitation, however expressed
- and include a landlord's obligations under terms 41 to 47.



- 24. The landlord is to be treated as having interfered with your right if a person who—
 - (a) claims under the landlord, or
 - (b) has an interest in the premises, or part of them, that is superior to the landlord's interest,
 - interferes with your right by any lawful act or omission.

Landlord's right to enter the premises: general

25. The landlord may enter the premises at any reasonable time for the purpose of—



- (a) complying with the Gas Safety Regulations,
- (b) carrying out any other inspection required by law, or
- (c) dealing with pests.
- The landlord must give you at least 24 hours' notice before exercising that power.
 - Explanatory note: Where this contract allows the landlord to do something, for example, to carry out inspections or repairs on the premises, he may authorise someone to do it on his behalf.



Landlord's right to enter the premises: emergencies If there is an emergency and the landlord needs to enter the premises immediately, he is entitled to enter, or if necessary force entry to, the premises without giving you any notice. The landlord may require you to pay for any damage done in the process of forcing entry to the premises if it was your fault that it was necessary to force entry. Landlord's right to enter the premises: repairs 29. The landlord may enter the premises at any reasonable time for the purpose of— (a) inspecting their condition and state of repair, or (b) carrying out works or repairs needed in order to comply with terms 41 to 47. 30. The landlord must give you at least 24 hours' notice before exercising that power. 31. The landlord may enter the premises at any reasonable time for the purpose of carrying out any works or repairs needed because of a failure by you to comply with your obligations under term 35. 32. The landlord must give you at least 24 hours' notice before exercising that power. D. NUMBERS OF OTHER OCCUPANTS **Deciding the permitted occupiers** 33. Apart from lodgers (see term 77), sub-holders (see term 78) and joint contract-holders (see term 81), you may decide how many other people will be permitted to live at the premises and who they shall be, subject to term 34. No overcrowding 34. You may not cause or allow the premises to become overcrowded within the meaning of Part 10 of the Housing Act 1985.

the premises.

Explanatory note: The guidance booklet provided with this contract explains the legal rules preventing too many people from living in

A fundamental term which cannot be left out of the contract or changed

⁽¹⁾ A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006

 $oxed{\boxtimes}$ A supplementary term which can be left out of this contract or changed



E. CARE OF THE PREMISES

Your responsibilities

- 35. You are not liable for fair wear and tear to the premises or to fixtures and fittings but you—
 - (a) must take care of the premises;
 - (b) must take care of any fixtures and fittings;
 - (c) must promptly repair or replace any fixtures and fittings that have been damaged or destroyed as a result of a lack of care by you or by a permitted occupier of the premises;
 - (d) may not remove any fixtures or fittings from the property without the consent of the landlord:
 - (e) will be responsible for any failure to take care of the premises or fixtures and fittings on the part of any lodger, sub-holder, person allowed by you to live at the premises (see term 33) or any other person that you have allowed to enter the premises.

Inventory

36. If one has not been prepared for the purposes of an authorised deposit scheme, the landlord must prepare an inventory of the premises. You are entitled to one copy of the inventory free of charge. The landlord may charge you for any further copies.

Notifying landlord of any defects requiring repair

37. You must make the landlord aware of any defect or disrepair which it is his responsibility to repair under terms 41 to 47.

Landlord's right to carry out repairs

38. The landlord may carry out any works or repairs needed because of a failure by you to comply with your obligations under term 35. He may charge you for any reasonable costs incurred in carrying out such works or repairs.

Passing relevant notices about the premises to landlord

39. You must as soon as is reasonably practicable give the landlord the original copies of any notices, orders or similar documents regarding the premises or any nearby land that are delivered to the premises.

Explanatory note: For example, if you receive any notices under the Party Wall etc Act 1996, you must give these to the landlord.

Gardens

40. If you have a garden, you must keep it tidy and well maintained, and not remove any trees or plants.

Landlord's obligations to repair

- The landlord must ensure that—
 - (a) there is no category 1 hazard on the premises, and
 - (b) if the premises form part only of a building, there is no category 1 hazard on the structure or exterior of the building or the common parts.
 - 42. The landlord must—
 - (a) keep in repair the structure and exterior of the premises (including drains, gutters and external pipes), and
 - (b) keep in repair and proper working order the service installations in the premises.
 - 43. If the premises form part only of a building, the landlord must—
 - (a) keep in repair the structure and exterior of any other part of the building (including drains, gutters and external pipes) in which he has an estate or interest, and
 - (b) keep in repair and proper working order a service installation which directly or indirectly serves the premises and which either-
 - (i) forms part of any part of the building in which he has an estate or interest, or
 - (ii) is owned by him or is under his control.
 - 44. The standard of repair required by terms 42 and 43 is that which is reasonable having regard to the age and character of the premises, and the period during which the premises are likely to be available for occupation as a home.
 - The landlord must make good any damage caused by works and repairs carried out in order to comply with his obligations under terms 41 to 43.
 - 46. The landlord may not impose any obligation on you in the event of your enforcing or relying on the landlord's obligations under terms 41 to 45.
 - 47. In this contract—

"category 1 hazard" has the same meaning as in the Housing Act 2004 (c. 34) (see section 2), and

"service installation" means an installation for the supply of water, gas or electricity, for sanitation, for space heating or for heating water.

Explanatory note: The guidance booklet provided with this contract explains more about what a category 1 hazard is.

- A fundamental term which cannot be left out of the contract or changed
- (**) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed













Limits on landlord's obligations to repair: general

48. Term 41 does not impose any liability on the landlord in respect of a category 1 hazard which is incapable of being removed by the landlord at reasonable expense.



- 49. Terms 41 and 42 do not require the landlord-
 - (a) to rebuild or reinstate the premises or any part of them, in the case of destruction or damage by a relevant cause, or



- (b) to keep in repair anything which you are entitled to remove from the premises.
- 50. If the premises form part only of a building, terms 41 and 43 do not require the landlord to rebuild or reinstate any other part of the building in which he has an estate or interest, in the case of destruction or damage by a relevant cause.



51. Relevant causes are fire, storm and flood or other inevitable accident.



52. Term 43 does not require the landlord to carry out works or repairs unless the disrepair or failure to keep in working order affects your enjoyment of—



- (a) the premises, or
- (b) the common parts that you are entitled to use under this contract.
- 53. Term 54 applies where—



- (a) the premises form part only of a building, and
- (b) in order to comply with terms 41 to 47 the landlord needs to carry out works or repairs in another part of the building.



54. The landlord is not liable for failing to comply with terms 41 to 47 if he does not have sufficient rights over that other part of the building to enable him to carry out the works or repairs, and was unable to obtain such rights after making a reasonable effort to do so.

Limits on landlord's obligations to repair: your fault

55. Term 41 does not impose any liability on the landlord if the existence of a category 1 hazard is wholly or mainly attributable to lack of care by you or a permitted occupier of the premises.



56. The landlord is not obliged by terms 42 or 43 to carry out works or repairs if the disrepair or the failure of a service installation to be in working order is wholly or mainly attributable to lack of care by you or a permitted occupier of the premises.

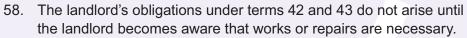


- 57. "Lack of care" means a failure to take proper care—
 - (a) of the premises, or
 - (b) if the premises form part only of a building, of the common parts that you are entitled to use under this contract.



Limits on landlord's obligations to repair: notice







59. The landlord complies with his obligations under those terms if he carries out the necessary works or repairs within a reasonable time after the day on which he becomes aware that they are necessary.



- 60. Term 61 applies if—
 - (a) the landlord (the "old landlord") transfers his interest in the premises to another person (the "new landlord"), and
 - (b) the old landlord is aware before the date of the transfer that works or repairs are necessary in order to comply with terms 42 or 43.



61. The new landlord is to be treated as becoming aware of the need for those works or repairs on the date of the transfer, but not before.





62. A permitted occupier who suffers personal injury, or loss of or damage to personal property, as a result of the landlord failing to comply with term 42 or 43 may enforce that term in his own right.



63. But a permitted occupier who is a lodger or sub-holder may do so only if the lodger is allowed to live in the premises, or the sub-occupation contract is made, in accordance with the terms of this contract.

Explanatory note: See term 77 for lodgers and term 78 for sub-occupation contracts made with sub-holders.

F. MAKING CHANGES TO THE PREMISES OR TO SERVICES

Your improvements



64. You may not make an improvement or alteration to the premises without the written consent of the landlord. The landlord has an absolute right to refuse consent for any alterations or improvements. The landlord may consent subject to conditions.



- 65. In term 64 "improvement" means any addition to, or alteration in the premises, and includes—
 - (a) any addition to or alteration in the landlord's fixtures and fittings,
 - (b) any addition or alteration connected with the provision of services to the premises,
 - (c) the erection of a radio or television aerial or satellite dish, and
 - (d) the carrying out of external decoration.

A fundamental term which cannot be left out of the contract or changed

⁽¹⁾ A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006

A supplementary term which can be left out of this contract or changed



Changes to services

- 66. You may not do any of the following without the consent of the landlord—
 - (a) cancel the supply of water, electricity or gas (if applicable) (see term 8); or
 - (b) install or remove (or arrange to have installed or removed) any meters at the premises that relate to the supply of services to the premises (see term 8).

G. SECURITY AND SAFETY

Security and keys

- 67. You must take reasonable care to protect the security of the premises.
- 68. You may not do the following without the consent of the landlord—
 - (a) change, add or remove any lock at the premises,
 - (b) cut any additional keys or sets of keys.
- 69. The landlord may charge you for the cost of changing, adding or removing any lock or having any new keys cut where this is necessary as a result of your fault.
- 70. If the premises are going to be unoccupied for 30 or more consecutive days you must make the landlord aware of this in advance. If the premises are to be left unoccupied you must comply with any requirements in respect of unoccupied premises contained in the landlord's insurance policy, but only if the landlord has given you notice of those requirements.
- 71. If there is a burglar alarm, you may not change the burglar alarm codes without the consent of the landlord. You must regularly check that the burglar alarm is working, and must replace the batteries (if applicable) as and when necessary.

Fire alarms, smoke alarms and carbon monoxide detectors

72. If there are fire alarms, smoke alarms or carbon monoxide detectors at the premises, you must regularly check that they are working, and must replace the batteries (if applicable) as and when necessary.

H. DEALINGS

Dealing: General prohibition

- 73. In terms 74 to 76 "dealing" includes—
 - (a) creating a tenancy, or creating a licence which confers the right to occupy the premises,
 - (b) transferring,
 - (c) mortgaging or otherwise charging.





- 74. You may not deal with this contract, the premises or any part of the premises except—
 - (a) in a way permitted by this contract, or
 - (b) in accordance with a family property order.



- 75. A joint contract-holder may not deal with anything mentioned in term 74, or his rights and obligations under this contract, except—
 - (a) in a way permitted by this contract, or
 - (b) in accordance with a family property order.



- 76. If you do anything in breach of term 74, or a joint contract-holder does anything in breach of term 75—
 - (a) the transaction is not binding on the landlord, and
 - (b) you are or the joint contract-holder is in breach of this contract (despite the transaction not being binding on the landlord).

Explanatory note: The guidance booklet provided with this contract contains further information on ways of dealing with it, in particular the procedural and consent requirements.

Lodgers



77. You may allow persons to live in the premises as lodgers if the landlord consents.

Making of sub-occupation contracts



78. You may make a sub-occupation contract that is a periodic standard contract if the landlord consents. The landlord has an absolute right to refuse consent for any request by you to make a sub-occupation contract. The landlord may consent subject to conditions.

Explanatory note: A sub-holder is the contract-holder under a sub-occupation contract. The guidance booklet provided with this contract contains further information about making sub-occupation contracts.

Transferring



- 79. You may transfer this contract if the landlord consents. The landlord has an absolute right to refuse consent for any request by you to transfer this contract.
- 80. If a person has guaranteed your obligations under this contract, that person is released from that guarantee, in respect of any breaches of the obligations under this contract occurring after the transfer of this contract, when you transfer this contract in accordance with term 79.

A fundamental term which cannot be left out of the contract or changed

A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006

A supplementary term which can be left out of this contract or changed



I. PROVISIONS ABOUT JOINT CONTRACT-HOLDERS

Adding a contract-holder

- 81. You may, with the consent of the landlord, make another person a joint contract-holder under this contract.
- 82. If a person is made a joint contract-holder under term 81 he becomes entitled to all the rights, and subject to all the obligations, of a contract-holder under this contract from the day on which he becomes a joint contract-holder.

Explanatory note: The guidance booklet provided with this contract gives further information about the formalities for adding a joint contract-holder.

Withdrawal

- 83. A joint contract-holder may withdraw from this contract by giving a notice (a "withdrawal notice") to the landlord.
- 84. The withdrawal notice must specify the date on which the joint contract-holder intends to cease to be a party to this contract (the "withdrawal date").
- 85. When giving a withdrawal notice under term 83 the joint contract-holder must give the landlord at least one month's notice.
- 86. The joint contract-holder must give a written warning to the other joint-contract holders when he gives the withdrawal notice to the landlord; and a copy of the withdrawal notice must be attached to the warning.
- 87. The landlord must give a written warning to the other joint contract-holders as soon as reasonably practicable after he receives the withdrawal notice; and a copy of the withdrawal notice must be attached to the warning.
- 88. The joint contract-holder ceases to be a party to this contract on the withdrawal date.
- 89. A notice given to the landlord by one or more (but not all) of the joint contract-holders that purports to be a notice under term 114 (contract-holder's notice to end contract) is to be treated as a withdrawal notice, and the date specified in the notice is to be treated as the withdrawal date.
- 90. Term 86 does not apply to a notice which is treated as a withdrawal notice because of term 89.





















Survivorship

- 91. If a joint contract-holder dies, or ceases to be a party to this contract for some other reason, from the time he ceases to be a party the remaining joint contract-holders are—
 - (a) fully entitled to all the rights under this contract, and
 - (b) liable to perform fully every obligation owed to the landlord under this contract.
- 92. The joint contract-holder is not entitled to any right or liable to any obligation in respect of the period after he ceases to be a party to this contract.
- 93. Nothing in terms 91 or 92 removes any right or waives any liability of the joint contract-holder accruing before he ceases to be a party to this contract.
- 94. Terms 91 to 93 do not apply where a joint contract-holder ceases to be a party to this contract because his rights and obligations under this contract are transferred in accordance with this contract.

J. TERMINATION OF THE CONTRACT: GENERAL

Termination

- 95. This contract may be ended only in accordance with—
 - (a) terms 98 to 105 and 111 to 165, or
 - (b) an enactment (including in particular the Rented Homes Act 2006 and the consumer protection regulations).
- 96. Nothing in term 95 affects—
 - (a) any right of the landlord or you to rescind this contract, or
 - (b) the operation of the law of frustration.

Joint contract-holders

97. If there are joint contract-holders, this contract cannot be ended by the act of one or more of the joint contract-holders acting without the other joint contract-holder or joint contract-holders.

Agreement

- 98. If the landlord and you agree to end this contract, this contract ends—
 - (a) when you give up possession of the premises in accordance with the agreement, or
 - (b) if you do not give up possession and a substitute occupation contract is made, immediately before the effective date of the substitute occupation contract.
- A fundamental term which cannot be left out of the contract or changed
- (1) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed















Renting Homes - periodic standard contract



- 99. An occupation contract is a substitute occupation contract if—
 - (a) it is made in respect of the same (or substantially the same) premises as this contract, and
 - (b) a contract-holder under it was also a contract-holder under this contract.

Repudiation

- 100. If the landlord commits a repudiatory breach of contract and you give up possession of the premises because of that breach, this contract ends when you give up possession of the premises.
 - Explanatory note: If the landlord commits a serious breach of this contract you may be entitled to end this contract simply by giving up possession of the premises. The guidance booklet provides more information about repudiation.

Your death

- 101. If you are the sole contract-holder and you die, this contract ends—
 - (a) one month after your death, or
 - (b) if earlier, when the landlord is given notice of your death by the authorised persons.
- 102. The authorised persons are—
 - (a) your personal representatives, or
 - (b) the permitted occupiers of the premises aged 16 and over (if any) acting together.
- 103. This contract does not end if under section 142 of the Rented Homes Act 2006 one or more persons are qualified to succeed you.
- 104. This contract does not end if, at your death, a family property order has effect which requires you to transfer this contract to another person.
- 105. If, after your death, the family property order ceases to have effect and there is no person qualified to succeed you, this contract ends—
 - (a) when the order ceases to have effect, or
 - (b) if later, at the time this contract would end under term 101.

When this contract ends

- 106. When this contract ends you must only leave behind—
 - (a) property belonging to the landlord, and
 - (b) property belonging to someone who is staying on in the premises.
- 107. If any furniture belonging to the landlord was moved during the life of this contract it must be returned to where it was at the start of this contract.
- 108. You must return all keys to the premises (including any additional keys that have been cut) to the landlord.

























109. When this contract ends, you may not leave anyone else living in the premises when you leave (unless they have a right of their own to be there).

Refunding pre-paid rent and charges



110. When this contract ends the landlord must refund an appropriate proportion of any pre-paid rent and other consideration, to be calculated on a pro-rata basis.

Explanatory note: The guidance booklet provided with this contract explains how the appropriate proportion would be calculated.

K. TERMINATION BY THE CONTRACT-HOLDER

Early termination



- 111. You may end this contract at any time before—
 - (a) the effective date, or
 - (b) if earlier, the day on which the landlord gives you a written statement of this contract under term 191.



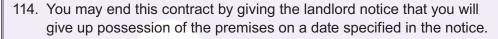
112. To end this contract under term 111, you must give a notice to the landlord stating that you wish to end this contract



- 113. On giving the notice to the landlord, you—
 - (a) cease to have any liability under this contract, and
 - (b) become entitled to the return of any deposit, rent or other consideration given to the landlord in accordance with this contract.

Contract-holder's notice







115. When giving notice under term 114 you must give the landlord at least one month's notice.



116. If you give up possession of the premises on or before the date specified in a notice under term 114, this contract ends on the date specified in the notice.



- 117. If you give up possession of the premises after that date but in connection with the notice, this contract ends—
 - (a) on the day on which you give up possession of the premises, or
 - (b) if a possession order is made, on the date determined in accordance with term 126.



- 118. The notice ceases to have effect if, before this contract ends—
 - (a) you withdraw the notice by further notice to the landlord, and
 - (b) the landlord does not object to the withdrawal in writing before the end of a reasonable period.
- A fundamental term which cannot be left out of the contract or changed
- (1) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
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L. TERMINATION BY THE LANDLORD

Landlord's notice

- 119. The landlord may end this contract by giving you notice that you must give up possession of the premises on a date specified in the notice.
- 120. The date specified in a notice under term 119 may not be less than two months after the day on which the notice is given to you.
- 121. If you give up possession of the premises on or before the date specified in a notice under term 119, this contract ends on the date specified in the notice.



122. If you give up possession of the premises after that date but in connection with the notice, this contract ends—



- (a) on the day on which you give up possession of the premises, or
- (b) if a possession order is made, on the date determined in accordance with term 126.
- 123. The notice ceases to have effect if, before this contract ends—



- (a) the landlord withdraws the notice by further notice to you, and
- (b) you do not object to the withdrawal in writing before the end of a reasonable period.

Possession proceedings

124. The landlord may make a claim to the court for recovery of possession of the premises from you ("a possession claim") only in the circumstances set out in terms 129 to 165.



125. Where those terms require the landlord to give you a possession notice before making a possession claim on any ground, the notice must (in addition to specifying the ground)—



- (a) state the landlord's intention to make a possession claim,
- (b) give particulars of the ground, and
- (c) state the date after which the landlord is able to make a possession claim.

Effect of possession order

126. If the court makes an order requiring you to give up possession of the premises on a date specified in the order, this contract ends—



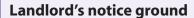
- (a) if you give up possession of the premises on or before that date, on that date,
- (b) if you give up possession of the premises after that date but before the order for possession is executed, on the day on which you give up possession of the premises, or
- (c) if you do not give up possession of the premises before the order for possession is executed, when the order for possession is executed.



- 127. Term 128 applies if-
 - (a) it is a condition of the order that the landlord must offer a new occupation contract of the same premises to one or more joint contract-holders (but not all of them), and
 - (b) that joint contract-holder (or those joint contract-holders) continue to occupy the premises on and after the effective date of the new contract.



128. This contract ends immediately before the effective date of the new contract.





129. If the landlord gives you a notice under term 119, the landlord may on that ground make a claim to the court for recovery of possession of the premises.



130. Section 195 of the Rented Homes Act 2006 provides that if the court is satisfied that the ground is made out, the court must make an order for possession of the premises.

Restrictions on the use of landlord's notice ground: general



- 131. The landlord may not make a possession claim on the ground in term 129—
 - (a) before the end of the period of two months starting with the day on which he gives you a notice under term 119, or
 - (b) after the end of the period of four months starting with that day.

Restrictions on the use of landlord's notice ground: breach of information requirements



132. If the landlord does not comply with term 191 (duty to provide written statement of contract), he may not make a possession claim on the ground in term 129 before the end of the restricted period.



133. The restricted period is six months starting with the day on which the landlord gives a written statement of this contract to you.



134. The landlord may not make a possession claim on the ground in term 129 at any time when he has not provided a notice he is required to provide under terms 181 to 185 (duty to provide information about parties).

Restrictions on the use of the landlord's notice ground: breach of deposit requirements



135. The landlord may not make a possession claim on the ground in term 129 at a time when any of terms 136 to 139 apply.



- 136. Security required by the landlord in a form not permitted by term 10 has not been returned to the person by whom it was given.
- A fundamental term which cannot be left out of the contract or changed
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Renting Homes - periodic standard contract



137. A deposit has been paid in connection with this contract but the landlord has not provided the information required by term 12.



138. A deposit has been paid in connection with this contract but the initial requirements of an authorised deposit scheme have not been complied with.



139. A deposit paid in connection with this contract is not being held in accordance with an authorised deposit scheme.



Breach of contract

140. If you breach this contract, the landlord may on that ground make a claim to the court for recovery of possession of the premises.



141. Section 199 of the Rented Homes Act 2006 provides that the court may not make an order for possession on that ground unless it considers it reasonable to do so.



Restrictions on the use of breach of contract ground

142. Before making a possession claim on the ground in term 140, the landlord must give you a possession notice specifying that ground.



143. The landlord may make a possession claim in reliance on a breach of any of terms 14 to 19 (prohibited conduct) on or after the day on which he gives you a possession notice specifying a breach of those terms.



144. The landlord may not make a possession claim in reliance on a breach of any other term of this contract before the end of the period of one month starting with the day on which he gives you a possession notice specifying a breach of that term.



145. In either case, the landlord may not make a possession claim after the end of the period of six months starting with the day on which he gives you the possession notice.



Serious rent arrears

146. If you are seriously in arrears with your rent, the landlord may on that ground make a claim to the court for recovery of possession of the premises.



- 147. You are seriously in arrears with your rent—
 - (a) where the rental period is a week or a fortnight, if at least eight weeks' rent is unpaid,
 - (b) where the rental period is a month, if at least two months' rent is unpaid,
 - (c) where the rental period is a quarter, if at least one quarter's rent is more than three months in arrears,
 - (d) where the rental period is a year, if at least three months' rent is more than three months in arrears.



- 148. Section 196 of the Rented Homes Act 2006 provides that the court must make an order for possession of the premises if it is satisfied that you—
 - (a) were seriously in arrears with your rent on the day on which the landlord gave you a possession notice, and
 - (b) are seriously in arrears with your rent on the day on which the court hears the possession claim.

Restrictions on the use of serious rent arrears ground



149. Before making a possession claim on the ground in term 146, the landlord must give you a possession notice specifying that ground.



- 150. The landlord may not make the claim-
 - (a) before the end of the period of one month starting with the day on which he gives you the possession notice, or
 - (b) after the end of the period of six months starting with that day.

Estate management grounds



151. The landlord may make a claim to the court for recovery of possession of the premises on one of the estate management grounds (which are set out in the box on pages 20 to 22).



- 152. Section 200 of the Rented Homes Act 2006 provides that the court may not make an order for possession on an estate management ground unless—
 - (a) it considers it reasonable to do so, and
 - (b) it is satisfied that suitable alternative accommodation is available to you (or will be available to you when the order takes effect).



153. If the court makes an order for possession on an estate management ground (and on no other ground), the landlord must pay to you a sum equal to the reasonable expenses likely to be incurred by you in moving from the premises.



154. Term 153 does not apply if the court makes an order for possession on Ground A or B of the estate management grounds (and on no other ground).

Restrictions on the use of estate management grounds



155. Before making a possession claim on an estate management ground, the landlord must give you a possession notice specifying that ground.



- 156. The landlord may not make the claim—
 - (a) before the end of the period of one month starting with the day on which he gives you the possession notice, or
 - (b) after the end of the period of six months starting with that day.

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Renting Homes - periodic standard contract



157. If a redevelopment scheme is approved under Part 2 of Schedule 6 to the Rented Homes Act 2006 subject to conditions, the landlord may give you a possession notice specifying estate management Ground B before the conditions are met.



158. The landlord may not give you a possession notice specifying estate management ground G (accommodation not required by successor)—



(a) before the end of the period of six months starting with the day of the previous contract-holder's death, or



- (b) after the end of the period of twelve months starting with that day.
- 159. The landlord may not give you a possession notice specifying estate management ground H (departing joint contract-holder) after the end of the period of six months starting with the day on which the joint contract-holder's rights and obligations under this contract ended.



Contract-holder's notice ground

160. If you fail to give up possession of the premises on the date specified in a notice under term 114, the landlord may on that ground make a claim to the court for recovery of possession of the premises.



161. Section 195 of the Rented Homes Act 2006 provides that if the court is satisfied that the ground is made out, it must make an order for possession of the premises.



Restrictions on the use of contract-holder's notice ground

162. Before making a possession claim on the ground in term 160 the landlord must give you a possession notice specifying that ground.



163. The landlord may make a possession claim on or after the day on which he gives you the possession notice.



164. But he may not make the possession claim after the end of the period of six months starting with that day.



165. The landlord may not give you a possession notice specifying the ground in term 160 after the end of the period of two months starting with the date specified in the notice under term 114 as the date on which you would give up possession of the premises.



ESTATE MANAGEMENT GROUNDS

THE GROUNDS



Ground A

- The landlord intends, within a reasonable time of obtaining possession of the premises—
 - (a) to demolish or reconstruct the building or part of the building comprising the premises, or
 - (b) to carry out work on that building or on land treated as part of the premises,

and cannot reasonably do so without obtaining possession of the premises.



Ground B

- 2 (1) This ground arises if the premises satisfy the first condition or the second condition.
 - (2) The first condition is that the premises are in an area which is the subject of a redevelopment scheme approved in accordance with Part 2 of Schedule 6 to the Rented Homes Act 2006, and the landlord intends within a reasonable time of obtaining possession to dispose of the premises in accordance with the scheme.
 - (3) The second condition is that part of the premises is in such an area and the landlord intends within a reasonable time of obtaining possession to dispose of that part in accordance with the scheme and for that purpose reasonably requires possession of the premises.



Ground C

- 3 (1) The landlord is a charity and your continued occupation of the premises would conflict with the objects of the charity.
 - (2) But this ground is not available to the landlord ("L") unless, at the time the contract was made and at all times after that, the person in the position of landlord (whether L or another person) has been a charity.



Ground D

- The premises have features which are substantially different from those of ordinary premises and which are designed to make them suitable for occupation by a physically disabled person who requires accommodation of a kind provided by the premises and—
 - (a) there is no longer such a person living in the premises, and
 - (b) the landlord requires them for occupation by such a person (whether alone or with members of his family).

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A supplementary term which can be left out of this contract or changed



Ground E

- (1) The landlord is a housing association or housing trust which makes premises available only for occupation (whether alone or with others) by persons who are difficult to house, and—
 - (a) either there is no longer such a person living in the premises or a local housing authority has offered you a right to occupy other premises under a secure contract, and
 - (b) the landlord requires the premises for occupation by such a person (whether alone or with members of his family).
 - (2) A person is difficult to house if his circumstances (other than merely financial circumstances) make it especially difficult for him to satisfy his need for housing.

Ground F

- The premises constitute part of a group of premises which it is the practice of the landlord to make available for occupation by persons with special needs and—
 - (a) a social service or special facility is provided in close proximity to the group of premises in order to assist persons with those special needs,
 - (b) there is no longer a person with those special needs living in the premises, and
 - (c) the landlord requires the premises for occupation by a person who has those special needs (whether alone or with members of his family).

Ground G

You succeeded to this contract under section 141 of the Rented Homes Act 2006 as a reserve successor of the previous contract-holder, and the accommodation comprised in the premises is more extensive than is reasonably required by you.

Ground H

- 8 (1) This ground arises if the first condition and the second condition are met.
 - (2) The first condition is that a joint contract-holder's rights and obligations under the contract have been brought to an end in accordance with—
 - (a) terms 83 to 90 (withdrawal), or
 - (b) section 115, 117, or 119 of the Rented Homes Act 2006 (exclusion).
 - (3) The second condition is that—
 - (a) the accommodation comprised in the premises is more extensive than is reasonably required by the remaining contract-holder (or contract-holders), or
 - (b) where the landlord is a community landlord, the remaining contract-holder does not (or the remaining contract-holders do not) meet the landlord's criteria for the allocation of housing accommodation.











Ground I

- 9 (1) This ground arises where it is desirable for some other substantial estate management reason that the landlord should obtain possession of the premises.
 - (2) An estate management reason may, in particular, relate to—
 - (a) all or part of the premises, or
 - (b) any other premises of the landlord to which the premises are connected, whether by reason of proximity or the purposes for which they are used, or in any other manner.

M. VARIATION



General 166. This contract may not be varied except—

- (a) in accordance with terms 4 to 6, 167 to 175, or
- (b) by or as a result of any enactment.



Fundamental, supplementary and additional terms

- 167. The fundamental terms, supplementary terms and additional terms of this contract may be varied
 - (a) by agreement between the landlord and you, or
 - (b) by the landlord, in accordance with terms 170 to 175.



- 168. Term 167 does not apply to—
 - (a) terms 14 to 19 (prohibited conduct),
 - (b) terms 179 to 180 (securing contract by deception),
 - (c) terms 91 to 94 (survivorship),
 - (d) terms 101 to 105 (your death).



- 169. An agreement to vary a fundamental term is of no effect unless as a result of the variation—
 - (a) the fundamental provision which the term incorporates would be incorporated without modification, or
 - (b) the contract would afford you a greater degree of protection than would be afforded in that case.

Fundamental, supplementary and additional terms: notice procedure 170. The landlord may give you notice that unless you consent to a variation



170. The landlord may give you notice that unless you consent to a variation of this contract, the landlord will take proceedings for possession on the ground in term 129 (landlord's notice).



- 171. The notice must—
 - (a) specify the nature of the variation and the date on which the variation is to take effect, and
 - (b) inform you that the notice also has effect as a notice under term 119 (landlord's notice to end contract).
- A fundamental term which cannot be left out of the contract or changed
- (1) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed

Renting Homes - periodic standard contract



172. The date specified as the date on which the variation is to take effect may not be less than two months after the day on which the notice is given to you.



173. If you do not give written consent to the variation on or before the date on which it is to take effect, the landlord may make a possession claim on the ground in term 129 (landlord's notice).



174. If the landlord satisfies the requirements of terms 170 to 173, he is to be treated for the purposes of making the possession claim as having given notice to end the contract under term 119.



175. Terms 173 and 174 do not apply in relation to a variation of a fundamental term unless as a result of the variation—



- (a) the fundamental provision which the term incorporates would be incorporated without modification, or
- (b) the contract would afford you a greater degree of protection than would be afforded in that case.

Written statement of variation

176. If this contract is varied under any of terms 4 to 6, 167 to 175 or by or as a result of any enactment the landlord must, before the end of the relevant period, give you—



- (a) a written statement of the term or terms varied, or
- (b) a written statement of the contract as varied.
- 177. The relevant period is the period of two weeks starting with the day on which this contract is varied.



178. The landlord may not charge a fee for providing a written statement under term 176.



N. OTHER MATTERS

Deception

179. If the landlord is induced to make this contract by means of a relevant false statement—



- (a) you are to be treated as being in breach of this contract, and
- (b) the landlord may accordingly make a claim to recover possession of the premises on the ground in term 140 (breach of contract).



- 180. A false statement is relevant if it is made knowingly or recklessly by—
 - (a) you, or
 - (b) another person acting at your instigation.

Information about parties

- 181. The landlord must, before the end of the period of two weeks starting with the effective date of this contract, give you notice of an address in England and Wales to which you may send documents that are intended for the landlord.
 - 182. If the landlord manages the premises through an agent the landlord must, before the end of the period of two weeks starting with the day on which he starts to manage the premises through the agent, give you notice of the agent's name and address.
 - 183. If there is a change in the identity of the landlord the new landlord must, before the end of the period of two weeks starting with the day on which he becomes the landlord, give you notice that he has become the landlord.
 - 184. If there is a change in the identity of the contract-holder the landlord must, before the end of the relevant period, give the new contract-holder notice that he has become the contract-holder under this contract.
 - 185. The relevant period is two weeks starting with—
 - (a) the day on which the identity of the contract-holder changes, or
 - (b) if later, the day on which the landlord becomes aware that the identity of the contract-holder has changed.

Compensation for breach of terms 181 to 185

- 186. If the landlord fails to comply with an obligation under terms 181 to 185, he is liable to pay you compensation under section 34 of the Rented Homes Act 2006.
- 187. The compensation is payable in respect of the relevant date and every day after the relevant date until-
 - (a) the day on which the landlord gives the notice in question, or
 - (b) if earlier, the last day of the period of two months starting with the relevant date.
- 188. Interest on the compensation is payable if the landlord fails to give you the notice on or before the day referred to term 187(b).
- 189. The interest starts to run on the day referred to in term 187(b), at the rate prevailing under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) at the end of that day.
- 190. The relevant date is the first day of the period before the end of which the landlord was required to give the notice.

Written statement of contract

191. The landlord must give you a written statement of this contract before the end of the period of two weeks starting with the effective date.

- A fundamental term which cannot be left out of the contract or changed
- (**) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed





















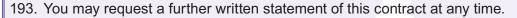


Renting Homes - periodic standard contract



192. The landlord may not charge a fee for providing you with a written statement under term 191.







194. The landlord may charge a reasonable fee for providing it.



195. The landlord must give you the further written statement before the end of the period of two weeks starting with-



(a) the day of the request, or

- (b) if the landlord charges a reasonable fee, the day on which you pay the fee.

Form of notices

196. Any notice or other document required or authorised to be given or made by this contract must be in writing.

O. ADDITIONAL TERMS





	re contract giving you a ract is brought to an e		ght to occupy the premises for	an indefi	nite period	
Between:					(landlord)	
and:					(contract-holder(s), referred to in this contract as "you")	
Relating to:					(the premises)	
The initial rent is £			per week/month/	(delete as applicable)	
The first payme	ent is to be made on					
and further pay	ments are to be made					
You can contact the landlord						
by post:						
by telephone:			by fax:			
by email:						
The effective date (when you can begin occupying the premises) is						
Please sign below as evidence of your agreement to this contract						
Contract-holde	r(s)		Date			
Landlord			Date			

DRAFT DONOT USE

Do not destroy this document

This document is important. It sets out your rights and responsibilities. You are advised to read it before agreeing to it. It should be kept for the lifetime of the contract. You may need to refer to it in the future. Please see the guidance booklet provided with this contract. Further advice is available from your local citizens advice bureau, your local housing advice centre or the Rented Homes website (www.rentedhomes.gov.uk).

This contract means that:

- you cannot be evicted without a court order, unless you abandon the premises;
- before a court will make an eviction order your landlord will have to show that either:
 - you have broken the contract and it is reasonable to evict you, or
 - your landlord needs to move you, suitable alternative accommodation is available, and it is reasonable to evict you;
- you have important rights as to how you use your home, although some of these require the consent of your landlord;
- you are responsible for the behaviour of everyone who lives in and visits your home;
- your landlord must give you a free written statement of your occupation contract within two weeks of the effective date: for each day it is late, you do not have to pay a day's rent, up to a maximum of two months' rent.

Many of the technical words and phrases used in this contract have a specific meaning under the Rented Homes Act 2006. Please see the guidance booklet accompanying this contract for a definition of these words and phrases.

This contract contains different types of terms. Whether a term may be left out of this contract or changed depends on which type it is. To make the contract easier to understand, symbols have been used for the different types of terms—



a fundamental term which cannot be left out of the contract or changed



a fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006



a supplementary term which can be left out of this contract or changed

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A. RENT AND OTHER CHARGES

Rent

1. You must pay the rent in full and on the dates agreed.

Right of set off

If the landlord is liable to pay you compensation under section 34 of the Rented Homes Act 2006, you may set off that liability against rent. Explanatory note: You need not pay a day's rent for each day the landlord does not provide you with a written statement of your occupation contract, or of a variation to it. The guidance booklet provided with this contract explains this further.



Variation of rent

- 3. The landlord may vary the rent payable by giving you a notice proposing a new rent to take effect on the date specified in the notice.
- 4. The period between the day on which the notice is given to you and the specified date may not be less than two months.

- 5. Subject to that—
 - (a) the first notice may specify any date, and
 - (b) subsequent notices must specify a date which is not less than one year after the last date on which a new rent took effect.

Council tax and services

- 6. You must pay the council tax.
- 7. You must pay for all gas, electricity, water, sewage, telephone and other services supplied to the premises.
- 8. You must arrange to be billed for the taxes and services mentioned in terms 6 and 7, and you must pay the amounts in full and on time.



DEPOSITS

Form of security

The landlord may not require security to be given in any form other than—



- (a) money, or
- (b) a guarantee.

Requirement to use deposit scheme

If you pay a deposit (or another person pays a deposit on your behalf), the deposit must be dealt with in accordance with an authorised deposit scheme.



- A fundamental term which cannot be left out of the contract or changed
- (*) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
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- Before the end of the period of 14 days starting with the day on which the deposit is paid, the landlord must give you (and any person who has paid the deposit on your behalf) information—
 - (a) identifying the authorised deposit scheme which applies,
 - (b) confirming the landlord's compliance with the initial requirements of the scheme, and
 - (c) explaining your (or that person's) rights in relation to the deposit.
- 12. "Deposit" means money paid as security.

B. PROHIBITED CONDUCT

Prohibited conduct

- 13. You may not use or threaten to use violence against a person lawfully living in the premises.
- 14. You may not do anything which creates a risk of significant harm to a person lawfully living in the premises.
- 15. You may not engage or threaten to engage in conduct that is capable of causing nuisance or annoyance to a person—
 - (a) living in the locality of the premises, or
 - (b) engaged in lawful activity in the premises or in the locality of the premises.
- 16. You may not use or threaten to use the premises, or any common parts that you are entitled to use under this contract, for criminal purposes.
- 17. You may not allow, incite, or encourage any person who is living in or visiting the premises to act as mentioned in terms 13, 14 or 15.
- 18. You may not allow, incite, or encourage any person to act as mentioned in term 16.
- The landlord must give you appropriate help and advice if you report prohibited conduct by anyone else living in one of the landlord's properties.





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C. CONTROL OF THE PREMISES

Use of the premises by you

20. You must use the premises as a private residence and you may not run a business at the premises or allow anyone else to do so.

X

Only or principal home

21. You must occupy the premises as your only or principal home during the whole of the life of this contract. If there are joint contract-holders, at least one of you must occupy the premises as your only or principal home.



22. You must inform the landlord in writing if you are going to be away from home for more than one month.



Protection of right to occupy

23. The landlord may not, by any act or omission, interfere with your right to occupy the premises.



24. The landlord does not interfere with your right by reasonably exercising his rights under this contract.



Explanatory note: An example would be where the landlord uses his power to reasonably inspect the premises under term 27.



- 25. The landlord does not interfere with your right merely because he fails to comply with his repairing obligations, which are
 - (a) his obligations to repair (or keep or deliver up in repair), or to maintain, renew, construct or replace any property, and(b) his obligations to keep any property fit for human habitation.
 - (b) his obligations to keep any property fit for human habitation, however expressed
 - and include a landlord's obligations under terms 44 to 50.



- 26. The landlord is to be treated as having interfered with your right if a person who—
 - (a) claims under the landlord, or
 - (b) has an interest in the premises, or part of them, that is superior to the landlord's interest,

interferes with your right by any lawful act or omission.

Landlord's right to enter the premises: general The landlord may enter the premises at any reasonable time for the purpose of-(a) complying with the Gas Safety Regulations, (b) carrying out any other inspection required by law, or (c) dealing with pests. 28. The landlord must give you at least 24 hours' notice before exercising that power. Explanatory note: Where this contract allows the landlord to do something, for example, to carry out inspections or repairs on the premises, he may authorise someone to do it on his behalf. Landlord's right to enter the premises: emergencies 29. If there is an emergency and the landlord needs to enter the premises immediately, he is entitled to enter, or if necessary force entry to, the premises without giving you any notice. 30. The landlord may require you to pay for any damage done in the process of forcing entry to the premises if it was your fault that it was necessary to force entry. Landlord's right to enter the premises: repairs 31. The landlord may enter the premises at any reasonable time for the purpose of-(a) inspecting their condition and state of repair, or (b) carrying out works or repairs needed in order to comply with terms 44 to 50. 32. The landlord must give you at least 24 hours' notice before exercising that power. 33. The landlord may enter the premises at any reasonable time for the purpose of carrying out any works or repairs needed because of a failure by you to comply with your obligations under term 37. 34. The landlord must give you at least 24 hours' notice before exercising that power.

A fundamental term which cannot be left out of the contract or changed

⁽¹⁾ A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006

A supplementary term which can be left out of this contract or changed



D. NUMBERS OF OTHER OCCUPANTS

Deciding the permitted occupiers

35. Apart from lodgers (see term 74), sub-holders (see term 75) and joint contract-holders (see term 83), you may decide how many others can live at the premises and who they shall be. This is subject to term 36.

X

No overcrowding

36. You may not cause or allow the premises to become overcrowded within the meaning of Part 10 of the Housing Act 1985.

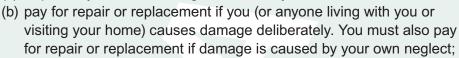
Explanatory note: The guidance booklet provided with this contract explains the legal rules preventing too many people from living in the premises.



E. CARE OF THE PREMISES

Your responsibilities

- 37. You must—
 - (a) report any faults or damage immediately to the landlord;



- (c) do small repairs like unblocking sinks or replacing tap washers or internal door handles;
- (d) keep the premises in a state of reasonable decorative order; and
- (e) repair and maintain your own equipment, such as cookers or washing machines.

Landlord's right to carry out repairs

38. The landlord may carry out any works or repairs needed because of a failure by you to comply with your obligations under term 37. He may charge you for any reasonable costs incurred in carrying out such works or repairs.



Parking

39. You, or anyone living in the premises with you, must only park a vehicle in a designated place, such as a hardstanding or marked parking area. If you have a designated resident's parking space, you must only use it in accordance with the rules laid down for such spaces, a copy of which you will be given by the landlord. You may not undertake major car repairs in or around your home.



Structures

40. You may not put up, or allow anyone else to put up, sheds, garages or any other structures on the premises without the landlord's consent.



Gardens

- 41. If you have a garden, you must keep it tidy and well maintained, and not remove any trees or plants.
- 42. If you do not comply with term 41, the landlord may undertake whatever work is necessary to put your garden in a proper state and charge you for that work. The landlord may enter your garden at any reasonable time for this purpose.
- 43. The landlord must give you at least 24 hours' notice before exercising that power.

Landlord's obligations to repair

- 44. The landlord must ensure that—
 - (a) there is no category 1 hazard on the premises, and
 - (b) if the premises form part only of a building, there is no category 1 hazard on the structure or exterior of the building or the common parts.
- 45. The landlord must—
 - (a) keep in repair the structure and exterior of the premises (including drains, gutters and external pipes), and
 - (b) keep in repair and proper working order the service installations in the premises.
- 46. If the premises form part only of a building, the landlord must—
 - (a) keep in repair the structure and exterior of any other part of the building (including drains, gutters and external pipes) in which he has an estate or interest, and
 - (b) keep in repair and proper working order a service installation which directly or indirectly serves the premises, and which either—
 - (i) forms part of any part of the building in which he has an estate or interest, or
 - (ii) is owned by him or is under his control.
- 47. The standard of repair required by terms 45 and 46 is that which is reasonable having regard to the age and character of the premises, and the period during which the premises are likely to be available for occupation as a home.
- 48. The landlord must make good any damage caused by works and repairs carried out in order to comply with his obligations under terms 44 to 46.
- 49. The landlord may not impose any obligation on you in the event of your enforcing or relying on the landlord's obligations under terms 44 to 48.

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- $\overline{\mathbb{Z}}$ A supplementary term which can be left out of this contract or changed





















Renting Homes - secure contract



50. In this contract—

"category 1 hazard" has the same meaning as in the Housing Act 2004 (c. 34) (see section 2), and

"service installation" means an installation for the supply of water, gas or electricity, for sanitation, for space heating or for heating water.

Explanatory note: The guidance booklet provided with this contract explains more about what a category 1 hazard is.

Limits on landlord's obligations to repair: general

- 51. Term 44 does not impose any liability on the landlord in respect of a category 1 hazard which is incapable of being removed by the landlord at reasonable expense.
- 52. Terms 44 and 45 do not require the landlord—
 - (a) to rebuild or reinstate the premises or any part of them, in the case of destruction or damage by a relevant cause, or
 - (b) to keep in repair anything which you are entitled to remove from the premises.
- 53. If the premises form part only of a building, terms 44 and 46 do not require the landlord to rebuild or reinstate any other part of the building in which he has an estate or interest, in the case of destruction or damage by a relevant cause.
- 54. Relevant causes are fire, storm and flood or other inevitable accident.
- 55. Term 46 does not require the landlord to carry out works or repairs unless the disrepair or failure to keep in working order affects your enjoyment of—
 - (a) the premises, or
 - (b) the common parts that you are entitled to use under this contract.
- 56. Term 57 applies where—
 - (a) the premises form part only of a building, and
 - (b) in order to comply with terms 44 to 50 the landlord needs to carry out works or repairs in another part of the building.
- 57. The landlord is not liable for failing to comply with terms 44 to 50 if he does not have sufficient rights over that other part of the building to enable him to carry out the works or repairs, and was unable to obtain such rights after making a reasonable effort to do so.

















Limits on landlord's obligations to repair: your fault



58. Term 44 does not impose any liability on the landlord if the existence of a category 1 hazard is wholly or mainly attributable to lack of care by you or a permitted occupier of the premises.



59. The landlord is not obliged by term 45 or 46 to carry out works or repairs if the disrepair or the failure of a service installation to be in working order is wholly or mainly attributable to lack of care by you or a permitted occupier of the premises.



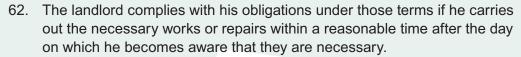
- 60. "Lack of care" means a failure to take proper care—
 - (a) of the premises, or
 - (b) if the premises form part only of a building, of the common parts that you are entitled to use under this contract.

Limits o





61. The landlord's obligations under terms 45 and 46 do not arise until the landlord becomes aware that works or repairs are necessary.





- 63. Term 64 applies if—
 - (a) the landlord (the "old landlord") transfers his interest in the premises to another person (the "new landlord"), and
 - (b) the old landlord is aware before the date of the transfer that works or repairs are necessary in order to comply with terms 45 or 46.



64. The new landlord is to be treated as becoming aware of the need for those works or repairs on the date of the transfer, but not before.

Rights of permitted occupiers



65. A permitted occupier who suffers personal injury, or loss of or damage to personal property, as a result of the landlord failing to comply with term 45 or 46 may enforce that term in his own right.



66. But a permitted occupier who is a lodger or sub-holder may do so only if the lodger is allowed to live in the premises, or the sub-occupation contract is made, in accordance with the terms of this contract.

Explanatory note: See term 74 for lodgers and term 75 for sub-occupation contracts made with sub-holders.



67. When you report a repair, the landlord must tell you when the repair will be completed.



- 68. When a repair is completed, the landlord must clear up afterwards and leave the decoration in a state as close as possible to that it was in before the repair was done.
- A fundamental term which cannot be left out of the contract or changed
- (1) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed



F. MAKING CHANGES TO THE PREMISES OR TO SERVICES

Changes to services

- 69. You may not do any of the following without the consent of the landlord—
 - (a) cancel the supply of water, electricity or gas (if applicable) (see term 7); or
 - (b) install or remove (or arrange to have installed or removed) any meters at the property that relate to the supply of services to the premises (see term 7).

G. DEALINGS

Dealing: General prohibition

- 70. In terms 71 to 73 "dealing" includes—
 - (a) creating a tenancy, or creating a licence which confers the right to occupy the premises,
 - (b) transferring,
 - (c) mortgaging or otherwise charging.
- 71. You may not deal with this contract, the premises or any part of the premises except—
 - (a) in a way permitted by this contract, or
 - (b) in accordance with a family property order.
- 72. A joint contract-holder may not deal with anything mentioned in term 71, or his rights and obligations under this contract, except—
 - (a) in a way permitted by this contract, or
 - (b) in accordance with a family property order.
- 73. If you do anything in breach of term 71, or a joint contract-holder does anything in breach of term 72—
 - (a) the transaction is not binding on the landlord, and
 - (b) you are or the joint contract-holder is in breach of this contract (despite the transaction not being binding on the landlord).

Explanatory note: The guidance booklet provided with this contract contains further information on ways of dealing with it, in particular the procedural and consent requirements.



Lodgers

74. You may allow persons to live in the premises as lodgers.



Making of sub-occupation contracts

75. You may make a sub-occupation contract that is a periodic standard contract if the landlord consents. The landlord has an absolute right to





refuse consent for any request by you to make a sub-occupation contract. The landlord may consent subject to conditions.

Explanatory note: A sub-holder is the contract-holder under a sub-occupation contract. The guidance booklet provided with this contract contains further information about making sub-occupation contracts.

Transfer to potential successor

- 76. You may transfer this contract as described in term 77, but only if the landlord consents.
- 77. You may transfer this contract to—
 - (a) a potential successor, or
 - (b) if there are two or more potential successors, all of the potential successors who wish to be included in the transfer.
- 78. If there is a sole contract-holder, a potential successor is a person who, under section 142 of the Rented Homes Act 2006, would be qualified to succeed him if he died immediately before the transfer.
- 79. If there are joint contract-holders, a potential successor is a person who, under section 142 of the Rented Homes Act 2006, would be qualified to succeed a joint contract-holder if—
 - (a) the joint contract-holder died immediately before the transfer, and
 - (b) when the joint contract-holder died he was the sole contract-holder.

Explanatory note: The guidance booklet provided with this contract gives further information about succession rights.

Transfer to secure contract-holder

- 80. You may transfer this contract as described in term 81, but only if the landlord consents.
- 81. You may transfer this contract to a person who—
 - (a) before the transfer, is a contract-holder under a secure contract under which the landlord is a community landlord, and
 - (b) immediately before the transfer, will cease to be the contract-holder under the contract mentioned in paragraph (a).

Explanatory note: "community landlord" includes a local authority (or one of a few similar public bodies with housing functions) and registered social landlords (most housing associations). See the guidance booklet provided with this contract for a complete definition.

Transferring

82. You may transfer this contract if the landlord consents. The landlord has an absolute right to refuse consent for any request by you to transfer this contract. This term applies only to transfers not covered by terms 76 to 81.

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H. PROVISIONS ABOUT JOINT CONTRACT-HOLDERS

Adding a contract-holder

- 83. You may, with the consent of the landlord, make another person a joint contract-holder under this contract.
- 84. If a person is made a joint contract-holder under term 83 he becomes entitled to all the rights, and subject to all the obligations, of a contract-holder under this contract from the day on which he becomes a joint contract-holder.

Explanatory note: The guidance booklet provided with this contract gives further information about the formalities for adding a joint contract-holder.

Withdrawal

- 85. A joint contract-holder may withdraw from this contract by giving a notice (a "withdrawal notice") to the landlord.
- 86. The withdrawal notice must specify the date on which the joint contract-holder intends to cease to be a party to this contract (the "withdrawal date").
- 87. When giving a withdrawal notice under term 85 the joint contract-holder must give the landlord at least one month's notice.
- 88. The joint contract-holder must give a written warning to the other joint-contract holders when he gives the withdrawal notice to the landlord; and a copy of the withdrawal notice must be attached to the warning.
- 89. The landlord must give a written warning to the other joint contract-holders as soon as reasonably practicable after he receives the withdrawal notice; and a copy of the withdrawal notice must be attached to the warning.
- 90. The joint contract-holder ceases to be a party to this contract on the withdrawal date.
- 91. A notice given to the landlord by one or more (but not all) of the joint contract-holders that purports to be a notice under term 114 (contract-holder's notice to end contract) is to be treated as a withdrawal notice, and the date specified in the notice is to be treated as the withdrawal date.
- 92. Term 88 does not apply to a notice which is treated as a withdrawal notice because of term 91.





















Survivorship

- 93. If a joint contract-holder dies, or ceases to be a party to this contract for some other reason, from the time he ceases to be a party the remaining joint contract-holders are—
 - (a) fully entitled to all the rights under this contract, and
 - (b) liable to perform fully every obligation owed to the landlord under this contract.
 - 94. The joint contract-holder is not entitled to any right or liable to any obligation in respect of the period after he ceases to be a party to this contract.
 - 95. Nothing in terms 93 or 94 removes any right or waives any liability of the joint contract-holder accruing before he ceases to be a party to this contract.
 - 96. Terms 93 to 95 do not apply where a joint contract-holder ceases to be a party to this contract because his rights and obligations under this contract are transferred in accordance with this contract.

I. TERMINATION OF THE CONTRACT: GENERAL

Termination

- 97. This contract may be ended only in accordance with—
 - (a) terms 100 to 107 and 111 to 144, or
 - (b) an enactment (including in particular the Rented Homes Act 2006 and the consumer protection regulations).
- 98. Nothing in term 97 affects—
 - (a) any right of the landlord or you to rescind this contract, or
 - (b) the operation of the law of frustration.

Joint contract-holders

99. If there are joint contract-holders, this contract cannot be ended by the act of one or more of the joint contract-holders acting without the other joint contract-holder or joint contract-holders.

Agreement

- 100. If the landlord and you agree to end this contract, this contract ends—
 - (a) when you give up possession of the premises in accordance with the agreement, or
 - (b) if you do not give up possession and a substitute occupation contract is made, immediately before the effective date of the substitute occupation contract.
- A fundamental term which cannot be left out of the contract or changed
- (1) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed















Renting Homes - secure contract



- 101. An occupation contract is a substitute occupation contract if—
 - (a) it is made in respect of the same (or substantially the same) premises as this contract, and
 - (b) a contract-holder under it was also a contract-holder under this contract.

Repudiation

- 102. If the landlord commits a repudiatory breach of this contract and you give up possession of the premises because of that breach, this contract ends when you give up possession of the premises.
 - Explanatory note: If the landlord commits a serious breach of this contract you may be entitled to end this contract simply by giving up possession of the premises. The guidance booklet provides more information about repudiation.

Your death

- 103. If you are the sole contract-holder and you die, this contract ends—
 - (a) one month after your death, or
 - (b) if earlier, when the landlord is given notice of your death by the authorised persons.
- 104. The authorised persons are—
 - (a) your personal representatives, or
 - (b) the permitted occupiers of the premises aged 16 and over (if any) acting together.
- 105. This contract does not end if under section 142 of the Rented Homes Act 2006 one or more persons are qualified to succeed you.
- 106. This contract does not end if, at your death, a family property order has effect which requires you to transfer this contract to another person.
- 107. If, after your death, the family property order ceases to have effect and there is no person qualified to succeed you, this contract ends—
 - (a) when the order ceases to have effect, or
 - (b) if later, at the time this contract would end under term 103.

When this contract ends

- 108. When this contract ends you must-
 - (a) leave the premises, the fixtures and any furnishings provided by the landlord in good condition. If you leave any of your own belongings, the landlord may dispose of them.
 - (b) pay for repair or replacement if damage has been caused deliberately or by your own neglect. You will not have to pay for normal wear and tear.
- 109. When this contract ends, you may not leave anyone else living in the premises when you leave (unless they have a right of their own to be there).



















$\overline{\mathbb{X}}$

Refunding pre-paid rent and charges

110. When this contract ends the landlord must refund an appropriate proportion of any pre-paid rent and other consideration, to be calculated on a pro-rata basis.

Explanatory note: The guidance booklet provided with this contract explains how the appropriate proportion would be calculated.

J. TERMINATION BY THE CONTRACT-HOLDER

Early termination

- 111. You may end this contract at any time before—
 - (a) the effective date, or
 - (b) if earlier, the day on which the landlord gives you a written statement of this contract under term 170.
- 112. To end this contract under term 111, you must give a notice to the landlord stating that you wish to end this contract
- 113. On giving the notice to the landlord, you—
 - (a) cease to have any liability under this contract, and
 - (b) become entitled to the return of any deposit, rent or other consideration given to the landlord in accordance with this contract.

Contract-holder's notice

- 114. You may end this contract by giving the landlord notice that you will give up possession of the premises on a date specified in the notice.
- 115. When giving notice under term 114 you must give the landlord at least one month's notice.
- 116. If you give up possession of the premises on or before the date specified in a notice under term 114, this contract ends on the date specified in the notice.
- 117. If you give up possession of the premises after that date but in connection with the notice, this contract ends—
 - (a) on the day on which you give up possession of the premises, or
 - (b) if a possession order is made, on the date determined in accordance with term 121.
- 118. The notice ceases to have effect if, before this contract ends—
 - (a) you withdraw the notice by further notice to the landlord, and
 - (b) the landlord does not object to the withdrawal in writing before the end of a reasonable period.

















A fundamental term which cannot be left out of the contract or changed

⁽¹⁾ A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006

A supplementary term which can be left out of this contract or changed



K. TERMINATION BY THE LANDLORD

Possession proceedings

119. The landlord may make a claim to the court for recovery of possession of the premises from you ("a possession claim") only in the circumstances set out in terms 124 to 144.



120. Where those terms require the landlord to give you a possession notice before making a possession claim on any ground, the notice must (in addition to specifying the ground)—



- (a) state the landlord's intention to make a possession claim,
- (b) give particulars of the ground, and
- (c) state the date after which the landlord is able to make a possession claim.

Effect of possession order

121. If the court makes an order requiring you to give up possession of the premises on a date specified in the order, this contract ends—



- (a) if you give up possession of the premises on or before that date, on that date,
- (b) if you give up possession of the premises after that date but before the order for possession is executed, on the day on which you give up possession of the premises, or
- (c) if you do not give up possession of the premises before the order for possession is executed, when the order for possession is executed.



- (a) it is a condition of the order that the landlord must offer a new occupation contract of the same premises to one or more joint contract-holders (but not all of them), and
- (b) that joint contract-holder (or those joint contract-holders) continue to occupy the premises on and after the effective date of the new contract.
- 123. This contract ends immediately before the effective date of the new contract.



Breach of contract

124. If you breach this contract, the landlord may on that ground make a claim to the court for recovery of possession of the premises.



125. Section 199 of the Rented Homes Act 2006 provides that the court may not make an order for possession on that ground unless it considers it reasonable to do so.

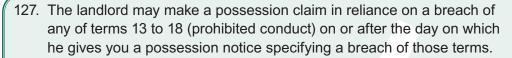


Restrictions on the use of breach of contract ground

126. Before making a possession claim on the ground in term 124, the landlord must give you a possession notice specifying that ground.









128. The landlord may not make a possession claim in reliance on a breach of any other term of this contract before the end of the period of one month starting with the day on which he gives you a possession notice specifying a breach of that term.



129. In either case, the landlord may not make a possession claim after the end of the period of six months starting with the day on which he gives you the possession notice.

Estate management grounds



130. The landlord may make a claim to the court for recovery of possession of the premises on one of the estate management grounds (which are set out in the box on pages 18 to 20).



- 131. Section 200 of the Rented Homes Act 2006 provides that the court may not make an order for possession on an estate management ground unless—
 - (a) it considers it reasonable to do so, and
 - (b) it is satisfied that suitable alternative accommodation is available to you (or will be available to you when the order takes effect).



132. If the court makes an order for possession on an estate management ground (and on no other ground), the landlord must pay to you a sum equal to the reasonable expenses likely to be incurred by you in moving from the premises.



133. Term 132 does not apply if the court makes an order for possession on Ground A or B of the estate management grounds (and on no other ground).

Restrictions on the use of estate management grounds



134. Before making a possession claim on an estate management ground, the landlord must give you a possession notice specifying that ground.



- 135. The landlord may not make the claim—
 - (a) before the end of the period of one month starting with the day on which he gives you the possession notice, or
 - (b) after the end of the period of six months starting with that day.



- 136. If a redevelopment scheme is approved under Part 2 of Schedule 6 to the Rented Homes Act 2006 subject to conditions, the landlord may give you a possession notice specifying estate management Ground B before the conditions are met.
- A fundamental term which cannot be left out of the contract or changed
- A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed

Renting Homes - secure contract



- 137. The landlord may not give you a possession notice specifying estate management ground G (accommodation not required by successor)—
 - (a) before the end of the period of six months starting with the day of the previous contract-holder's death, or
 - (b) after the end of the period of twelve months starting with that day.
- 138. The landlord may not give you a possession notice specifying estate management ground H (departing joint contract-holder) after the end of the period of six months starting with the day on which the joint contract-holder's rights and obligations under this contract ended.



Contract-holder's notice ground

possession of the premises.

- 139. If you fail to give up possession of the premises on the date specified in a notice under term 114, the landlord may on that ground make a claim to the court for recovery of possession of the premises.
- 140. Section 195 of the Rented Homes Act 2006 provides that if the court is satisfied that the ground is made out, it must make an order for





Restrictions on the use of contract-holder's notice ground

141. Before making a possession claim on the ground in term 139 the landlord must give you a possession notice specifying that ground.



142. The landlord may make a possession claim on or after the day on which he gives you the possession notice.



143. But he may not make the possession claim after the end of the period of six months starting with that day.



144. The landlord may not give you a possession notice specifying the ground in term 139 after the end of the period of two months starting with the date specified in the notice under term 114 as the date on which you would give up possession of the premises.



ESTATE MANAGEMENT GROUNDS

THE GROUNDS



Ground A

- The landlord intends, within a reasonable time of obtaining possession of the premises—
 - (a) to demolish or reconstruct the building or part of the building comprising the premises, or
 - (b) to carry out work on that building or on land treated as part of the premises,

and cannot reasonably do so without obtaining possession of the premises.



Ground B

- 2 (1) This ground arises if the premises satisfy the first condition or the second condition.
 - (2) The first condition is that the premises are in an area which is the subject of a redevelopment scheme approved in accordance with Part 2 of Schedule 6 to the Rented Homes Act 2006, and the landlord intends within a reasonable time of obtaining possession to dispose of the premises in accordance with the scheme.
 - (3) The second condition is that part of the premises is in such an area and the landlord intends within a reasonable time of obtaining possession to dispose of that part in accordance with the scheme and for that purpose reasonably requires possession of the premises.



Ground C

- 3 (1) The landlord is a charity and your continued occupation of the premises would conflict with the objects of the charity.
 - (2) But this ground is not available to the landlord ("L") unless, at the time the contract was made and at all times after that, the person in the position of landlord (whether L or another person) has been a charity.



Ground D

- The premises have features which are substantially different from those of ordinary premises and which are designed to make them suitable for occupation by a physically disabled person who requires accommodation of a kind provided by the premises and—
 - (a) there is no longer such a person living in the premises, and
 - (b) the landlord requires them for occupation by such a person (whether alone or with members of his family).
- A fundamental term which cannot be left out of the contract or changed
- (1) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed



Ground E

- (1) The landlord is a housing association or housing trust which makes premises available only for occupation (whether alone or with others) by persons who are difficult to house, and—
 - (a) either there is no longer such a person living in the premises or a local housing authority has offered you a right to occupy other premises under a secure contract, and
 - (b) the landlord requires the premises for occupation by such a person (whether alone or with members of his family).
 - (2) A person is difficult to house if his circumstances (other than merely financial circumstances) make it especially difficult for him to satisfy his need for housing.

Ground F

- The premises constitute part of a group of premises which it is the practice of the landlord to make available for occupation by persons with special needs and—
 - (a) a social service or special facility is provided in close proximity to the group of premises in order to assist persons with those special needs,
 - (b) there is no longer a person with those special needs living in the premises, and
 - (c) the landlord requires the premises for occupation by a person who has those special needs (whether alone or with members of his family).

Ground G

You succeeded to this contract under section 141 of the Rented Homes Act 2006 as a reserve successor of the previous contract-holder, and the accommodation comprised in the premises is more extensive than is reasonably required by you.

Ground H

- 8 (1) This ground arises if the first condition and the second condition are met.
 - (2) The first condition is that a joint contract-holder's rights and obligations under the contract have been brought to an end in accordance with—
 - (a) terms 85 to 92 (withdrawal), or
 - (b) section 115, 117, or 119 of the Rented Homes Act 2006 (exclusion).
 - (3) The second condition is that—
 - (a) the accommodation comprised in the premises is more extensive than is reasonably required by the remaining contract-holder (or contract-holders), or
 - (b) where the landlord is a community landlord, the remaining contract-holder does not (or the remaining contract-holders do not) meet the landlord's criteria for the allocation of housing accommodation.











Ground I

- 9 (1) This ground arises where it is desirable for some other substantial estate management reason that the landlord should obtain possession of the premises.
 - (2) An estate management reason may, in particular, relate to—
 - (a) all or part of the premises, or
 - (b) any other premises of the landlord to which the premises are connected, whether by reason of proximity or the purposes for which they are used, or in any other manner.

L. VARIATION



General

- 145. This contract may not be varied except—
 - (a) in accordance with terms 3 to 5, 146 to 154, or
 - (b) by or as a result of any enactment.





- 146. A fundamental term of this contract may be varied by agreement between the landlord and you.
- 147. Term 146 does not apply to—
 - (a) terms 13 to 18 (prohibited conduct),
 - (b) terms 158 to 159 (securing contract by deception),
 - (c) terms 93 to 96 (survivorship),
 - (d) terms 103 to 107 (your death).



- 148. An agreement to vary a fundamental term is of no effect unless as a result of the variation—
 - (a) the fundamental provision which the term incorporates would be incorporated without modification, or
 - (b) the contract would afford you a greater degree of protection than would be afforded in that case.

Supplementary and additional terms



- 149. A supplementary or additional term of this contract may be varied—
 - (a) by agreement between the landlord and you, or
 - (b) by the landlord giving a notice of variation to you.

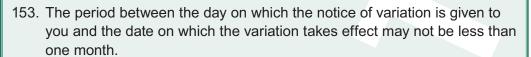


- 150. Before giving a notice of variation the landlord must give you a preliminary notice—
 - (a) informing you that he intends to give a notice of variation,
 - (b) specifying the proposed variation and informing you of its nature and effect, and
 - (c) inviting you to comment on the proposed variation within the time specified in the notice.
- A fundamental term which cannot be left out of the contract or changed
- (1) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed

Renting Homes - secure contract



- 151. The specified time must give you a reasonable opportunity to comment.
- 152. The notice of variation must specify the variation effected by it and the date on which the variation takes effect.



154. When giving a notice of variation the landlord must also provide you with such information as he considers necessary to inform you of the nature and effect of the variation.







Written statement of variation

- 155. If this contract is varied under any of terms 3 to 5, 146 to 154 or by or as a result of any enactment the landlord must, before the end of the relevant period, give you—
 - (a) a written statement of the term or terms varied, or
 - (b) a written statement of this contract as varied.
- 156. The relevant period is the period of two weeks starting with the day on which this contract is varied.
- 157. The landlord may not charge a fee for providing a written statement under term 155.







M. OTHER MATTERS

Deception

- 158. If the landlord is induced to make this contract by means of a relevant false statement—
 - (a) you are to be treated as being in breach of this contract, and
 - (b) the landlord may accordingly make a claim to recover possession of the premises on the ground in term 124 (breach of contract).
- 159. A false statement is relevant if it is made knowingly or recklessly by—
 (a) you, or
 - (b) another person acting at your instigation.



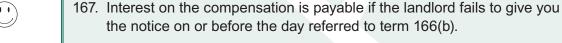
Information about parties

- 160. The landlord must, before the end of the period of two weeks starting with the effective date of this contract, give you notice of an address in England and Wales to which you may send documents that are intended for the landlord.
- 161. If the landlord manages the premises through an agent the landlord must, before the end of the period of two weeks starting with the day on which he starts to manage the premises through the agent, give you notice of the agent's name and address.





162. If there is a change in the identity of the landlord the new landlord must, before the end of the period of two weeks starting with the day on which he becomes the landlord, give you notice that he has become the landlord. 163. If there is a change in the identity of the contract-holder the landlord must, before the end of the relevant period, give the new contract-holder notice that he has become the contract-holder under this contract. 164. The relevant period is two weeks starting with— (a) the day on which the identity of the contract-holder changes, or (b) if later, the day on which the landlord becomes aware that the identity of the contract-holder has changed. Compensation for breach of terms 160 to 164 165. If the landlord fails to comply with an obligation under terms 160 to 164, he is liable to pay you compensation under section 34 of the Rented Homes Act 2006. 166. The compensation is payable in respect of the relevant date and every day after the relevant date until-(a) the day on which the landlord gives the notice in question, or (b) if earlier, the last day of the period of two months starting with the relevant date.



- 168. The interest starts to run on the day referred to in term 166(b), at the rate prevailing under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) at the end of that day.
- 169. The relevant date is the first day of the period before the end of which the landlord was required to give the notice.

Written statement of contract

- 170. The landlord must give you a written statement of this contract before the end of the period of two weeks starting with the effective date.
- 171. The landlord may not charge a fee for providing you with a written statement under term 170.
- 172. You may request a further written statement of this contract at any time.
- 173. The landlord may charge a reasonable fee for providing it.
- 174. The landlord must give you the further written statement before the end of the period of two weeks starting with-
 - (a) the day of the request, or
 - (b) if the landlord charges a reasonable fee, the day on which you pay the fee.
- A fundamental term which cannot be left out of the contract or changed
- (1) A fundamental term which can be left out of this contract or changed, but only if that gives you greater protection than you are entitled to under the Rented Homes Act 2006
- A supplementary term which can be left out of this contract or changed



Form of notices

175. Any notice or other document required or authorised to be given or made by this contract must be in writing.



N. ADDITIONAL TERMS









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Renting Homes: The Final Report

Volume 2: Draft Bill









The Law Commission

(LAW COM No 297)

RENTING HOMES: THE FINAL REPORT VOLUME 2: DRAFT BILL

Presented to the Parliament of the United Kingdom by the Secretary of State for Constitutional Affairs and Lord Chancellor by Command of Her Majesty May 2006

Cm 6781 - II £32.50

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are:

The Honourable Mr Justice Toulson, *Chairman*Professor Hugh Beale QC, FBA
Mr Stuart Bridge
Dr Jeremy Horder
Mr Kenneth Parker QC

The Chief Executive of the Law Commission is Mr Steve Humphreys.

The Law Commission is located at Conquest House, 37-38 John Street, Theobalds Road, London WC1N 2BQ.

Volume 2 of this report contains the draft Bill that encapsulates the recommendations contained in volume 1.

The terms of the recommendations contained in the volume 1 of this report were agreed on 7 April 2006.

The text of this report is available on the Internet at:

http://www.lawcom.gov.uk

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Rented Homes Bill

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DRAFT

OF A

BILL

TO

Make provision about tenancies and licences which confer the right to occupy premises as a home; and for connected purposes.

B E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

OCCUPATION CONTRACTS

Introductory

1 Occupation contracts

- (1) A tenancy or licence is an occupation contract if
 - (a) it is within subsection (2) or (3), and
 - (b) rent or other consideration is payable under it.
- (2) A tenancy or licence is within this subsection if
 - (a) it is made between a landlord and an individual, and
 - (b) it confers on the individual the right to occupy premises as a home.
- (3) A tenancy or licence is within this subsection if
 - (a) it is made between a landlord and two or more persons at least one of whom is an individual, and
 - (b) it confers on the individual (or, if there is more than one individual, on one or more of them) the right to occupy premises as a home.
- (4) Each person with whom a landlord makes an occupation contract is a contract-holder under the occupation contract.
- (5) But an individual cannot be a contract-holder under an occupation contract if he has not reached the age of 16.

(6) This section is subject to Schedule 1 (exceptions).

2 Secure contracts and standard contracts

An occupation contract is either –

- (a) a secure contract, or
- (b) a standard contract.

3 Nature of contracts

- (1) A secure contract is a periodic contract.
- (2) A standard contract is either a fixed term contract or a periodic contract.
- (3) A standard contract (but not a secure contract) may provide that the contract-holder is not entitled to occupy the premises as a home for such periods as are specified in the contract.
- (4) The contract may specify periods—
 - (a) by reference to specified dates, or
 - (b) by reference to any matters reasonably ascertainable by the contractholder.

Community landlords and private landlords

4 Contract made by community landlord

- (1) An occupation contract made by a community landlord is a secure contract unless one of the following exceptions applies.
- (2) The first exception applies if
 - (a) no other exception applies,
 - (b) the occupation contract is within Schedule 2 (occupation contracts which may be standard contracts), and
 - (c) before or at the time the contract is made, the landlord gives the contract-holder a notice under section 6.
- (3) The second exception applies if the contract is made as a result of an order under section 59 (imposition of standard contract following breach of contract).
- (4) The third exception applies if the contract arises under section 165(2) or is within section 165(6) (contracts at end of fixed term).
- (5) The fourth exception applies if the contract is a tenancy or licence arising under section 202 (implied tenancies and licences).
- (6) Chapter 2 of Part 3 specifies circumstances in which an occupation contract which is a standard contract because of
 - (a) the first exception and paragraph 2 or 3 of Schedule 2 (supported and probationary contracts), or
 - (b) the second exception,

becomes a secure contract.

5 Contract adopted by community landlord

- (1) If a community landlord becomes the landlord under an existing secure contract, the contract continues as a secure contract.
- (2) If a community landlord becomes the landlord under an existing standard contract because of a transfer under section 125 or section 128 (transfer of sub-occupation contract), the contract continues as a standard contract.
- (3) If a community landlord becomes the landlord under an existing standard contract for some other reason, the contract becomes a secure contract unless one of the following exceptions applies.
- (4) The first exception applies if
 - (a) no other exception applies,
 - (b) the contract is within Schedule 2 (occupation contracts which may be standard contracts), and
 - (c) before or at the time the community landlord becomes the landlord, the community landlord gives the contract-holder a notice under section 6.
- (5) The second exception applies if the contract is made as a result of an order under section 59 (imposition of standard contract following breach of contract).
- (6) The third exception applies if the contract arises under section 165(2) or is within section 165(6) (contracts at end of fixed term).
- (7) The fourth exception applies if the contract is a tenancy or licence arising under section 202 (implied tenancies and licences).
- (8) The fifth exception applies if
 - (a) the contract is a fixed term standard contract for which a premium was paid, and
 - (b) before the community landlord becomes the landlord, the contractholder elects that the contract should remain a fixed term standard contract.
- (9) Chapter 2 of Part 3 specifies circumstances in which an occupation contract which is a standard contract because of
 - (a) the first exception and paragraph 2 or 3 of Schedule 2 (supported and probationary contracts), or
 - (b) the second exception,

becomes a secure contract.

6 Notice of standard contract

- (1) A notice under this section is a notice—
 - (a) identifying the paragraph of Schedule 2 on which the landlord relies, and
 - (b) stating that the contract is a standard contract.
- (2) If the contract-holder has the right to apply for a review under section 7, the notice must also inform him of that right and of the time by which the application must be made.

7 Review of notice

- (1) This section applies where a community landlord gives a notice under section 6 and the landlord's decision to give the notice is subject to judicial review.
- (2) The contract-holder may apply to a county court for a review of the landlord's decision.
- (3) The application must be made before the end of the period of 14 days starting with the day on which the landlord gives the contract-holder the notice.
- (4) The county court hearing the application may confirm or quash the decision.
- (5) In considering whether to confirm or quash the decision, the county court must apply the principles applied by the High Court on an application for judicial review.
- (6) If the county court quashes the decision, it may make any order the High Court could make when making a quashing order on an application for judicial review.
- (7) If the landlord gives the contract-holder a further notice under section 6 before the end of the relevant period, the notice has effect as if given
 - (a) in a case within section 4, at the time the contract was made, or
 - (b) in a case within section 5, at the time the community landlord became the landlord.
- (8) The relevant period is the period of 14 days beginning with the day on which the county court quashes the decision.

8 Notice of right to elect

- (1) Not less than one month before a community landlord becomes the landlord under a fixed term standard contract for which a premium was paid, the community landlord must give the contract-holder a notice under this section.
- (2) The notice must—
 - (a) inform the contract-holder of his right to make an election under section 5(8)(b) and of the time by which the election must be made, and
 - (b) explain how section 5 will apply to the contract if the contract-holder does not make the election.

9 Community landlords in Wales

- (1) The National Assembly for Wales may by order
 - (a) provide that sections 4 to 8 and Schedule 2 do not apply to occupation contracts made by community landlords in relation to premises situated in Wales, and
 - (b) make alternative provision about the circumstances in which such occupation contracts are secure contracts and the circumstances in which they are standard contracts.
- (2) An order under subsection (1) may make consequential amendments to and repeals of any enactment.

10 Contract made or adopted by private landlord

- (1) An occupation contract made by a private landlord is a standard contract unless, before or at the time the contract is made, the landlord gives the contract-holder a notice stating that the contract is a secure contract.
- (2) If a private landlord becomes the landlord under an existing secure contract, the contract continues as a secure contract.
- (3) If a private landlord becomes the landlord under an existing standard contract, the contract continues as a standard contract.

Fundamental provisions

11 Incorporation of fundamental provisions

- (1) Sections 14 to 18 identify provisions ("fundamental provisions") that are incorporated as terms of occupation contracts or particular kinds of occupation contract, but subject to subsections (2) and (3).
- (2) A fundamental provision is not incorporated as a term of an occupation contract if
 - (a) the landlord and the contract-holder agree that it should not be incorporated, and
 - (b) the effect of its not being incorporated is that the contract affords the contract-holder a greater degree of protection.
- (3) A fundamental provision is incorporated as a term of an occupation contract with modifications if
 - (a) the landlord and the contract-holder agree that it should be incorporated with those modifications, and
 - (b) the effect of its being incorporated with those modifications is that the contract affords the contract-holder a greater degree of protection.
- (4) Subsections (2) and (3) do not apply to the following fundamental provisions
 - (a) section 51 (prohibited conduct),
 - (b) section 64 (securing contract by deception),
 - (c) section 111 (survivorship), and
 - (d) section 159 (death of contract-holder).
- (5) Subsections (2) and (3) are subject to section 29 (landlord's failure to provide written statement of contract) and section 31 (incomplete statement of contract).
- (6) In this Act—

"fundamental provision" has the meaning given by subsection (1), and "fundamental term", in relation to an occupation contract, means a term of the contract which incorporates a fundamental provision (with or without modifications).

12 Effect of non-incorporation etc.

- (1) Subsections (2) and (3) apply if
 - (a) because of section 11(2) a fundamental provision is not incorporated as a term of an occupation contract, or

- (b) because of section 11(3) a fundamental provision is incorporated as a term of the contract with modifications.
- (2) If as a result it is necessary that another fundamental provision is not incorporated, the other provision is not incorporated.
- (3) If as a result it is necessary that another fundamental provision is incorporated with modifications, the other provision is incorporated with the necessary modifications (in addition to any modifications made because of section 11(3)).

13 Relationship with unfair terms regulations

If a fundamental provision –

- (a) is incorporated as a term of an occupation contract without modification, or
- (b) because of section 11(3) or 12(3) is incorporated as a term of an occupation contract with modifications,

that term is for the purposes of the unfair terms regulations a term which reflects a mandatory statutory provision (so that the regulations do not apply to it).

14 Fundamental provisions of all contracts

The following provisions are incorporated as terms of all occupation contracts –

- (a) section 24 (written statement of contract),
- (b) sections 36 and 37 (deposits),
- (c) section 51 (prohibited conduct),
- (d) sections 64 to 69 (other rights and obligations),
- (e) section 108 (addition of joint contract-holder),
- (f) section 111 (survivorship),
- (g) section 120 (dealing),
- (h) sections 152 to 159 (termination: general) (but subject to section 133 in the case of fixed term standard contracts),
- (i) sections 183 to 186 and Part 1 of Schedule 6 (termination by landlord).

15 Fundamental provisions of secure contracts

- (1) The following provisions are incorporated as terms of all secure contracts—
 - (a) sections 43 to 48 (repairs),
 - (b) sections 79 to 83 (variation),
 - (c) section 112 (withdrawal of joint contract-holder),
 - (d) sections 122 and 131 (dealing),
 - (e) sections 167 to 170 (contract-holder's notice).
- (2) Section 132 (transfer to secure contract-holder) is incorporated as a term of secure contracts under which the landlord is a community landlord.

16 Fundamental provisions of standard contracts

(1) Sections 187 and 188 (termination of contract for serious rent arrears) are incorporated as terms of all standard contracts.

(2) Section 78 (temporary exclusion) is incorporated as a term of supported standard contracts.

17 Fundamental provisions of periodic standard contracts

- (1) The following provisions are incorporated as terms of periodic standard contracts—
 - (a) sections 43 to 48 (repairs),
 - (b) sections 84 to 88 (variation) (but subject to section 91),
 - (c) section 112 (withdrawal of joint contract-holder),
 - (d) sections 167 to 170 (contract-holder's notice),
 - (e) sections 173 to 179 (landlord's notice).
- (2) Section 181 is incorporated as a fundamental provision of a periodic standard contract which arises under section 165(2).

18 Fundamental provisions of fixed term standard contracts

- (1) The following provisions are incorporated as terms of fixed term standard contracts
 - (a) sections 89 and 90 (variation),
 - (b) section 180 (landlord's notice in connection with end of term).
- (2) Sections 43 to 48 (repairs) are incorporated as terms of fixed term standard contracts made for a term of less than seven years.
- (3) The term for which a fixed term standard contract is made is to be determined in accordance with section 19.
- (4) Sections 168 to 170 (termination by contract-holder's notice) are incorporated as terms of fixed term standard contracts which have a contract-holder's break clause (see section 171).
- (5) Sections 174 to 179 (termination by landlord's notice) are incorporated as terms of fixed term standard contracts which have a landlord's break clause (see section 182).

19 Fixed term standard contracts: length of term

- (1) This section applies for the purposes of section 18(3).
- (2) If the occupation contract is a tenancy, it is to be treated as made for a term commencing with the grant.
- (3) If the occupation contract is a licence, it is to be treated as made for a term commencing with the effective date of the contract.
- (4) The contract is to be treated as made for a term of less than seven years if it is determinable at the option of the landlord before the end of the period of seven years starting with the commencement of the term.
- (5) If the contract confers on the contract-holder an option for renewal for a term which, together with the original term, amounts to seven years or more, it is not to be treated as made for a term of less than seven years (unless subsection (4) applies).

20 Interpretation

- (1) This section applies for the interpretation of references in this Act to a fundamental provision.
- (2) In relation to contracts in which the fundamental provision is incorporated (with or without modifications), the reference has effect as a reference to the fundamental term which incorporates the provision.

Supplementary provisions

21 Incorporation of supplementary provisions

- (1) A provision which is a supplementary provision in relation to an occupation contract is incorporated as a term of the contract, but this is subject to subsections (3) and (4).
- (2) A provision is a supplementary provision in relation to an occupation contract if it is prescribed as such by the appropriate authority, after consultation with such persons as appear to it to be appropriate.
- (3) A supplementary provision is not incorporated as a term of an occupation contract if the landlord and the contract-holder agree that it should not be incorporated.
- (4) A supplementary provision is incorporated as a term of an occupation contract with modifications if the landlord and the contract-holder agree that it should be incorporated with those modifications.
- (5) Subsections (3) and (4) are subject to section 29 (landlord's failure to provide written statement of contract) and section 31 (incomplete written statement).
- (6) In this Act—
 - "supplementary provision" (except in section 241) has the meaning given by subsection (2), and
 - "supplementary term", in relation to an occupation contract, means a term of the contract which incorporates a supplementary provision (with or without modifications).

22 Effect of non-incorporation etc.

- (1) Subsections (2) and (3) apply if
 - (a) because of section 21(3) a supplementary provision is not incorporated as a term of an occupation contract, or
 - (b) because of section 21(4) a supplementary provision is incorporated as a term of the contract with modifications.
- (2) If as a result it is necessary that another supplementary provision is not incorporated, the other provision is not incorporated.
- (3) If as a result it is necessary that another supplementary provision is incorporated with modifications, the other provision is incorporated with the necessary modifications (in addition to any modifications made because of section 21(4)).

23 Relationship with unfair terms regulations

- (1) For the purposes of the unfair terms regulations, a supplementary term which incorporates a supplementary provision without modification reflects a mandatory statutory provision (so that the regulations do not apply to it).
- (2) Before prescribing a supplementary provision under section 21 the appropriate authority must have regard to whether, if the unfair terms regulations applied to a supplementary term incorporating the provision without modification, the term would be fair.
- (3) If a term which incorporates a supplementary provision with modifications is void or invalid (because of the unfair terms regulations or for any other reason), that term is of no effect and the contract is to be treated as incorporating the provision without modification.

Written statement of contract: fundamental provision of all contracts

24 Written statement

- (1) The landlord under an occupation contract must give the contract-holder a written statement of the contract before the end of the period of two weeks starting with the effective date.
- (2) The landlord may not charge a fee for providing a written statement under subsection (1).
- (3) The contract-holder may request a further written statement of the contract at any time.
- (4) The landlord may charge a reasonable fee for providing it.
- (5) The landlord must give the contract-holder the further written statement before the end of the period of two weeks starting with—
 - (a) the day of the request, or
 - (b) if the landlord charges a reasonable fee, the day on which the contract-holder pays the fee.

Written statement of contract: further provision

25 Contents of written statement

- (1) A written statement of an occupation contract must set out the names of the parties to the contract.
- (2) It must set out—
 - (a) the terms of the contract as to the matters which are key matters in relation to the contract (see section 27),
 - (b) the fundamental terms of the contract,
 - (c) the supplementary terms of the contract, and
 - (d) any other express terms of the contract ("additional terms").
- (3) It must identify
 - (a) any fundamental provision applicable to the contract which is not incorporated as a term of the contract because of section 11(2) or 12(2), and

- (b) any supplementary provision applicable to the contract which is not incorporated as a term of the contract because of section 21(3) or 22(2).
- (4) It must contain explanatory information about such matters as may be prescribed.
- (5) In this Act "additional terms" has the meaning given by subsection (2)(d).

26 Editorial changes in written statement

- (1) The written statement may set out the fundamental and supplementary terms of the contract with editorial changes.
- (2) Editorial changes are changes to the wording of a fundamental or supplementary term which do not change the substance of that term in any way, for example—
 - (a) substituting the names of the landlord or contract-holder for references to "the landlord", "the landlord under an occupation contract", "the contract-holder", "the contract-holder under a secure contract" etc.,
 - (b) substituting, for references to a fundamental provision, references to the corresponding fundamental term.

27 Key matters

- (1) The following are key matters in relation to all occupation contracts
 - (a) the premises,
 - (b) the effective date,
 - (c) the amount of rent or other consideration, and
 - (d) the rental periods.
- (2) The following are key matters in relation to standard contracts
 - (a) whether the contract is periodic or made for a fixed term,
 - (b) if it is made for a fixed term, the term for which it is made, and
 - (c) if there are periods during which the contract-holder is not entitled to occupy the premises as a home, those periods.

28 Enforcement

No term of an occupation contract is enforceable against the contract-holder before the earlier of —

- (a) the landlord giving the contract-holder a written statement of the contract under section 24(1), and
- (b) the effective date.

Failure to provide written statement etc.

29 Failure to provide statement: application to court

- (1) If the landlord under an occupation contract fails to comply with a requirement to provide a written statement under section 24, the contract-holder may apply to the court for a declaration as to the terms of the contract.
- (2) On an application under subsection (1) each fundamental and supplementary provision applicable to the contract is to be treated as incorporated as a term of

the contract without modification, unless the contract-holder claims that it was not incorporated or was incorporated with modifications.

- (3) In that case the court must determine the contract-holder's claim.
- (4) Subsection (2) does not apply if the landlord's failure to comply with section 24 is attributable to the act or omission of the contract-holder.
- (5) The court may
 - (a) attach a statement of the occupation contract to its declaration, or
 - (b) order the landlord to give the contract-holder a written statement of the contract.

30 Failure to provide statement: compensation

- (1) If the landlord under an occupation contract fails to comply with a requirement to provide a written statement under section 24, he is liable to pay the contract-holder compensation under section 34.
- (2) The compensation is payable in respect of the relevant date and every day after the relevant date until
 - (a) the day on which the landlord gives the contract-holder a written statement of the contract, or
 - (b) if earlier, the last day of the period of two months starting with the relevant date.
- (3) Interest on the compensation is payable if the landlord fails to give the contract-holder a written statement of the contract on or before the day referred to in subsection (2)(b).
- (4) The interest starts to run on the day referred to in subsection (2)(b), at the rate prevailing under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) at the end of that day.
- (5) This section does not apply if the landlord's failure to comply with section 24 is attributable to the act or omission of the contract-holder.
- (6) The relevant date
 - (a) if the landlord was required to provide a written statement under section 24(1), is the effective date, and
 - (b) if the landlord was required to provide a written statement under section 24(3) to (5), is the first day of the period mentioned in section 24(5).

31 Incomplete statement

- (1) If the landlord under an occupation contract provides a written statement of the contract that is incomplete, the contract-holder may apply to the court for a declaration as to the terms of the contract.
- (2) A written statement is incomplete if it does not include everything required to be included by section 25.
- (3) The contract-holder may not make an application under subsection (1) before the end of the period of two weeks starting with the relevant date.
- (4) Subsection (5) applies if the written statement —

- (a) does not set out a fundamental provision applicable to the contract and does not contain a statement that the provision is not incorporated because of section 11(2) or 12(2), or
- (b) does not set out a supplementary provision applicable to the contract and does not contain a statement that the provision is not incorporated because of section 21(3) or 22(2).
- (5) That provision is to be treated as incorporated as a term of the contract without modification unless
 - (a) section 12 or 22 applies in relation to it, or
 - (b) the contract-holder claims it was not incorporated or was incorporated with modifications.
- (6) If the contract-holder claims it was not incorporated or was incorporated with modifications, the court must determine the contract-holder's claim.
- (7) Subsection (5) does not apply if the omission of the provision or statement is attributable to the act or omission of the contract-holder.
- (8) The court may
 - (a) attach a written statement of the occupation contract to its declaration, or
 - (b) order the landlord to give the contract-holder a written statement of the contract which is not incomplete.
- (9) If the court is satisfied that the written statement is incomplete because of the wilful default of the landlord, it may if it thinks fit order the landlord to pay the contract-holder compensation under section 34.
- (10) The compensation is payable in respect of such period, not exceeding two months, as the court may determine; and the court may order the landlord to pay interest at such rate and calculated in such manner as it thinks fit.
- (11) "The relevant date" has the same meaning as in section 30.

32 Incorrect statement: contract-holder's application to court

- (1) The contract-holder under an occupation contract may apply to the court for a declaration that a written statement of the contract—
 - (a) sets out a term of the contract incorrectly,
 - (b) incorrectly states that because of section 11(2) or 12(2) a fundamental provision applicable to the contract has not been incorporated as a term of the contract,
 - (c) incorrectly states that because of section 21(3) or 22(2) a supplementary provision applicable to the contract has not been incorporated as a term of the contract, or
 - (d) sets out a term that is not a term of the contract.
- (2) Subsection (1)(a)
 - (a) does not include the case where a term is set out with editorial changes permitted under section 26, but
 - (b) includes the case where the written statement sets out a term that is of no effect.
- (3) The contract-holder may not apply to the court under subsection (1) before the end of the period of two weeks starting with the relevant date.

- (4) If the court is satisfied that the ground in subsection (1)(a), (1)(b) or (1)(c) is made out, it may make a declaration setting out the correct term.
- (5) If the court is satisfied that the ground in subsection (1)(d) is made out, it may make a declaration that the term is not a term of the contract.
- (6) The court may
 - (a) attach a written statement of the occupation contract to its declaration, or
 - (b) order the landlord to give the contract-holder a corrected written statement of the contract.
- (7) If the court is satisfied that the written statement is incorrect as described in subsection (1) because of the wilful default of the landlord, it may if it thinks fit order the landlord to pay the contract-holder compensation under section 34.
- (8) The compensation is payable in respect of such period, not exceeding two months, as the court may determine; and the court may order the landlord to pay interest at such rate and calculated in such manner as it thinks fit.
- (9) "The relevant date" has the same meaning as in section 30.

33 Incorrect statement: landlord's application to court

- (1) This section applies if the landlord under an occupation contract is a community landlord and has given the contract-holder—
 - (a) a notice under section 6, but
 - (b) a written statement of the contract that is consistent with a secure contract.
- (2) The landlord may apply to the court for a declaration that the contract is a standard contract.
- (3) The court may not make the declaration if it is satisfied that, at the time the landlord gave the written statement to the contract-holder, it was the intention of the landlord that the contract should be a secure contract.
- (4) If the court makes the declaration each fundamental and supplementary provision applicable to the contract is to be treated as incorporated as a term of the contract without modification, unless the contract-holder claims it was not incorporated or was incorporated with modifications.
- (5) In that case the court must determine the contract-holder's claim.
- (6) The court may
 - (a) attach a written statement of the occupation contract to its declaration, or
 - (b) order the landlord to give the contract-holder a corrected written statement of the contract.

34 Amount of compensation

(1) Where the landlord under an occupation contract is liable to pay compensation to the contract-holder under this section, the amount of compensation payable in respect of a particular day is equivalent to the amount of rent payable under the contract in respect of that day.

- (2) If the contract provides for rent to be paid in respect of periods other than a day, the amount of rent payable in respect of a single day is the appropriate proportion of the rent payable in respect of the period in which that day falls.
- (3) If compensation is payable because of section 30 or 92 (failure to provide statement), the contract-holder may apply to the court for an order increasing the amount of the compensation on the ground that the landlord's failure to provide a written statement was wilful.
- (4) If compensation is payable because of section 31 or 32 (incomplete or incorrect statement), the contract-holder may apply to the court for an order increasing the amount of the compensation.
- (5) On an application under subsection (3) or (4), the court may increase the amount of the compensation payable in respect of a particular day by such percentage, not exceeding 100 per cent, as it thinks fit.

Model contracts

35 Model contracts

- (1) The appropriate authority may prescribe model contracts for such descriptions of occupation contract as it thinks fit.
- (2) A model contract for an occupation contract of a particular description is a written statement appropriate to a contract of that description which incorporates without modification all the fundamental and supplementary provisions applicable to it.

PART 2

RIGHTS AND OBLIGATIONS UNDER OCCUPATION CONTRACTS

CHAPTER 1

DEPOSITS

Fundamental provisions of all contracts

36 Form of security

The landlord under an occupation contract may not require security to be given in any form other than—

- (a) money, or
- (b) a guarantee.

37 Requirement to use deposit scheme

- (1) If the contract-holder under an occupation contract pays a deposit (or another person pays a deposit on his behalf), the deposit must be dealt with in accordance with an authorised deposit scheme.
- (2) Before the end of the period of 14 days starting with the day on which the deposit is paid, the landlord must give the contract-holder (and any person who has paid the deposit on his behalf) the required information.

- (3) The required information is information
 - (a) identifying the authorised deposit scheme which applies,
 - (b) confirming the landlord's compliance with the initial requirements of the scheme, and
 - (c) explaining the contract-holder's (or that person's) rights in relation to the deposit.
- (4) "Deposit" means money paid as security.

Further provision

38 Deposit schemes

- (1) The appropriate authority must make arrangements for securing that one or more deposit schemes are available.
- (2) "Deposit scheme" means a scheme for the purpose of
 - (a) safeguarding deposits paid in connection with occupation contracts, and
 - (b) facilitating the resolution of disputes arising in connection with such deposits.
- (3) "Arrangements" means arrangements with any body or person ("the scheme administrator") under which the scheme administrator undertakes to establish and maintain a deposit scheme of a description specified in the arrangements.
- (4) The arrangements must require the scheme administrator to give the appropriate authority such information, and such facilities for obtaining information, as the appropriate authority may require.
- (5) The appropriate authority may
 - (a) give financial assistance to the scheme administrator,
 - (b) make other payments to the scheme administrator in pursuance of the arrangements,
 - (c) guarantee the discharge of any financial obligation incurred by the scheme administrator in connection with the arrangements.
- (6) The appropriate authority may make regulations conferring powers and imposing duties on scheme administrators.

39 Required information

The appropriate authority may by regulations make provision as to what information is sufficient to comply with section 37(3).

40 Proceedings: form of security

- (1) This section applies if
 - (a) the landlord under an occupation contract requires security to be given in a form which is not permitted by section 36, and
 - (b) security is given in that form.
- (2) The contract-holder (or any person who has given the security on his behalf) may apply to a county court for an order under subsection (3).

(3) The order is an order requiring the person who appears to be holding the property constituting the security to return it.

41 Proceedings: deposit schemes

- (1) Where a deposit has been paid in connection with an occupation contract, the contract-holder (or any person who has paid the deposit on his behalf) may make an application to a county court on any of the following grounds.
- (2) The first ground is that the landlord has not complied with section 37(2).
- (3) The second ground is that the applicant
 - (a) has been notified by the landlord that a particular authorised deposit scheme applies to the deposit, but
 - (b) has been unable to obtain confirmation from the scheme administrator that the deposit is being held in accordance with the scheme.
- (4) The third ground is that the landlord has not complied with the initial requirements of an authorised deposit scheme.
- (5) The county court must act as follows if
 - (a) in the case of an application on the first or third ground, it is satisfied that the ground is made out, or
 - (b) in the case of an application on the second ground, it is not satisfied that the deposit is being held in accordance with an authorised deposit scheme.
- (6) It must order the person who appears to be holding the deposit
 - (a) to repay the deposit to the applicant before the end of the relevant period, or
 - (b) to pay it, before the end of that period, to the scheme administrator of an authorised custodial deposit scheme to be held in accordance with the scheme.
- (7) It must order the landlord to pay to the applicant, before the end of the relevant period, a sum of money equal to three times the amount of the deposit.
- (8) The relevant period is the period of 14 days beginning with the date of the order.
- (9) A custodial deposit scheme is a scheme under which deposits are paid to the scheme administrator by the landlord and held by the scheme administrator until, in accordance with the scheme, they fall to be paid to the landlord or contract-holder.

Interpretation

42 Interpretation

- (1) In this Act—
 - "authorised deposit scheme" means a deposit scheme in force in accordance with arrangements under section 38,
 - "deposit" has the meaning given by section 37(4),
 - "deposit scheme" has the meaning given by section 38(2),

Chapter 1 – Deposits

- "initial requirements", in relation to a deposit scheme, means the requirements of the scheme which must be complied with by the landlord when a deposit is paid,
- "security" means security for the performance of the contract-holder's obligations and the discharge of the contract-holder's liabilities.
- (2) In this Act references to a deposit, in relation to a time after a deposit has been paid, are to a sum representing the deposit.

CHAPTER 2

CONDITION OF PREMISES

Fundamental provisions of secure contracts, periodic standard contracts and fixed term standard contracts for a term of less than 7 years

43 Landlord's obligations

- (1) The landlord under a secure contract, a periodic standard contract and a fixed term standard contract made for a term of less than seven years must ensure that
 - (a) there is no category 1 hazard on the premises, and
 - (b) if the premises form part only of a building, there is no category 1 hazard on the structure or exterior of the building or the common parts.
- (2) The landlord must—
 - (a) keep in repair the structure and exterior of the premises (including drains, gutters and external pipes), and
 - (b) keep in repair and proper working order the service installations in the premises.
- (3) If the premises form part only of a building, the landlord must—
 - (a) keep in repair the structure and exterior of any other part of the building (including drains, gutters and external pipes) in which he has an estate or interest, and
 - (b) keep in repair and proper working order a service installation which directly or indirectly serves the premises, and which either—
 - (i) forms part of any part of the building in which he has an estate or interest, or
 - (ii) is owned by him or is under his control.
- (4) The standard of repair required by subsections (2) and (3) is that which is reasonable having regard to the age and character of the premises, and the period during which the premises are likely to be available for occupation as a home.
- (5) The landlord must make good any damage caused by works and repairs carried out in order to comply with his obligations under this section.
- (6) The landlord may not impose any obligation on the contract-holder in the event of the contract-holder's enforcing or relying on the landlord's obligations under this section.
- (7) In this Chapter –

"category 1 hazard" has the same meaning as in the Housing Act 2004 (c. 34) (see section 2), and

"service installation" means an installation for the supply of water, gas or electricity, for sanitation, for space heating or for heating water.

44 Limits on section 43: general

- (1) Section 43(1) does not impose any liability on the landlord in respect of a category 1 hazard which is incapable of being removed by the landlord at reasonable expense.
- (2) Subsections (1) and (2) of section 43 do not require the landlord
 - (a) to rebuild or reinstate the premises or any part of them, in the case of destruction or damage by a relevant cause, or
 - (b) to keep in repair anything which the contract-holder is entitled to remove from the premises.
- (3) If the premises form part only of a building, subsections (1) and (3) of section 43 do not require the landlord to rebuild or reinstate any other part of the building in which he has an estate or interest, in the case of destruction or damage by a relevant cause.
- (4) Relevant causes are fire, storm and flood or other inevitable accident.
- (5) Section 43(3) does not require the landlord to carry out works or repairs unless the disrepair or failure to keep in working order affects the contract-holder's enjoyment of
 - (a) the premises, or
 - (b) the common parts that the contract-holder is entitled to use under the occupation contract.

45 Limits on section 43: contract-holder's fault

- (1) Section 43(1) does not impose any liability on the landlord if the existence of a category 1 hazard is wholly or mainly attributable to lack of care by the contract-holder or a permitted occupier of the premises.
- (2) The landlord is not obliged by section 43 (2) or (3) to carry out works or repairs if the disrepair, or the failure of a service installation to be in working order, is wholly or mainly attributable to lack of care by the contract-holder or a permitted occupier of the premises.
- (3) "Lack of care" means a failure to take proper care—
 - (a) of the premises, or
 - (b) if the premises form part only of a building, of the common parts that the contract-holder is entitled to use under the occupation contract.

46 Limits on section 43: notice

- (1) The landlord's obligations under subsections (2) and (3) of section 43 do not arise until the landlord becomes aware that works or repairs are necessary.
- (2) The landlord complies with his obligations under those subsections if he carries out the necessary works or repairs within a reasonable time after the day on which he becomes aware that they are necessary.

(3) Subsection (4) applies if –

Chapter 2 – Condition of premises

- (a) the landlord (the "old landlord") transfers his interest in the premises to another person (the "new landlord"), and
- (b) the old landlord is aware before the date of the transfer that works or repairs are necessary in order to comply with section 43(2) or (3).
- (4) The new landlord is to be treated as becoming aware of the need for those works or repairs on the date of the transfer, but not before.

47 Access to premises

- (1) The landlord may enter the premises at any reasonable time for the purpose of
 - (a) inspecting their condition and state of repair, or
 - (b) carrying out works or repairs needed in order to comply with section 43.
- (2) The landlord must give at least 24 hours' notice to the contract-holder before exercising that power.
- (3) Subsection (4) applies where
 - (a) the premises form part only of a building, and
 - (b) in order to comply with section 43 the landlord needs to carry out works or repairs in another part of the building.
- (4) The landlord is not liable for failing to comply with section 43 if he does not have sufficient rights over that other part of the building to enable him to carry out the works or repairs, and was unable to obtain such rights after making a reasonable effort to do so.

48 Rights of permitted occupiers

- (1) A permitted occupier who suffers relevant damage as a result of the landlord failing to comply with subsection (2) or (3) of section 43 may enforce that subsection in his own right.
- (2) But a permitted occupier who is a lodger or sub-holder may do so only if the lodger is allowed to live in the premises, or the sub-occupation contract is made, in accordance with the terms of the occupation contract.
- (3) Relevant damage means personal injury, or loss of or damage to personal property.

Further provision

49 Specific performance

- (1) In any proceedings for breach of a repairing obligation under an occupation contract, the court may order specific performance of the obligation despite any equitable rule limiting the availability of that remedy.
- (2) Repairing obligations are
 - (a) obligations to repair (or keep or deliver up in repair), or to maintain, renew, construct or replace any property, and

(b) obligations to keep any property fit for human habitation however expressed,

and include a landlord's obligations under section 43.

50 Waste and tenant-like user

- (1) The contract-holder under an occupation contract is not liable for waste in respect of the premises.
- (2) The rule of law under which a tenant has an implied duty to use the demised premises in a tenant-like manner does not apply if the tenancy is an occupation contract.

CHAPTER 3

PROHIBITED CONDUCT

Fundamental provision of all contracts

51 Prohibited conduct

- (1) The contract-holder under an occupation contract may not use or threaten to use violence against a person lawfully living in the premises.
- (2) The contract-holder may not do anything which creates a risk of significant harm to a person lawfully living in the premises.
- (3) The contract-holder may not engage or threaten to engage in conduct that is capable of causing nuisance or annoyance to a person—
 - (a) living in the locality of the premises, or
 - (b) engaged in lawful activity in the premises or in the locality of the premises.
- (4) The contract-holder may not use or threaten to use the premises, or any common parts that the contract-holder is entitled to use under the occupation contract, for criminal purposes.
- (5) The contract-holder may not allow, incite, or encourage any person who is living in or visiting the premises to act as mentioned in subsection (1), (2) or (3).
- (6) The contract-holder may not allow, incite or encourage any person to act as mentioned in subsection (4).

Injunction against prohibited conduct

52 Injunction

- (1) This section applies if the contract-holder under an occupation contract is acting, has acted or threatens to act in breach of section 51.
- (2) The court may, on an application by the landlord, grant an injunction prohibiting the contract-holder from acting in breach of that section.

- (3) If there are joint contract-holders an application may be made, and an injunction granted, in respect of all of them or in respect of such of them as are specified in the application or injunction.
- (4) An injunction under this section may be made to have effect for a specified period or until varied or discharged.
- (5) An injunction under this section may be varied or discharged by the court on an application by
 - (a) the landlord on whose application the injunction was made, or
 - (b) the person against whom it was made.
- (6) If the court thinks it reasonable to do so, it may grant (or vary) an injunction without the person against whom the injunction is sought (or against whom the injunction was made) having been given such notice as is otherwise required by rules of court.
- (7) If the court acts under subsection (6), it must give the person against whom the injunction is made an opportunity to make representations in relation to the injunction as soon as it is reasonably practicable for him to do so.

53 Exclusion order

- (1) This section applies if the court grants an injunction under section 52 to a community landlord or a registered charity and
 - (a) the conduct in respect of which the injunction is granted involves the use or threatened use of violence, or
 - (b) there is a risk of significant harm to any person.
- (2) The court may include in the injunction a provision prohibiting the person against whom it is made from entering or being in—
 - (a) any premises specified in the injunction (including the premises subject to the occupation contract), or
 - (b) any area specified in the injunction.
- (3) The court may include in the injunction a provision requiring the person against whom it is made to exclude from the premises subject to the occupation contract any person specified in the injunction.

54 Power of arrest: general

- (1) Where the court grants an injunction under section 52 to a community landlord or a registered charity, it may attach a power of arrest to any provision of the injunction.
- (2) If it does so, it may provide that the power of arrest is to have effect for a shorter period than the other provisions of the injunction.
- (3) A period specified for the purposes of subsection (2) may be extended by the court (on one or more occasions) on an application to vary or discharge the injunction.
- (4) The court may vary or discharge the injunction in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the injunction).

- (5) An injunction may be varied or discharged under subsection (4) on an application by—
 - (a) the person against whom the injunction was made, or
 - (b) the community landlord or registered charity on whose application the injunction was made.

55 Power of arrest: applications without notice

- (1) This section applies if an injunction is granted under section 52 without notice of the application for the injunction having been given to the person against whom the injunction is made ("the respondent").
- (2) In deciding whether to attach a power of arrest to the injunction, the court must have regard to all the circumstances including the matters in subsections (3) and (4).
- (3) The first matter is whether it is likely that the landlord will be deterred or prevented from seeking the attachment of a power of arrest if the court does not attach a power of arrest immediately.
- (4) The second matter is whether there is reason to believe
 - (a) that the respondent is aware of the proceedings but is deliberately evading service, and
 - (b) that the landlord or another person will be seriously prejudiced if the decision to attach a power of arrest is delayed until substituted service is effected.
- (5) If the court attaches a power of arrest to the injunction, it must give the respondent an opportunity to make representations as to the exercise of the power as soon as it is reasonably practicable for him to do so.

56 Arrest

- (1) If a power of arrest is attached to a provision of an injunction under section 52, a constable may arrest without warrant a person whom he has reasonable cause for suspecting to be—
 - (a) in breach of the provision, or
 - (b) otherwise in contempt of court in relation to a breach of the provision.
- (2) After making an arrest under subsection (1), a constable must inform the landlord on whose application the injunction was granted.
- (3) A person arrested under subsection (1) must be brought before the relevant judge before the end of the period of 24 hours starting with the time of his arrest.
- (4) In reckoning a period of 24 hours for the purposes of subsection (3) no account is to be taken of Christmas Day, Good Friday or any Sunday.
- (5) Subsection (6) applies if under section 54 the court could have attached a power of arrest to a provision of an injunction, but did not.
- (6) If at any time the landlord on whose application the injunction was made considers that the person against whom the injunction was made has failed to comply with the injunction, the landlord may apply to the relevant judge for the issue of a warrant for the arrest of the person.

- (7) The relevant judge may not issue a warrant unless
 - (a) the application is substantiated on oath, and
 - (b) he has reasonable grounds for believing that the person against whom the injunction was made has failed to comply with it.

57 Remand: general

- (1) If a person is brought before the relevant judge under section 56(3) or on a warrant issued under section 56(6) and the matter is not disposed of immediately, the judge may remand him.
- (2) Schedule 3 applies in relation to the power to remand a person under this section.
- (3) Subsection (4) applies if under Schedule 3 a person remanded under this section is granted bail.
- (4) The person may be required to comply, before release on bail or later, with such requirements as appear to be necessary to secure that he does not interfere with witnesses or otherwise obstruct the course of justice.

58 Remand for medical examination

- (1) If the relevant judge has reason to consider that a medical report will be required, he may exercise any power to remand a person under section 57 for the purpose of enabling a medical examination and report to be made in relation to the person.
- (2) If he does so, the adjournment is not to be for more than—
 - (a) four weeks at a time, or
 - (b) if the judge remands the person in custody, three weeks at a time.
- (3) Subsection (4) applies if there is reason to suspect that a person who has been arrested under section 56(1), or under a warrant issued under section 56(6), is suffering from mental illness or severe mental impairment.
- (4) The relevant judge has the same power to make an order under section 35 of the Mental Health Act 1983 (c. 20) (remand for report on mental condition) in the case of the person arrested as the Crown Court has under that section in the case of an accused person (within the meaning of that section).

Prohibited conduct contracts

59 Order imposing standard contract

- (1) If the landlord under a secure contract is a community landlord or a registered charity, it may apply to the court for an order under this section on the ground that the contract-holder is in breach of section 51.
- (2) The effect of an order under this section is
 - (a) to end the secure contract from a date specified in the order, and
 - (b) if the contract-holder remains in occupation after the specified date, to create a periodic standard contract whose effective date is the date specified in the order.
- (3) The court may not make an order under this section unless it is satisfied that—

- (a) the contract-holder is in breach of section 51,
- (b) it would have made an order for possession on the ground in section 183 (breach of contract) in reliance only on that breach,
- (c) the landlord will make available to the contract-holder a programme of social support the aim of which is the prevention of prohibited conduct, and
- (d) it is reasonable to make the order.
- (4) The appropriate authority may issue guidance as to the activities and services (including assistance, advice and counselling services) that may be included in a programme of social support for the purposes of subsection (3)(c).

60 Procedure

- (1) The court may not entertain the landlord's application for an order under section 59 unless
 - (a) the landlord has given notice to the contract-holder of his intention to apply for such an order, or
 - (b) the court considers it reasonable to dispense with the requirement of notice.
- (2) A notice under subsection (1) must give particulars of the conduct in respect of which the order is sought and state that proceedings may not be brought—
 - (a) before the day specified in the notice, or
 - (b) after the end of the period of six months starting with the day on which the notice is given to the contract-holder.
- (3) The day specified for the purposes of subsection (2)(a) may be the day on which the notice is given to the contract-holder.
- (4) The landlord may, in the same proceedings, apply to the court for an order under section 59 and make a claim for recovery of possession of the premises.

61 Terms of standard contract

- (1) This section applies where a standard contract is created by an order under section 59.
- (2) If the landlord and the contract-holder agree the terms of the standard contract, the terms of the standard contract are the terms agreed.
- (3) Subsection (2) is subject to the provisions of this Act as to the incorporation of fundamental and supplementary provisions.
- (4) If the landlord and the contract-holder do not agree the terms of the standard contract
 - (a) the fundamental and supplementary provisions applicable to periodic standard contracts are incorporated as terms of the contract without modification,
 - (b) any terms of the contract which are incompatible with those fundamental or supplementary provisions cease to have effect, and
 - (c) otherwise, the terms of the standard contract are the same as the terms of the secure contract.
- (5) In either case, it is a term of the standard contract that —

- (a) any arrears of rent payable at the end of the secure contract become payable under the standard contract, and
- (b) any rent paid in advance or overpaid at the end of the secure contract is credited to the contract-holder's liability to pay rent under the standard contract.

Further provision

62 Power to amend section 51

The appropriate authority may by order amend section 51.

63 Interpretation

- (1) In this Act "prohibited conduct" means conduct prohibited by section 51.
- (2) In this Chapter "relevant judge", in relation to an injunction under section 52, means
 - (a) if the injunction was granted by the High Court, a judge of that court, and
 - (b) if the injunction was granted by a county court, a judge or district judge of that or any other county court.

CHAPTER 4

OTHER RIGHTS AND OBLIGATIONS

Fundamental provisions of all contracts

64 Deception

- (1) If the landlord under an occupation contract is induced to make the contract by means of a relevant false statement
 - (a) the contract-holder is to be treated as being in breach of the occupation contract, and
 - (b) the landlord may accordingly make a claim to recover possession of the premises on the ground in section 183 (breach of contract).
- (2) A false statement is relevant if it is made knowingly or recklessly by
 - (a) the contract-holder, or
 - (b) another person acting at the contract-holder's instigation.

65 Protection of right to occupy

- (1) The landlord under an occupation contract may not, by any act or omission, interfere with the contract-holder's right to occupy the premises.
- (2) The landlord does not interfere with the contract-holder's right by reasonably exercising his rights under the contract.
- (3) The landlord does not interfere with the contract-holder's right merely because he fails to comply with his repairing obligations (within the meaning of section 49(2)).

- (4) The landlord is to be treated as having interfered with the contract-holder's right if a person who—
 - (a) claims under the landlord, or
 - (b) has an interest in the premises, or part of them, that is superior to the landlord's interest,

interferes with the contract-holder's right by any lawful act or omission.

66 Right of set off

If the landlord under an occupation contract is liable to pay the contract-holder compensation under section 34, the contract-holder may set off that liability against rent.

67 Form of notices

Any notice or other document required or authorised to be given or made by an occupation contract must be in writing.

68 Information about parties

- (1) The landlord under an occupation contract must, before the end of the period of two weeks starting with the effective date of the contract, give the contract-holder notice of an address in England and Wales to which the contract-holder may send documents that are intended for the landlord.
- (2) If the landlord manages the premises through an agent the landlord must, before the end of the period of two weeks starting with the day on which he starts to manage the premises through the agent, give the contract-holder notice of the agent's name and address.
- (3) If there is a change in the identity of the landlord the new landlord must, before the end of the period of two weeks starting with the day on which he becomes the landlord, give the contract-holder notice that he has become the landlord.
- (4) If there is a change in the identity of the contract-holder the landlord must, before the end of the relevant period, give the new contract-holder notice that he has become the contract-holder under the contract.
- (5) The relevant period is two weeks starting with—
 - (a) the day on which the identity of the contract-holder changes, or
 - (b) if later, the day on which the landlord becomes aware that the identity of the contract-holder has changed.

69 Compensation for breach of section 68

- (1) If the landlord fails to comply with an obligation under section 68, he is liable to pay the contract-holder compensation under section 34.
- (2) The compensation is payable in respect of the relevant date and every day after the relevant date until
 - (a) the day on which the landlord gives the notice in question, or
 - (b) if earlier, the last day of the period of two months starting with the relevant date.

- (3) Interest on the compensation is payable if the landlord fails to give the contract-holder the notice on or before the day referred to in subsection (2)(b).
- (4) The interest starts to run on the day referred to in subsection (2)(b), at the rate prevailing under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) at the end of that day.
- (5) The relevant date is the first day of the period before the end of which the landlord was required to give the notice.

Further provision

70 No distress for rent

- (1) If premises are subject to an occupation contract, no distress for the rent of the premises may be levied.
- (2) But that does not apply to distress levied under section 102 of the County Courts Act 1984 (c. 28).

71 Joint contract-holders

- (1) This section applies if there are two or more joint contract-holders under an occupation contract.
- (2) Each joint contract-holder is fully liable to the landlord for the performance of every obligation owed to the landlord under the occupation contract.
- (3) References in this Act to the contract-holder, except where otherwise provided, are to the joint contract-holders.
- (4) Subsection (3) applies even if the occupation contract is a tenancy and the leasehold estate is vested in one or more, but not all, of the joint contract-holders.

72 Joint landlords

- (1) This section applies if two or more persons jointly constitute the landlord under an occupation contract.
- (2) Each of them is fully liable to the contract-holder for the performance of every obligation owed to the contract-holder under the contract.
- (3) References in this Act to the landlord are to the persons who jointly constitute the landlord.

73 Landlord's consent: timing

- (1) Where a provision of an occupation contract permits something to be done with the landlord's consent, the landlord may give his consent after the thing has been done.
- (2) But this does not apply to—
 - (a) section 108 (adding a joint contract-holder), or
 - (b) any provision permitting the transfer of the occupation contract, or of a joint contract-holder's rights and obligations under the occupation contract.

74 Landlord's consent: reasonableness

- (1) This section applies to any provision of an occupation contract permitting something to be done with the landlord's consent, unless it is expressly excluded in relation to the provision or the provision is within subsection (2).
- (2) A provision is within this subsection if
 - (a) the contract makes provision in relation to it which is inconsistent with subsection (5) or (11), or
 - (b) the contract provides in relation to it that if the landlord does not give or refuse consent, he is to be treated as having refused it.
- (3) A request for the landlord's consent must be made in writing, and references in this section to a request are to a written request.
- (4) The landlord may consent subject to conditions.
- (5) The landlord may not—
 - (a) unreasonably refuse consent, or
 - (b) consent subject to unreasonable conditions.
- (6) The landlord may ask for further information to enable him to deal with a request; but he may not do so after the end of the period of 14 days starting with the day on which the request is made.
- (7) If the landlord asks for information which it is not reasonable to ask for, he is to be treated as not having asked for that information.
- (8) If the landlord does not give or refuse consent in writing before the end of the relevant period, he is to be treated as having consented without conditions.
- (9) The relevant period is the period of two months starting with the later of
 - (a) the day on which the request for consent is made, or
 - (b) if the landlord asks for information under subsection (6), the day on which the information is provided.
- (10) If the landlord consents subject to conditions he must give the contract-holder written notice of the conditions at the time he gives his consent; and if he does not do so he is to be treated as having consented without conditions.
- (11) If the landlord refuses consent or consents subject to conditions, the person who made the request may ask for a written statement of the landlord's reasons.
- (12) If the landlord does not give a written statement of his reasons before the end of the period of two months starting with the day on which the statement is asked for, the landlord is to be treated as having consented without conditions.

75 Application to court

- (1) This section applies where under section 74 the landlord gives a statement of his reasons for refusing consent or consenting subject to conditions.
- (2) The person who made the request for consent may apply to the court on the ground that—
 - (a) the landlord's refusal of consent is unreasonable, or
 - (b) one or more of the conditions imposed is unreasonable.

- (3) If the court is satisfied that the ground in subsection (2)(a) is made out it may declare that the landlord unreasonably refused his consent, and may also
 - (a) declare that the landlord is to be treated as having consented without conditions, or
 - (b) direct the landlord to reconsider the request for consent.
- (4) If the court is satisfied that the ground in subsection (2)(b) is made out it may declare that one or more of the conditions is unreasonable, and may also—
 - (a) declare that the landlord is to be treated as having consented without conditions or subject to those conditions that were not declared unreasonable, or
 - (b) direct the landlord to reconsider the request for consent.
- (5) If the court makes a declaration under subsection (3) or (4) it may make any other order it thinks fit.

CHAPTER 5

SUPPORTED STANDARD CONTRACTS

General

76 Supported standard contract

In this Act—

- (a) "supported standard contract" means a standard contract which relates to supported accommodation, and
- (b) the enhanced management period of a supported standard contract is to be determined in accordance with sections 95 to 97.

77 Mobility

- (1) A supported standard contract may provide that during the enhanced management period the premises subject to the contract are such premises, within a building specified in the contract, as are from time to time specified by the landlord.
- (2) If it does so, then during the enhanced management period references in this Act to the premises subject to the occupation contract are to be treated as references to the premises for the time being specified by the landlord.

Fundamental provision

78 Temporary exclusion

- (1) This section applies during the enhanced management period of a supported standard contract.
- (2) If the landlord or the designated person reasonably believes that a contract-holder has done anything within subsection (3), he may require him—
 - (a) to leave the premises, and
 - (b) not to return to the premises for a specified period.

- (3) The acts are—
 - (a) using violence against any person on the premises,
 - (b) doing something on the premises which creates a risk of significant harm to any person,
 - (c) behaving on the premises in a way which seriously impedes the ability of another resident of supported accommodation provided by the landlord to benefit from the support provided in connection with that accommodation.
- (4) The period specified under subsection (2)(b) may not be longer than 48 hours.
- (5) The landlord or the designated person must give a contract-holder required to leave the premises under this section a notice setting out the reasons why he is required to leave, and must do so—
 - (a) when requiring him to leave, or
 - (b) as soon as reasonably practicable afterwards.
- (6) The landlord or designated person may use the power conferred by this section, in relation to a contract-holder, no more than three times in any period of six months.
- (7) In this section –

"the designated person" means a person designated by the landlord as entitled to exercise the power under this section in relation to the premises, and

"premises" includes any common parts.

PART 3

VARIATION OF OCCUPATION CONTRACTS

CHAPTER 1

VARIATION OF TERMS

Fundamental provisions of secure contracts

79 General

A secure contract may not be varied except—

- (a) in accordance with sections 80 to 82, or
- (b) by or as a result of any enactment.

80 Rent

- (1) The landlord may vary the rent payable under a secure contract by giving the contract-holder a notice proposing a new rent to take effect on the date specified in the notice.
- (2) The period between the day on which the notice is given to the contract-holder and the specified date may not be less than two months.
- (3) Subject to that
 - (a) the first notice may specify any date, and

(b) subsequent notices must specify a date which is not less than one year after the last date on which a new rent took effect.

81 Fundamental terms

- (1) A fundamental term of a secure contract may be varied by agreement between the landlord and the contract-holder.
- (2) Subsection (1) does not apply to a fundamental term incorporating
 - (a) section 51 (prohibited conduct),
 - (b) section 64 (securing contract by deception),
 - (c) section 111 (survivorship),
 - (d) section 159 (death of contract-holder).
- (3) An agreement to vary a fundamental term is of no effect unless as a result of the variation
 - (a) the fundamental provision which the term incorporates would be incorporated without modification, or
 - (b) the contract would afford the contract-holder a greater degree of protection than would be afforded in that case.

82 Supplementary and additional terms

- (1) A supplementary or additional term of a secure contract may be varied
 - (a) by agreement between the landlord and the contract-holder, or
 - (b) by the landlord giving a notice of variation to the contract-holder.
- (2) Before giving a notice of variation the landlord must give the contract-holder a preliminary notice—
 - (a) informing the contract-holder that he intends to give a notice of variation,
 - (b) specifying the proposed variation and informing the contract-holder of its nature and effect, and
 - (c) inviting the contract-holder to comment on the proposed variation within the time specified in the notice.
- (3) The specified time must give the contract-holder a reasonable opportunity to comment.
- (4) The notice of variation must specify the variation effected by it and the date on which the variation takes effect.
- (5) The period between the day on which the notice of variation is given to the contract-holder and the date on which the variation takes effect may not be less than one month.
- (6) When giving a notice of variation the landlord must also provide the contractholder with such information as he considers necessary to inform the contractholder of the nature and effect of the variation.

83 Written statement of variation

(1) If a secure contract is varied under sections 80 to 82 or by or as a result of any enactment the landlord must, before the end of the relevant period, give the contract-holder —

- (a) a written statement of the term or terms varied, or
- (b) a written statement of the occupation contract as varied.
- (2) The relevant period is the period of two weeks starting with the day on which the contract is varied.
- (3) The landlord may not charge a fee for providing a written statement under subsection (1).

Fundamental provisions of periodic standard contracts

84 General

A periodic standard contract may not be varied except —

- (a) in accordance with sections 85 to 87, or
- (b) by or as a result of any enactment.

85 Rent

- (1) The landlord may vary the rent payable under a periodic standard contract by giving the contract-holder a notice proposing a new rent to take effect on the date specified in the notice.
- (2) The period between the day on which the notice is given to the contract-holder and the specified date may not be less than two months.
- (3) Subject to that
 - (a) the first notice may specify any date, and
 - (b) subsequent notices must specify a date which is not less than one year after the last date on which a new rent took effect.

86 Other terms: the rule

- (1) The fundamental terms, supplementary terms and additional terms of a periodic standard contract may be varied—
 - (a) by agreement between the landlord and the contract-holder, or
 - (b) by the landlord in accordance with section 87.
- (2) Subsection (1) does not apply to a fundamental term incorporating
 - (a) section 51 (prohibited conduct),
 - (b) section 64 (securing contract by deception),
 - (c) section 111 (survivorship),
 - (d) section 159 (death of contract-holder).
- (3) An agreement to vary a fundamental term is of no effect unless as a result of the variation—
 - (a) the fundamental provision which the term incorporates would be incorporated without modification, or
 - (b) the contract would afford the contract-holder a greater degree of protection than would be afforded in that case.

Chapter 1 – Variation of terms

87 Other terms: notice procedure

- (1) The landlord may give the contract-holder notice that unless the contract-holder consents to a variation of the contract, the landlord will take proceedings for possession on the ground in section 175 (landlord's notice).
- (2) The notice must—
 - (a) specify the nature of the variation and the date on which the variation is to take effect, and
 - (b) inform the contract-holder that the notice also has effect as a notice under section 173 (landlord's notice to end contract).
- (3) The date specified as the date on which the variation is to take effect may not be less than two months after the day on which the notice is given to the contract-holder.
- (4) If the contract-holder does not give written consent to the variation on or before the date on which it is to take effect, the landlord may make a possession claim on the ground in section 175 (landlord's notice).
- (5) If the landlord satisfies the requirements of this section, he is to be treated for the purposes of making the possession claim as having given notice to end the contract under section 173.
- (6) Subsections (4) and (5) do not apply in relation to a variation of a fundamental term unless as a result of the variation—
 - (a) the fundamental provision which the term incorporates would be incorporated without modification, or
 - (b) the contract would afford the contract-holder a greater degree of protection than would be afforded in that case.

88 Written statement of variation

- (1) If a periodic standard contract is varied under sections 85 to 87 or by or as a result of any enactment the landlord must, before the end of the relevant period, give the contract-holder—
 - (a) a written statement of the term or terms varied, or
 - (b) a written statement of the contract as varied.
- (2) The relevant period is the period of two weeks starting with the day on which the contract is varied.
- (3) The landlord may not charge a fee for providing a written statement under subsection (1).

Fundamental provisions of fixed term standard contracts

89 General

- (1) A fixed term standard contract may not be varied except—
 - (a) by agreement between the landlord and the contract-holder, or
 - (b) by or as a result of any enactment.
- (2) Subsection (1)(a) does not apply to a fundamental term incorporating
 - (a) section 51 (prohibited conduct),
 - (b) section 64 (securing contract by deception),

- (c) section 111 (survivorship),
- (d) section 159 (death of contract-holder).
- (3) An agreement to vary a fundamental term is of no effect unless as a result of the variation
 - (a) the fundamental provision which the term incorporates would be incorporated without modification, or
 - (b) the contract would afford the contract-holder a greater degree of protection than would be afforded in that case.

90 Written statement of variation

- (1) If a fixed term standard contract is varied by agreement or by or as a result of any enactment the landlord must, before the end of the relevant period, give the contract-holder—
 - (a) a written statement of the term or terms varied, or
 - (b) a written statement of the contract as varied.
- (2) The relevant period is the period of two weeks starting with the day on which the contract is varied.
- (3) The landlord may not charge a fee for providing a written statement under subsection (1).

Further provision

91 Periodic standard contracts: modification

Sections 86(1)(b) and 87 are not incorporated as terms of a periodic standard contract which does not incorporate section 173 (landlord's notice to end contract).

92 Failure to provide written statement etc.

- (1) If the landlord under an occupation contract fails to comply with an obligation under section 83, 88 or 90 he is liable to pay the contract-holder compensation under section 34.
- (2) The compensation is payable in respect of the relevant date and every day after the relevant date until
 - (a) the day on which the landlord gives the contract-holder a written statement of the term or terms varied, or of the contract, or
 - (b) if earlier, the last day of the period of two months starting with the relevant date.
- (3) Interest on the compensation is payable if the landlord fails to give the contract-holder a written statement on or before the day referred to in subsection (2)(b).
- (4) The interest starts to run on the day referred to in subsection (2)(b), at the rate prevailing under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) at the end of that day.
- (5) The relevant date is the day on which the contract was varied.

- (6) Subsections (1) to (5) do not apply if the landlord's failure to comply with the obligation is attributable to the act or omission of the contract-holder.
- (7) If under section 83, 88 or 90 the landlord gives the contract-holder a written statement of the contract as varied, sections 31 and 32 (incomplete and incorrect statements) apply to the statement as if references in those sections to the relevant date were to the day on which the contract was varied.

93 Meaning of "variation"

In this Act "variation", in relation to an occupation contract—

- (a) includes the addition or removal of a term,
- (b) does not include any change in the identity of the landlord or contractholder under the contract.

CHAPTER 2

STANDARD CONTRACTS THAT BECOME SECURE CONTRACTS

Supported standard contracts

94 Conversion to secure contract

A supported standard contract becomes a secure contract immediately after the end of the enhanced management period if at the end of that period —

- (a) the contract subsists, and
- (b) the landlord under the contract is a community landlord.

95 Enhanced management period

- (1) The enhanced management period of a supported standard contract is the period of two years starting with the effective date of the contract.
- (2) But if there is an extension under section 97, the enhanced management period ends immediately after the contract ends.
- (3) Subsection (4) applies instead of subsection (1) if, at the end of what would be the enhanced management period under subsection (1)
 - (a) a possession claim made by the landlord in respect of the premises has not been concluded, or
 - (b) the landlord has given the contract-holder a possession notice or a notice under section 173 or 180 (landlord's notices to end contract), and the period before the end of which he may make a possession claim has not ended.
- (4) The enhanced management period is the period starting with the effective date of the contract and ending
 - (a) when a relevant event occurs, or
 - (b) if no relevant event occurs, immediately after the contract ends.
- (5) In a case within subsection (3)(a) the relevant event is the conclusion of the possession claim in favour of the contract-holder.
- (6) In a case within subsection (3)(b) each of the following is a relevant event —

- (a) withdrawal of the notice,
- (b) the period ending without a possession claim having been made,
- (c) conclusion in favour of the contract-holder of a possession claim made in reliance on the notice.

96 Modification of section 95

- (1) This section applies if
 - (a) a contract-holder under a supported standard contract ("the current contract") was previously a contract-holder under one or more relevant supported standard contracts ("the previous contracts"), and
 - (b) the current contract is the immediate successor of the previous contract (or one of the previous contracts).
- (2) A relevant supported standard contract is a supported standard contract relating to—
 - (a) the premises to which the current contract relates, or
 - (b) premises in the same unit as the premises to which the current contract relates.
- (3) If there is a sole contract-holder and one previous contract, the reference in section 95(1) to the effective date of the contract is to be treated as a reference to the effective date of the previous contract.
- (4) If there is a sole contract-holder and two or more previous contracts, the reference in section 95(1) to the effective date of the contract is to be treated as a reference to the effective date of the most recent of the previous contracts which was not itself the immediate successor of a relevant supported standard contract.
- (5) If there are joint contract-holders the reference in section 95(1) to the effective date of the contract is to be treated as a reference to the relevant date.
- (6) The relevant date is determined by
 - (a) identifying, in relation to each joint contract-holder, the date to which section 95(1) would be treated as referring under subsections (3) and (4) if he were the sole contract-holder, and
 - (b) taking the earliest of those dates.
- (7) Subsection (8) applies if
 - (a) the enhanced management period of a previous contract was extended under section 97, and
 - (b) the date to which section 95(1) referred in relation to the previous contract was the same as the date to which section 95(1) refers in relation to the current contract.
- (8) The enhanced management period of the current contract ends immediately after the current contract ends.
- (9) A supported standard contract ("contract 2") is the immediate successor of another supported standard contract ("contract 1") if contract 1 ends immediately before the effective date of contract 2.

97 Extending the enhanced management period

- (1) The landlord may extend the enhanced management period of a supported standard contract by giving the contract-holder a notice of extension.
- (2) The notice of extension must be given to the contract-holder at least eight weeks before the day on which the enhanced management period would end under section 95(1).
- (3) The landlord may not give a notice of extension unless he is satisfied that there is a need for the power in section 78 (temporary exclusion) to continue to be available to the landlord in respect of the contract-holder (or, if there are joint contract-holders, in respect of one or more of them).
- (4) The notice of extension must—
 - (a) state that the landlord has decided to extend the enhanced management period because he is satisfied as mentioned in subsection (3), and
 - (b) set out his reasons for being satisfied.
- (5) If the contract-holder has the right to apply for a review under section 107, the notice of extension must also inform him of that right and of the time by which the application must be made.
- (6) In making the decision to extend the enhanced management period the landlord may take into account the behaviour of the contract-holder (or, if there are joint contract-holders, the behaviour of any of them).

Probationary standard contracts

98 Conversion to secure contract

- (1) An occupation contract which
 - (a) is a standard contract because of paragraph 3 of Schedule 2, and
 - (b) subsists at the end of the probation period,

becomes a secure contract immediately after the end of that period.

- (2) Subsection (1) does not apply if the probation period ends because of section 99(6).
- (3) In this Act "probationary standard contract" means a contract which is a standard contract because of paragraph 3 of Schedule 2, and in relation to which the probation period has not yet ended.

99 Probation period

- (1) The probation period, in relation to an occupation contract which is a standard contract because of paragraph 3 of Schedule 2, is—
 - (a) the period of 12 months starting with the probation date of the contract or,
 - (b) if there is an extension under section 101, the period of 18 months starting with the probation date of the contract.
- (2) But subsection (3) applies instead of subsection (1) if, at the end of what would be the probation period under subsection (1) —

- (a) a possession claim made by the landlord in respect of the premises has not been concluded, or
- (b) the landlord has given the contract-holder a possession notice or a notice under section 173 or 180 (landlord's notices to end contract), and the period before the end of which he may make a possession claim has not ended.
- (3) The probation period is the period starting with the probation date of the contract and ending—
 - (a) when a relevant event occurs, or
 - (b) if no relevant event occurs, immediately after the contract ends.
- (4) In a case within subsection (2)(a) the relevant event is the conclusion of the possession claim in favour of the contract-holder.
- (5) In a case within subsection (2)(b) each of the following is a relevant event
 - (a) withdrawal of the notice,
 - (b) the period ending without a possession claim having been made,
 - (c) conclusion in favour of the contract-holder of a possession claim made in reliance on the notice.
- (6) If, before the time at which the probation period would end apart from this subsection, a private landlord becomes the landlord under the contract, the probation period ends.
- (7) The probation date of an occupation contract is—
 - (a) the effective date of the contract, or
 - (b) if the contract became a standard contract because of paragraph 3 of Schedule 2 on a community landlord becoming the landlord under the contract, the day the community landlord became the landlord.

100 Modification of section 99

- (1) This section applies in relation to an occupation contract which is a standard contract because of paragraph 3 of Schedule 2 if
 - (a) a contract-holder under the contract ("the current contract") was previously a contract-holder under one or more probationary standard contracts ("the previous contracts"), and
 - (b) the current contract is the immediate successor of the previous contract (or one of the previous contracts).
- (2) If there is a sole contract-holder and one previous contract, the probation date of the current contract is the same as the probation date of the previous contract.
- (3) If there is a sole contract-holder and two or more previous contracts, the probation date of the current contract is the same as the probation date of the most recent of the previous contracts which was not itself the immediate successor of a probationary standard contract.
- (4) If there are joint contract-holders, the probation date of the contract is determined by
 - (a) identifying, in relation to each joint contract-holder, what the probation date would be under subsections (2) and (3) if he were the sole contract-holder, and
 - (b) taking the earliest of those dates.

- (5) Subsection (6) applies if the probation period of a previous contract with the same probation date as the current contract was extended under section 101.
- (6) The probation period of the current contract is the period of 18 months starting with the probation date of the current contract.
- (7) An occupation contract ("contract 2") is the immediate successor of another contract ("contract 1") if contract 1 ends immediately before the effective date of contract 2.

101 Extending the probation period

- (1) The landlord may extend the probation period to the period of 18 months starting with the probation date of the contract by giving the contract-holder a notice of extension.
- (2) The notice of extension must be given to the contract-holder at least eight weeks before the day on which the probation period would end under section 99(1)(a).
- (3) The notice of extension must state that the landlord has decided to extend the probation period and set out the reasons for that decision.
- (4) If the contract-holder has the right to apply for a review under section 107, the notice of extension must also inform him of that right and of the time by which the application must be made.
- (5) In making the decision to extend the probation period, the landlord may take into account—
 - (a) the behaviour of the contract-holder (or, if there are joint contract-holders, the behaviour of any of them), and
 - (b) the behaviour of any person who appears to the landlord to live in the premises.
- (6) A landlord may take a person's behaviour into account under subsection (5)(b) whether or not the person lives continuously in the premises, and whatever the capacity in which the person lives in the premises.

Prohibited conduct standard contracts

102 Conversion to secure contract

- (1) A standard contract which
 - (a) is a standard contract because of an order under section 59, and
 - (b) subsists at the end of the trial period,

becomes a secure contract immediately after the end of that period.

- (2) Subsection (1) does not apply if the trial period ends because of section 103(9).
- (3) In this Act "prohibited conduct standard contract" means a contract which is a standard contract because of an order under section 59, and in relation to which the trial period has not yet ended.

103 Trial period

- (1) The trial period, in relation to an occupation contract which is a standard contract because of an order under section 59, is—
 - (a) the period of 12 months starting with the effective date of the contract, or
 - (b) if there is an extension under section 104, the period of 18 months starting with the effective date of the contract.
- (2) If the landlord gives the contract-holder notice that the trial period will end before the time at which it would end under subsection (1), the period ends on the date specified in the notice.
- (3) If under section 105 the court orders that the trial period will end before the time at which it would end under subsection (1), the period ends on the date specified in the order.
- (4) If subsections (2) and (3) both apply, the period ends on the earlier of the date specified in the notice and the date specified in the order.
- (5) Subsection (6) applies instead of subsections (1) to (4) if, at the end of what would be the trial period under those subsections
 - (a) a possession claim made by the landlord in respect of the premises has not been concluded, or
 - (b) the landlord has given the contract-holder a possession notice or a notice under section 173 (landlord's notice to end contract), and the period before the end of which he may make a possession claim has not ended.
- (6) The trial period is the period starting with the effective date of the contract and ending
 - (a) when a relevant event occurs, or
 - (b) if no relevant event occurs, immediately after the contract ends.
- (7) In a case within subsection (5)(a) the relevant event is the conclusion of the possession claim in favour of the contract-holder.
- (8) In a case within subsection (5)(b) each of the following is a relevant event
 - (a) withdrawal of the notice,
 - (b) the period ending without a possession claim having been made,
 - (c) conclusion in favour of the contract-holder of a possession claim made in reliance on the notice.
- (9) If, before the time at which the trial period would end apart from this subsection, a private landlord other than a registered charity becomes the landlord under the contract, the trial period ends.

104 Extending the trial period

- (1) The landlord may extend the trial period to the period of 18 months starting with the effective date of the contract by giving the contract-holder a notice of extension.
- (2) The notice of extension must be given to the contract-holder at least eight weeks before the date on which the trial period would end under section 103(1)(a).

- (3) The notice of extension must state that the landlord has decided to extend the trial period, and set out the reasons for the landlord's decision.
- (4) If the contract-holder has the right to apply for a review under section 107, the notice of extension must also inform him of that right and of the time by which the application must be made.
- (5) In making the decision to extend the trial period, the landlord may take into account—
 - (a) the behaviour of the contract-holder (or, if there are joint contract-holders, the behaviour of any of them), and
 - (b) the behaviour of any person who appears to the landlord to live in the premises.
- (6) A landlord may take into account a person's behaviour under subsection (5)(b) whether or not the person lives continuously in the premises, and whatever the capacity in which the person lives in the premises.

105 Application to end trial period

- (1) The contract-holder under an occupation contract which is a standard contract because of an order under section 59 may apply to the court for an order ending the trial period before the time at which it would end under section 103(1).
- (2) The application may be made at any time after the end of the period of six months starting with the effective date of the contract.
- (3) The court may end the trial period only if it is satisfied that—
 - (a) it is no longer necessary for the contract-holder to occupy under a standard contract, or
 - (b) the landlord has not made an appropriate programme of social support available to the contract-holder and it is unlikely that such support will be made available.

Supplementary

106 Terms of secure contract

- (1) This section applies where under this Chapter a standard contract becomes a secure contract.
- (2) If the landlord and the contract-holder have agreed what the terms of the contract are to be in that event, the terms of the contract are the terms agreed.
- (3) Subsection (2) is subject to the provisions of this Act as to the incorporation of fundamental and supplementary provisions.
- (4) If the landlord and the contract-holder have not agreed what the terms of the contract are to be in that event
 - (a) the fundamental and supplementary provisions applicable to secure contracts made with the landlord are incorporated as terms of the contract without modification,
 - (b) any terms of the contract which are incompatible with those fundamental or supplementary provisions cease to have effect, and
 - (c) otherwise, the terms of the secure contract are the same as the terms of the standard contract.

107 Review of decision to extend

- (1) This section applies if a landlord gives a notice of extension under section 97, 101 or 104, and the landlord's decision to give the notice is subject to judicial review.
- (2) The contract-holder may apply to a county court for a review of the decision.
- (3) The application must be made before the end of the period of 14 days starting with the day on which the landlord gives the contract-holder the notice.
- (4) The county court hearing the application may confirm or quash the decision.
- (5) In considering whether to confirm or quash the decision, the county court must apply the principles applied by the High Court on an application for judicial review.
- (6) If the county court quashes the decision
 - (a) the notice of extension is of no effect, and
 - (b) the county court may make any order the High Court could make when making a quashing order on an application for judicial review.
- (7) If the landlord gives the contract-holder a further notice under section 97, 101 or 104 before the end of the relevant period, the notice has effect as if given in accordance with section 97(2), 101(2) or 104(2).
- (8) The relevant period is the period of 14 days beginning with the day on which the county court quashes the decision.

PART 4

ADDITION AND REMOVAL OF JOINT CONTRACT-HOLDERS

Addition: fundamental provision of all contracts

108 Adding a contract-holder

- (1) The contract-holder under an occupation contract may, with the consent of the landlord, make another person a joint contract-holder under the contract.
- (2) If a person is made a joint contract-holder under this section he becomes entitled to all the rights, and subject to all the obligations, of a contract-holder under the contract from the day on which he becomes a joint contract-holder.

Addition: further provision

109 Adding a contract-holder and landlord's consent

What is reasonable under section 74 (landlord's consent), as it applies in relation to section 108, is to be determined having regard to Schedule 4.

110 Formalities

(1) The addition of a joint contract-holder under an occupation contract may be effected only by a document signed by each individual who is, and executed by each corporation which is, a party to the transaction.

(2) The landlord is a party to the transaction for the purposes of subsection (1), except in a case where he is treated as having consented under section 74(8), (10) or (12).

Survivorship: fundamental provision of all contracts

111 Survivorship

- (1) If a joint contract-holder under an occupation contract dies, or ceases to be a party to the contract for some other reason, from the time he ceases to be a party the remaining joint contract-holders are—
 - (a) fully entitled to all the rights under the contract, and
 - (b) liable to perform fully every obligation owed to the landlord under the contract.
- (2) The joint contract-holder is not entitled to any right or liable to any obligation in respect of the period after he ceases to be a party to the contract.
- (3) Nothing in subsection (1) or (2) removes any right or waives any liability of the joint contract-holder accruing before he ceases to be a party to the contract.
- (4) This section does not apply where a joint contract-holder ceases to be a party to the contract because his rights and obligations under the contract are transferred in accordance with the contract.

Withdrawal: fundamental provision of secure contracts and periodic standard contracts

112 Withdrawal

- (1) A joint contract-holder under a secure contract or a periodic standard contract may withdraw from the contract by giving a notice (a "withdrawal notice") to the landlord.
- (2) The withdrawal notice must specify the date on which the joint contract-holder intends to cease to be a party to the contract (the "withdrawal date").
- (3) The joint contract-holder must give a written warning to the other joint contract-holders when he gives the withdrawal notice to the landlord; and a copy of the withdrawal notice must be attached to the warning.
- (4) The landlord must give a written warning to the other joint contract-holders as soon as reasonably practicable after he receives the withdrawal notice; and a copy of the withdrawal notice must be attached to the warning.
- (5) The joint contract-holder ceases to be a party to the contract on the withdrawal date.
- (6) A notice given to the landlord by one or more (but not all) of the joint contract-holders that purports to be a notice under section 167 (contract-holder's notice to end contract) is to be treated as a withdrawal notice, and the date specified in the notice is to be treated as the withdrawal date.
- (7) Subsection (3) does not apply to a notice which is treated as a withdrawal notice because of subsection (6).

Withdrawal: further provision

113 Power to prescribe time limits

The appropriate authority may prescribe supplementary provisions specifying a minimum time period between the date on which a notice under section 112 is given to the landlord, and the date specified in the notice.

114 Withdrawal using contract-holder's break clause

- (1) This section applies if a fixed term standard contract contains a contract-holder's break clause.
- (2) The contract may provide that if there are joint contract-holders, a notice given to the landlord by one or more (but not all) of them that purports to be a notice under the break clause is to be treated as a notice that the joint contract-holder wishes (or the joint contract-holders wish) to withdraw from the contract ("a withdrawal notice").
- (3) If it does so, it must also make provision equivalent to section 112(4) and (5).

Exclusion

115 Non-occupation: exclusion by landlord

- (1) If the landlord under an occupation contract believes that a relevant joint contract-holder ("J")
 - (a) does not occupy the premises, and
 - (b) does not intend to occupy them,

the landlord may end J's rights and obligations in accordance with this section.

- (2) A joint contract-holder is a relevant joint contract-holder if it is a term of the contract (however expressed) that he must occupy the premises as his only or principal home.
- (3) The landlord must give J notice
 - (a) stating that the landlord believes that J does not occupy, and does not intend to occupy, the premises,
 - (b) requiring J to inform the landlord in writing before the end of the warning period if J intends to occupy the premises, and
 - (c) informing J of the landlord's intention to end J's rights and obligations under the contract if at the end of the warning period the landlord is satisfied that J does not occupy, and does not intend to occupy, the premises.
- (4) The warning period is the period of four weeks starting with the day on which a notice under subsection (3) is given to J.
- (5) During the warning period the landlord must make such inquiries as are necessary to satisfy himself that J does not occupy the premises and does not intend to occupy them.
- (6) At the end of the warning period the landlord may, if he is satisfied as described in subsection (5), end J's rights and obligations under the contract by giving him a notice.

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- (7) J ceases to be a party to the contract at the end of the period of eight weeks starting with the day on which he is given notice under subsection (6).
- (8) The landlord must give a copy of a notice under subsection (3) or (6) to each of the other joint contract-holders.

116 Remedies for exclusion under section 115

- (1) J may, before the end of the period of eight weeks starting with the day on which he is given notice under section 115(6), apply to the court on a ground in subsection (2) for a declaration or order under subsection (3).
- (2) The grounds are—
 - (a) that the landlord failed to give notice under section 115(3) or failed to make the inquiries required by section 115(5),
 - (b) that J occupied, or intended to occupy, the premises and his failure to respond (or to respond adequately) to the notice under section 115(3) was justifiable,
 - (c) that when the landlord gave the notice to J under section 115(6) the landlord did not have reasonable grounds for being satisfied that J did not occupy, and did not intend to occupy, the premises.
- (3) If the court finds that one or more of the grounds are made out it may
 - (a) make a declaration that the notice under section 115(6) is of no effect and that J continues to be a party to the contract, and
 - (b) make such further order as it thinks fit.

117 Non-occupation: exclusion by joint contract-holder

- (1) If a relevant joint contract-holder ("J") under an occupation contract is believed by another joint contract-holder ("C")—
 - (a) not to occupy the premises, and
 - (b) not to intend to occupy them,

J's rights and obligations under the contract may be ended in accordance with this section.

- (2) A joint contract-holder is a relevant joint contract-holder if it is a term of the contract (however expressed) that he must occupy the premises as his only or principal home.
- (3) C must give J notice—
 - (a) stating that C believes that J does not occupy, and does not intend to occupy, the premises,
 - (b) requiring J to inform C in writing before the end of the warning period if J intends to occupy the premises, and
 - (c) informing J that if at the end of the warning period C is satisfied that J does not occupy, and does not intend to occupy, the premises, J's rights and obligations under the contract may be ended.
- (4) C must give a copy of a notice under subsection (3)
 - (a) to the landlord, and
 - (b) if there are joint contract-holders other than C and J, to each of those other joint contract-holders.

- (5) During the warning period C must make such inquiries as are necessary to satisfy himself that J does not occupy the premises and does not intend to occupy them.
- (6) At the end of the warning period C may, if he is satisfied as described in subsection (5), apply to the court for an order ending J's rights and obligations under the occupation contract.
- (7) If the court is satisfied that J does not occupy, and does not intend to occupy, the premises, it may make the order applied for under subsection (6).
- (8) But it may not make the order if the fact that J does not occupy, and does not intend to occupy, the premises is attributable to C or another joint contract-holder failing to comply with section 51(1) or (2) (prohibited conduct).
- (9) If the court makes the order, J ceases to be a party to the contract on the date specified in the order.
- (10) The warning period is the period of four weeks starting with the day on which a notice under subsection (3) is given to J.

118 Remedies for exclusion under section 117

- (1) Subsection (2) applies if the court makes an order under section 117 ending J's rights and obligations under the occupation contract.
- (2) J may, before the end of the period of six months starting with the day on which the order is made, apply to the court on a ground in subsection (3) for a declaration or order under subsection (4).
- (3) The grounds are
 - (a) that C failed to give notice under section 117(3) or failed to make the inquiries required by section 117(5),
 - (b) that J occupied, or intended to occupy the premises and his failure to respond (or to respond adequately) to the notice under section 117(3) was justifiable,
 - (c) that when C applied to the court he did not have reasonable grounds for being satisfied that J did not occupy, and did not intend to occupy, the premises.
- (4) If the court finds that one or more of the grounds is made out it may
 - (a) rescind its order under section 117 and declare that J continues to be a party to the occupation contract, and
 - (b) make such further order as it thinks fit.

119 Prohibited conduct: exclusion by landlord

- (1) If the landlord under an occupation contract believes that a joint contract-holder ("J") is in breach of section 51 (prohibited conduct), J's rights and obligations under the contract may be ended in accordance with this section.
- (2) The landlord must give J a notice
 - (a) stating that the landlord believes that J is in breach of section 51,
 - (b) specifying particulars of the breach, and
 - (c) stating that the landlord will apply to the court for an order ending J's rights and obligations under the contract.

- The landlord must give a copy of a notice under subsection (2) to the other joint contract-holders.
- The landlord may apply to the court for an order ending J's rights and obligations under the contract at any time before the end of the period of 6 months starting with the day on which the landlord gives J the notice under subsection (2).
- The court may make such an order if it would have made an order for possession against J, had the circumstances been those mentioned in subsection (6).
- The circumstances are that
 - I was the sole contract-holder under the contract, and
 - the landlord had made a possession claim against J on the ground that J was in breach of section 51.
- If the court makes the order, J ceases to be a party to the contract on the date specified in the order.

PART 5

TRANSMISSION OF OCCUPATION CONTRACTS ETC.

CHAPTER 1

DEALING

Dealing: fundamental provision of all contracts

120 Dealing: general prohibition

- The contract-holder under an occupation contract may not deal with the occupation contract, the premises or any part of the premises except
 - in a way permitted by the contract, or (a)
 - in accordance with a family property order.
- A joint contract-holder may not deal with anything mentioned in subsection (1), or his rights and obligations under the occupation contract, except
 - in a way permitted by the contract, or
 - (b) in accordance with a family property order.
- If the contract-holder does anything in breach of subsection (1), or a joint contract-holder does anything in breach of subsection (2)
 - the transaction is not binding on the landlord, and
 - the contract-holder or joint contract-holder is in breach of the contract (despite the transaction not being binding on the landlord).
- "Dealing" includes
 - creating a tenancy, or creating a licence which confers the right to occupy the premises,
 - (b) transferring,
 - mortgaging or otherwise charging.

Dealing: further provision

121 Dealing and landlord's consent

- (1) Where section 74 (landlord's consent) applies in relation to a dealing provision, what is reasonable under that section is to be determined having regard to Schedule 4.
- (2) A dealing provision is a provision of an occupation contract which permits the contract-holder or a joint contract-holder to deal with anything mentioned in section 120(1) or (2) with the landlord's consent.
- (3) Section 19(1) of the Landlord and Tenant Act 1927 (c. 36) (effect of covenants not to assign etc. without consent) does not apply to a tenancy which is an occupation contract.

Lodgers: fundamental provision of secure contracts

122 Lodgers

The contract-holder under a secure contract may allow persons to live in the premises as lodgers.

Sub-occupation

123 Sub-occupation contract never takes effect as transfer

- (1) This section applies where the contract-holder under an occupation contract ("the head contract") enters into a sub-occupation contract, and the term of the sub-occupation contract ends at the same time as the term of the head contract.
- (2) The sub-occupation contract takes effect as such (and not as a transfer to the sub-holder).

124 Failure to comply with conditions

- (1) This section applies if an occupation contract ("the head contract") permits the contract-holder to enter into a sub-occupation contract with the consent of the landlord ("the head landlord").
- (2) A sub-occupation contract is not to be treated as made otherwise than in accordance with the head contract only because—
 - (a) the head landlord consents subject to conditions, and
 - (b) the conditions are not complied with.
- (3) But if in such a case the sub-occupation contract is a secure contract or a fixed term standard contract, the head landlord may elect to treat it as a periodic standard contract having the characteristics mentioned in subsection (5).
- (4) If he does so, it is to be treated as such a contract in any question arising between the sub-holder and any person other than the contract-holder.
- (5) The characteristics are that
 - (a) all the fundamental and supplementary provisions applicable to a periodic standard contract are incorporated without modification,

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- (b) any terms of the secure contract or fixed term standard contract which are incompatible with those provisions have no effect, and
- (c) otherwise, the terms of the contract are the same as the terms of the secure contract or fixed term standard contract.

125 Termination of head contract

- (1) This section applies if
 - (a) the contract-holder under an occupation contract ("the head contract") enters into a sub-occupation contract in accordance with the head contract, and
 - (b) the head contract ends after its effective date.
- (2) If the sub-occupation contract subsists immediately before the head contract ends—
 - (a) the sub-occupation contract continues, and
 - (b) the contract-holder's rights and obligations as landlord under the sub-occupation contract are transferred to the head landlord.
- (3) If the sub-holder asks the head landlord for a written statement of the contract under section 24(3), the references to the contract-holder in sections 29(4) and 30(5) (failure to provide statement) include the person who was the contract-holder under the head contract.
- (4) This section does not apply if the head contract is a fixed term standard contract which ends at the end of the fixed term.

126 Termination of head contract: further provision

- (1) Nothing in section 125 affects any right of the head landlord under section 124(3) (power to treat sub-occupation contract as periodic standard contract).
- (2) Nothing in section 125 makes the head landlord liable to the sub-holder in respect of any breach of the sub-occupation contract committed by the contract-holder.
- (3) Nothing in section 125 makes the sub-holder liable to the head landlord in respect of any breach by the sub-holder of the sub-occupation contract that occurred before the head contract ended.
- (4) But the head landlord may be liable to the sub-holder (or the sub-holder to the head landlord) to the extent that any breach of the sub-occupation contract continues after the head contract ends.
- (5) Subsections (3) and (4) do not affect any power conferred on the head landlord by the sub-occupation contract.

127 Extended possession order

- (1) This section applies if
 - (a) the contract-holder ("C") under an occupation contract ("the head contract") enters into a sub-occupation contract in accordance with the head contract, and
 - (b) after the sub-occupation contract is entered into, C's landlord ("H") makes a possession claim against C.

- (2) In the proceedings on the claim against C, H may apply for an order for possession against the sub-holder ("S") in respect of the premises subject to the sub-occupation contract (an "extended possession order").
- (3) The court may consider making an extended possession order against S only if it has decided to make an order for possession against C.
- (4) The court may make an extended possession order against S only if it would have made an order for possession against S, had an application for such an order been made by C in a possession claim made by C against S.
- (5) In determining whether to make an extended possession order against S, the court may take into account
 - (a) whether H gave S notice of his intention to apply for an extended possession order (in writing or otherwise), and
 - (b) the length of any notice so given.

128 Exclusion of contract-holder

- (1) This section applies if a contract-holder ("C") under an occupation contract ("the head contract") enters into a sub-occupation contract in accordance with the head contract.
- (2) If the sub-holder ("S") believes that C no longer considers himself to be a party to the head contract and the sub-occupation contract, S may secure that the head contract is ended in accordance with this section.
- (3) S must give C a notice
 - (a) stating that S believes that C no longer considers himself to be a party to the head contract and the sub-occupation contract,
 - (b) requiring C to inform S in writing before the end of the warning period if he does consider himself to be a party to one or both of those contracts, and
 - (c) informing C that after the warning period the head contract may be ended and his rights and obligations under the sub-occupation contract may be transferred to C's landlord ("H").
- (4) S must give a copy of the notice to H.
- (5) During the warning period, S must make such inquiries as are necessary to satisfy himself that C no longer considers himself to be a party to the head contract and the sub-occupation contract.
- (6) At the end of the warning period S may apply to the court for an order that—
 - (a) the head contract is to be treated as having ended, and
 - (b) C's rights and obligations as landlord under the sub-occupation contract are to be transferred to H in accordance with sections 125 and 126.
- (7) If the court is satisfied that C does not consider himself to be a party to the head contract and the sub-occupation contract, it may make the order applied for under subsection (6); and if it does so it must specify the date from which the head contract is to be treated as having ended.
- (8) The court may not make an order under subsection (7) in favour of S if it would have made an order for possession against S, had an application for such an order been made by C in a possession claim made by C against S.

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(9) The warning period is the period of four weeks starting with the day on which a notice under subsection (3) is given to C.

129 Excluded contract-holder's remedies

- (1) This section applies if the court makes an order against C under section 128(7).
- (2) Before the end of the period of six months starting with the day on which the order is made, C may apply to the court on a ground in subsection (3) for a declaration or order under subsection (4).
- (3) The grounds are
 - (a) that S failed to give C a notice under section 128(3) or failed to make the inquiries required by section 128(5),
 - (b) that C did consider himself to be a party to the head contract or the suboccupation contract or both of them and his failure to respond (or to respond adequately) to the notice under section 128(3) was justifiable,
 - (c) that, when S applied to the court, he did not have reasonable grounds for being satisfied that C considered himself not to be a party to the head contract and the sub-occupation contract.
- (4) If the court finds that one or more of the grounds is made out, it may
 - (a) rescind its order under section 128(7) and declare that the head contract continues to have effect in relation to the premises, and
 - (b) make such further order as it thinks fit.

130 Interpretation

- (1) This section applies for the interpretation of this Act.
- (2) A "sub-occupation contract" is an occupation contract—
 - (a) made with a landlord who is himself the contract-holder under an occupation contract ("the head contract"), and
 - (b) which relates to all or part of the premises to which the head contract relates.
- (3) "Sub-holder" means the contract-holder under the sub-occupation contract.
- (4) "Head landlord" means the landlord under the head contract.

Transfer: fundamental provision of secure contracts

131 Transfer to potential successor

- (1) The contract-holder under a secure contract may transfer the contract as described in this section, but only if the landlord consents.
- (2) The contract-holder may transfer the contract to—
 - (a) a potential successor, or
 - (b) if there are two or more potential successors, all of the potential successors who wish to be included in the transfer.
- (3) If there is a sole contract-holder a potential successor is a person who, under section 142, would be qualified to succeed the contract-holder if the contract-holder died immediately before the transfer.

- (4) If there are joint contract-holders a potential successor is a person who, under section 142, would be qualified to succeed a joint contract-holder if
 - (a) the joint contract-holder died immediately before the transfer, and
 - (b) when the joint contract-holder died he was the sole contract-holder.

Transfer: fundamental provision of secure contracts with community landlord

132 Transfer to secure contract-holder

- (1) The contract-holder under a secure contract under which the landlord is a community landlord may transfer the contract as described in this section, but only if the landlord consents.
- (2) The contract-holder may transfer the contract to a person who
 - (a) before the transfer is a contract-holder under a secure contract under which the landlord is a community landlord, and
 - (b) immediately before the transfer will cease to be the contract-holder under the contract mentioned in paragraph (a).

Transfer: fixed term standard contracts

133 Transfer on death of sole contract-holder

- (1) A fixed term standard contract may provide that on the death of a sole contract-holder, the contract may be transferred in the course of the administration of the contract-holder's estate.
- (2) Section 141 (right to succeed) does not apply to a fixed term standard contract that contains such provision.
- (3) Section 159 (termination of contract on death) is not incorporated as a term of a fixed term standard contract that contains such provision.

134 Forced transfers

- (1) A fixed term standard contract may provide that if there are joint contract-holders, one or more of them may require the other joint contract-holder or joint contract-holders to join in a transfer of the contract in accordance with the contract.
- (2) If the contract contains such provision, the joint contract-holder or joint contract-holders wishing to transfer the occupation contract may apply to the court for an order that the other joint contract-holder or joint contract-holders join in the transfer.
- (3) The court may make the order applied for if it thinks fit.

135 Joint contract-holder's interest

- (1) This section applies if a fixed term standard contract provides that a joint contract-holder may transfer his rights and obligations under the contract.
- (2) The contract must also provide that a transfer may not be made unless the transferor gives notice to the other joint contract-holders that a transfer will be made.

(3) The contract must also provide that the transferee is not entitled to occupy the premises without the consent of the other joint contract-holders.

136 Transfer on death of joint contract-holder

- (1) This section applies if a fixed term standard contract provides that on the death of a joint contract-holder his rights and obligations under the contract may be transferred in the course of the administration of his estate.
- (2) The contract must also provide that a transfer may not be made unless the joint contract-holder gives notice to the other joint contract-holders before his death that such a transfer will be made.
- (3) The contract must also provide that the transferee is not entitled to occupy the premises without the consent of the other joint contract-holders.

Transfer: further provision

137 Form of transfer

- (1) This section applies to—
 - (a) a transfer of an occupation contract by the contract-holder,
 - (b) a transfer by a joint contract-holder of his rights and obligations under an occupation contract.
- (2) The transfer must be signed by each individual who is, and executed by each corporation which is, a party to the transfer.
- (3) If the contract requires the landlord's consent to the transfer, the landlord is a party to the transfer for the purposes of subsection (1).
- (4) But the landlord is not a party in a case where his consent to the transfer is required and he is treated as having consented under section 74(8), (10) or (12).
- (5) A transfer to which this section applies is of no effect if it does not comply with subsection (2).
- (6) This section does not apply to a transfer in accordance with a provision included in the contract under section 133 or 136.

138 Effect of authorised transfer under section 137

- (1) If an occupation contract is transferred by the contract-holder in accordance with the contract and section 137, on the transfer date
 - (a) the transferee becomes entitled to all the rights and subject to all the obligations of the contract-holder under the contract, and
 - (b) the contract-holder ceases to be entitled to any rights or subject to any obligations under the contract.
- (2) If a joint contract-holder's rights and obligations under an occupation contract are transferred in accordance with the contract and section 137, on the transfer date
 - (a) the transferee becomes entitled to all the rights and subject to all the obligations of the joint contract-holder under the contract, and
 - (b) the joint contract-holder ceases to be entitled to any rights or subject to any obligations under the contract.

- (3) Subsection (2)(a) is subject to any provision included in the contract because of sections 135(3) or 136(3).
- (4) Nothing in subsection (1)(b) or (2)(b) removes any right or waives any liability accruing before the transfer date.
- (5) The transfer date is the day agreed by the transferor and transferee as the day on which the transfer takes effect.

139 Effect of unauthorised transfer

- (1) This section applies to—
 - (a) a transfer of an occupation contract by the contract-holder otherwise than in accordance with the contract, and
 - (b) a transfer by a joint contract-holder of his rights and obligations under an occupation contract otherwise than in accordance with the contract.
- (2) If the landlord accepts payments from the transferee in respect of the transferee's occupation of the premises, at a time when the landlord
 - (a) knows that the transfer was made otherwise than in accordance with the contract, or
 - (b) ought reasonably to know that the transfer was made otherwise than in accordance with the contract,

the transfer becomes binding on him on the day immediately after the last day of the relevant period.

- (3) Section 138 applies as if
 - (a) the transfer was made in accordance with the contract and section 137, and
 - (b) the transfer date was the day immediately after the last day of the relevant period.
- (4) The relevant period is the period of two months starting with the day on which payments are first accepted as described in subsection (2).
- (5) Subsections (2) and (3) do not apply if before the end of the relevant period the landlord
 - (a) takes steps to end the occupation contract, or
 - (b) brings proceedings to evict the transferee as a trespasser or otherwise shows an intention to treat the transferee as a trespasser.
- (6) References in this section to a transfer include a purported transfer which does not comply with section 137.

140 Deeds and covenants

- (1) This section applies in relation to occupation contracts which are tenancies.
- (2) Section 52 of the Law of Property Act 1925 (c. 20) (land must be conveyed by deed) does not apply to a transfer of the contract.
- (3) The Landlord and Tenant (Covenants) Act 1995 (c. 30) does not apply to—
 - (a) a transfer by a contract-holder of any of the things mentioned in section 120(1), or by a joint contract-holder of any of the things mentioned in section 120(2), or

(b) a transfer which under section 28(6)(b) of that Act would be treated as a transfer of the premises.

CHAPTER 2

SUCCESSION

141 Succession on death

- (1) This section applies on the death of the sole contract-holder under an occupation contract (subject to section 133(2)).
- (2) If one person is qualified to succeed the contract-holder, that person succeeds to the contract.
- (3) If more than one person is qualified to succeed the contract-holder, the person identified in accordance with section 143 succeeds to the contract.

142 Persons qualified to succeed

- (1) A person is qualified to succeed the contract-holder if that person
 - (a) is a priority successor of the contract-holder or a reserve successor of the contract-holder, and
 - (b) is not excluded by subsection (3) or (4).
- (2) But if the contract-holder is a reserve successor in relation to the occupation contract, no person is qualified to succeed him.
- (3) A person is excluded if he has not reached the age of 16 at the time of the contract-holder's death.
- (4) A person is excluded if at any time in the period of 12 months ending with the contract-holder's death he occupied the premises or part of them under a sub-occupation contract.
- (5) A person is not excluded by subsection (4) if
 - (a) he is a priority successor of the contract-holder, or he is a reserve successor of the contract-holder who meets the family member condition in section 145 because of section 230(1)(a) or (b), and
 - (b) the sub-occupation contract under which he occupied the premises or part of them ended before the contract-holder's death.

143 More than one qualified successor

- (1) This section applies where there is more than one person who is qualified to succeed the contract-holder.
- (2) If one of the persons is a priority successor, the priority successor succeeds to the contract.
- (3) If two or more of the persons are priority successors, the person who succeeds to the contract is (or the persons who succeed to the contract are)
 - (a) the priority successor (or successors) selected by agreement between the priority successors, or
 - (b) if they fail to agree (or fail to notify the landlord of an agreement) within a reasonable time, whichever of them the landlord selects.

- (4) If all the persons are reserve successors, the person who succeeds to the contract is (or the persons who succeed to the contract are)
 - (a) the person (or persons) selected by agreement between the reserve successors, or
 - (b) if they fail to agree (or fail to notify the landlord of an agreement) within a reasonable time, whichever of them the landlord selects.
- (5) Where the landlord makes a selection under subsection (3)(b), a priority successor who is not selected may appeal to the court against the landlord's selection.
- (6) Where the landlord makes a selection under subsection (4)(b), a reserve successor who is not selected may appeal to the court against the landlord's selection.
- (7) An appeal under subsection (5) or (6) must be brought before the end of the period of four weeks starting with the day on which the landlord makes the selection.
- (8) The court must determine the appeal on the merits (and not by way of review).

144 Priority successor

- (1) A person is a priority successor of the contract-holder if
 - (a) he is a member of the contract-holder's family within section 230(1)(a) or (b) (spouses, civil partners etc.), and
 - (b) he occupied the premises as his only or principal home at the time of the contract-holder's death.
- (2) But no person is a priority successor of the contract-holder if the contract-holder is a priority successor in relation to the occupation contract.

145 Reserve successor: family member

- (1) A person is a reserve successor of the contract-holder if he is not a priority successor of the contract-holder and
 - (a) he meets the family member condition,
 - (b) he occupied the premises as his only or principal home at the time of the contract-holder's death, and
 - (c) if he meets the family member condition because of section 230(1)(c), he also meets the basic residence condition.
- (2) A person meets the family member condition if he is a member of the contract-holder's family.
- (3) A person meets the basic residence condition if throughout the period of 12 months ending with the contract-holder's death—
 - (a) he occupied the premises, or
 - (b) he lived with the contract-holder.
- (4) If the contract-holder was a priority successor in relation to the occupation contract, the references in subsections (2) and (3)(b) to the contract-holder include the person the contract-holder succeeded.

146 Reserve successor: carer

Chapter 2 - Succession

- (1) A person is a reserve successor of the contract-holder if he is not a priority successor of the contract-holder and
 - (a) he meets the carer condition,
 - (b) he occupied the premises as his only or principal home at the time of the contract-holder's death, and
 - (c) he meets the carer residence condition.
- (2) A person meets the carer condition if at any time in the period of 12 months ending with the contract-holder's death he was a carer in relation to—
 - (a) the contract-holder, or
 - (b) a member of the contract-holder's family who, at the time the care was provided, lived with the contract-holder.
- (3) If the contract-holder was a priority successor in relation to the occupation contract, the references in subsection (2) to the contract-holder include the person the contract-holder succeeded.
- (4) A person meets the carer residence condition if
 - (a) he meets the basic residence condition in section 145(3) and (4), and
 - (b) at the time of the contract-holder's death there were no other premises which the person was entitled to occupy as a home.
- (5) "Carer" means a person who—
 - (a) provides or intends to provide a substantial amount of care for another person on a regular basis, and
 - (b) does not provide or will not provide that care because of a contract of employment or other contract with any person.
- (6) A person is not to be treated as providing care because of a contract merely because he is provided with board or lodging or may become qualified to succeed as a reserve successor.

147 Effect of succession

- (1) A person who succeeds to an occupation contract under section 141(2) or sections 141(3) and 143(2) is to be treated as becoming the contract-holder on the relevant date.
- (2) A person who succeeds (or persons who succeed) to an occupation contract under sections 141(3) and 143(3) or (4) is (or are) to be treated as becoming the contract-holder on the later of
 - (a) the relevant date, and
 - (b) the day agreement is reached or the landlord makes a selection.
- (3) The relevant date is the day on which the contract would have ended under section 159 if no one had been qualified to succeed to the contract.
- (4) During the period beginning with the relevant date and ending with a person (or persons) becoming the contract-holder under subsection (2), the relevant successors
 - (a) are not to be treated as trespassers in relation to the premises, and
 - (b) for the purposes of any liability under the contract to pay rent or other consideration, are to be treated as if they were joint contract-holders under the contract.

- Chapter 2 Succession
- (5) "The relevant successors" are the persons who
 - (a) are qualified to succeed the contract-holder, and
 - (b) are living in the premises.
- (6) Subject to subsection (4)(b), nothing in this section makes a person who succeeds to the contract liable to the landlord (or the landlord liable to that person) in respect of any breach of the contract occurring before the person becomes a contract-holder.
- (7) But the landlord may be liable to that person (or that person liable to the landlord) to the extent that any breach of the contract continues after the person becomes a contract-holder.

148 Substitute succession on early termination

- (1) This section applies where
 - (a) a person ("S") succeeds to an occupation contract under section 143(2),
 - (b) before the end of the period of six months starting with the death of the original contract-holder, S gives notice under a contract-holder's notice provision that he wishes to end the contract or agrees with the landlord that the contract should end, and
 - (c) apart from this section, the contract would end in accordance with the contract-holder's notice provision or the agreement.
- (2) The contract does not end if one or more persons are qualified to succeed the original contract-holder.
- (3) If one person is qualified to succeed the original contract-holder, that person succeeds to the contract.
- (4) If more than one person is qualified to succeed the original contract-holder, the person identified in accordance with section 143 succeeds to the contract.
- (5) Whether there is a person qualified to succeed the original contract-holder is to be determined by applying section 142 in relation to the original contract-holder; but S is to be treated as not qualified to succeed the original contract-holder.
- (6) In this section
 - "the original contract-holder" is the contract-holder as a result of whose death S succeeded to the contract, and
 - "contract-holder's notice provision" means section 167 (contract-holder's notice to end periodic contract) or a contract-holder's break clause.

149 Effect of substitute succession

- (1) A person who succeeds to an occupation contract under section 148(3) or sections 148(4) and 143(2) is to be treated as becoming the contract-holder on the relevant date.
- (2) A person who succeeds (or persons who succeed) to an occupation contract under sections 148(4) and 143(3) or (4) is (or are) to be treated as becoming the contract-holder under the contract on the later of
 - (a) the relevant date, and
 - (b) the day agreement is reached or the landlord makes a selection.

- Chapter 2 Succession
 - (3) The relevant date is the day on which, but for section 148(2), the contract would have ended.
 - (4) During the period beginning with the relevant date and ending with a person (or persons) becoming the contract-holder under subsection (2), the relevant successors
 - (a) are not to be treated as trespassers in relation to the premises, and
 - (b) for the purposes of any liability under the contract to pay rent or other consideration, are to be treated as if they were joint contract-holders under the contract.
 - (5) "The relevant successors" are the persons who
 - (a) are qualified to succeed the original contract-holder, and
 - (b) are living in the premises.
 - (6) Subject to subsection (4)(b), nothing in this section makes a person who succeeds to the contract liable to the landlord (or the landlord liable to that person) in respect of any breach of the contract occurring before the person becomes a contract-holder.
 - (7) But the landlord may be liable to that person (or that person liable to the landlord) to the extent that any breach of the contract continues after the person becomes a contract-holder.

150 Notice of rights under section 148

- This section applies where the landlord under an occupation contract—
 - (a) receives notice under a contract-holder's notice provision, or
 - (b) agrees with the contract-holder to end the contract, in the circumstances mentioned in section 148(1)(a) and (b).
- (2) The landlord must, before the end of the period of 14 days starting with the day on which he receives S's notice or the day of the agreement, give a notice to—
 - (a) the occupiers of the premises (other than S), and
 - (b) any potential successors not occupying the premises whose address is known to the landlord.
- (3) A potential successor is a person qualified to succeed the original contract-holder under section 148.
- (4) The notice must—
 - (a) state that S has given notice that he wishes to end the contract or that S and the landlord have agreed to end the contract, and
 - (b) explain the effect of section 148.

151 Interpretation

- (1) This section applies for the interpretation of this Act.
- (2) A contract-holder is a priority or reserve successor in relation to an occupation contract if he succeeded to the contract as a priority or reserve successor of the contract-holder who died.
- (3) If a contract-holder is a priority or reserve successor in relation to a fixed term standard contract, he is also a priority or reserve successor in relation to —

- (a) any periodic contract which arises under section 165(2) at the end of the fixed term, and
- (b) unless the contract provides otherwise, any contract under section 165(6).
- (4) If a contract-holder is a priority or reserve successor in relation to an occupation contract which is ended under section 160 (abandonment), he is also a priority or reserve successor in relation to any occupation contract under which he becomes the contract-holder as a result of an order under section 162(3)(b) (provision of suitable alternative accommodation on appeal).
- (5) A contract-holder to whom an occupation contract is transferred by, or in accordance with, a family property order is a priority or reserve successor in relation to the contract if the person from whom the contract was transferred was such a successor.
- (6) A contract-holder is a priority or reserve successor in relation to an occupation contract if his being treated as such a successor was a condition of consent to a transaction relating to the contract.
- (7) Subsection (8) applies if, before the end of the period of six months starting with the day on which a secure contract ("the first contract") ends—
 - (a) the contract-holder under the first contract becomes a contract-holder under another secure contract ("the second contract"), and
 - (b) either the premises or the landlord are the same under the second contract as under the first contract.
- (8) If the contract-holder was a priority or reserve successor in relation to the first contract he is also such a successor in relation to the second contract, unless the second contract provides otherwise.

Part 6

TERMINATION OF OCCUPATION CONTRACTS

CHAPTER 1

TERMINATION: GENERAL

Fundamental provisions of all contracts

152 Termination

- (1) An occupation contract may be ended only in accordance with
 - (a) the fundamental terms of the contract which incorporate fundamental provisions set out in this Part, or other terms included in the contract in accordance with this Part, or
 - (b) an enactment (including in particular this Act and the consumer protection regulations).
- (2) Nothing in this section affects
 - (a) any right of the landlord or contract-holder to rescind the contract, or
 - (b) the operation of the law of frustration.

153 Possession proceedings

- (1) The landlord under an occupation contract may make a claim to the court for recovery of possession of the premises from the contract-holder ("a possession claim") only in the circumstances set out in Chapters 2 and 3.
- (2) Where those Chapters require the landlord to give the contract-holder a possession notice before making a possession claim on any ground, the notice must (in addition to specifying the ground)
 - (a) state the landlord's intention to make a possession claim,
 - (b) give particulars of the ground, and
 - (c) state the date after which the landlord is able to make a possession claim.

154 Effect of possession order

- If the court makes an order requiring the contract-holder under an occupation contract to give up possession of the premises on a date specified in the order, the contract ends —
 - (a) if the contract-holder gives up possession of the premises on or before that date, on that date,
 - (b) if the contract-holder gives up possession of the premises after that date but before the order for possession is executed, on the day on which he gives up possession of the premises, or
 - (c) if the contract-holder does not give up possession of the premises before the order for possession is executed, when the order for possession is executed.
- (2) Subsection (3) applies if
 - (a) it is a condition of the order that the landlord must offer a new occupation contract of the same premises to one or more joint contract-holders (but not all of them), and
 - (b) that joint contract-holder (or those joint contract-holders) continue to occupy the premises on and after the effective date of the new contract.
- (3) The occupation contract in relation to which the order for possession was made ends immediately before the effective date of the new contract.

155 Joint contract-holders

If there are joint contract-holders under an occupation contract, the contract cannot be ended by the act of one or more of the joint contract-holders acting without the other joint contract-holder or joint contract-holders.

Methods of termination: fundamental provisions of all contracts

156 Early termination

- (1) The contract-holder may end the contract at any time before—
 - (a) the effective date, or
 - (b) if earlier, the day on which the landlord gives the contract-holder a written statement of the contract under section 24(1).

- (2) To end the contract under subsection (1), the contract-holder must give a notice to the landlord stating that he wishes to end the contract.
- (3) On giving the notice to the landlord, the contract-holder
 - (a) ceases to have any liability under the contract, and
 - (b) becomes entitled to the return of any deposit, rent or other consideration given to the landlord in accordance with the contract.

157 Agreement

- (1) If the landlord and the contract-holder under an occupation contract agree to end the contract, the contract ends—
 - (a) when the contract-holder gives up possession of the premises in accordance with the agreement, or
 - (b) if he does not give up possession and a substitute occupation contract is made, immediately before the effective date of the substitute occupation contract.
- (2) An occupation contract is a substitute occupation contract if
 - (a) it is made in respect of the same (or substantially the same) premises as the original contract, and
 - (b) a contract-holder under it was also a contract-holder under the original contract.

158 Repudiation

If the landlord under an occupation contract commits a repudiatory breach of contract and the contract-holder gives up possession of the premises because of that breach, the contract ends when the contract-holder gives up possession of the premises.

159 Death of contract-holder

- (1) If the sole contract-holder under an occupation contract dies, the contract ends—
 - (a) one month after the death of the contract-holder, or
 - (b) if earlier, when the landlord is given notice of the death by the authorised persons.
- (2) The authorised persons are—
 - (a) the contract-holder's personal representatives, or
 - (b) the permitted occupiers of the premises aged 16 and over (if any) acting together.
- (3) The contract does not end if under section 142 one or more persons are qualified to succeed the contract-holder.
- (4) The contract does not end if, at the contract-holder's death, a family property order has effect which requires the contract-holder to transfer the contract to another person.
- (5) If, after the contract-holder's death, the family property order ceases to have effect and there is no person qualified to succeed the contract-holder, the contract ends—
 - (a) when the order ceases to have effect, or

(b) if later, at the time the contract would end under subsection (1).

Abandonment

160 Possession of abandoned premises

- (1) If the landlord under a relevant occupation contract believes that the contractholder has abandoned the premises, he may recover possession of the premises in accordance with this section.
- (2) An occupation contract is relevant if it is a term of the contract (however expressed) that the contract-holder must occupy the premises as his only or principal home.
- (3) The landlord must give the contract-holder notice
 - (a) stating that the landlord believes that the contract-holder has abandoned the premises,
 - (b) requiring the contract-holder to inform the landlord in writing before the end of the warning period if the contract-holder has not abandoned the premises, and
 - (c) informing the contract-holder of the landlord's intention to end the contract if at the end of the warning period he is satisfied that the contract-holder has abandoned the premises.
- (4) During the warning period the landlord must make such inquiries as are necessary to satisfy himself that the contract-holder has abandoned the premises.
- (5) At the end of the warning period the landlord may, if he is satisfied as described in subsection (4), end the contract by giving the contract-holder a notice.
- (6) The contract ends when the notice under subsection (5) is given to the contract-holder.
- (7) If an occupation contract is ended under this section the landlord may recover possession of the premises without court proceedings.
- (8) The warning period is the period of four weeks starting with the day on which a notice under subsection (3) is given to the contract-holder.
- (9) The landlord must give a copy of a notice under subsection (3) or (5) to any lodger or sub-holder of the contract-holder.

161 Disposal of property

- (1) The appropriate authority may by regulations make provision in connection with safeguarding property (other than the landlord's property) that is on the premises when a contract ends under section 160, and delivering it to its owner.
- (2) The regulations may in particular
 - (a) provide that delivery of property is conditional on payment of expenses incurred by the landlord,
 - (b) authorise the disposal of property after a prescribed period,

(c) allow the landlord to apply any proceeds of sale in satisfaction of expenses incurred by the landlord and amounts due from the contractholder under the contract.

162 Contract-holder's remedies

- (1) A contract-holder may, before the end of the period of six months starting with the day on which he is given notice under section 160(5), apply to the court on a ground in subsection (2) for a declaration or order under subsection (3).
- (2) The grounds are—
 - (a) that the landlord failed to give notice under section 160(3) or failed to make the inquiries required by section 160(4),
 - (b) that the contract-holder had not abandoned the premises and his failure to respond (or to respond adequately) to the notice under section 160(3) was justifiable,
 - (c) that when the landlord gave the notice to the contract-holder under section 160(5) the landlord did not have reasonable grounds for being satisfied that the contract-holder had abandoned the premises.
- (3) If the court finds that one or more of the grounds is made out it may—
 - (a) make a declaration that the notice under section 160(5) is of no effect and the occupation contract continues to have effect in relation to the premises, or
 - (b) order the landlord to provide suitable alternative accommodation to the contract-holder,

and may make such further order as it thinks fit.

(4) The suitability of alternative accommodation is to be determined in accordance with Schedule 5.

163 Rights of entry

- (1) If the landlord under a relevant occupation contract reasonably believes that the contract-holder has abandoned the premises, the landlord may enter the premises at any time in order to make them secure or to safeguard their contents and any fixtures or fittings, and may use reasonable force.
- (2) An occupation contract is relevant if it is a term of the contract (however expressed) that the contract-holder must occupy the premises as his only or principal home.

Other methods of termination

164 Death of landlord

An occupation contract which is a licence ends on the death of the landlord.

165 End of fixed term

- (1) A fixed term standard contract ends at the end of the term for which it is made.
- (2) If the contract-holder remains in occupation of the premises after the end of the term, the landlord and the contract-holder are to be treated as having made a new periodic standard contract in relation to the premises.

- (3) The new contract—
 - (a) has an effective date falling immediately after the end of the fixed term, and
 - (b) has rental periods that are the same as those for which rent was last payable under the fixed term contract.
- (4) The fundamental and supplementary provisions applicable to periodic standard contracts are incorporated as terms of the new contract without modification.
- (5) Subject to subsections (3) and (4), the new contract has the same terms as the fixed term contract immediately before it ended.
- (6) A new occupation contract does not arise as described in subsection (2) if the landlord and the contract-holder have made a new occupation contract in relation to the same (or substantially the same) premises which has an effective date falling immediately after the fixed term contract ends.
- (7) If, before or on the effective date of a new occupation contract arising as described in subsection (2) or (6)
 - (a) the contract-holder enters into an obligation to do an act which will cause the new contract to end, or
 - (b) the contract-holder gives any notice or other document that would, but for this subsection, cause the new contract to end,

the obligation is unenforceable or the notice or document is of no effect.

166 Forfeiture and notices to quit

- (1) A landlord under an occupation contract may not rely on
 - (a) any provision in the contract for re-entry or forfeiture, or
 - (b) any enactment or rule of law as to re-entry or forfeiture.
- (2) A landlord under an occupation contract may not serve a notice to quit.
- (3) Accordingly any provision in an occupation contract for re-entry or forfeiture, or relating to a landlord's notice to quit or the circumstances in which such a notice may be served, is of no effect.

CHAPTER 2

TERMINATION FOLLOWING NOTICE

Contract-holder's notice: fundamental provisions of secure contracts and periodic standard contracts

167 Contract-holder's notice

The contract-holder under a secure contract or a periodic standard contract may end the contract by giving the landlord notice that he will give up possession of the premises on a date specified in the notice.

168 Recovery of possession

- (1) If the contract-holder fails to give up possession of the premises on the date specified in a notice under section 167, the landlord may on that ground make a claim to the court for recovery of possession of the premises.
- (2) Section 195 provides that if the court is satisfied that the ground is made out, it must make an order for possession of the premises.

169 Restrictions on section 168

- (1) Before making a possession claim on the ground in section 168 the landlord must give the contract-holder a possession notice specifying that ground.
- (2) The landlord may make the possession claim on or after the day on which he gives the contract-holder the possession notice.
- (3) But he may not make the possession claim after the end of the period of six months starting with that day.
- (4) The landlord may not give the contract-holder a possession notice specifying the ground in section 168 after the end of the period of two months starting with the date specified in the notice under section 167 as the date on which the contract-holder would give up possession of the premises.

170 Termination of contract

- (1) If the contract-holder gives up possession of the premises on or before the date specified in a notice under section 167, the contract ends on the date specified in the notice.
- (2) If the contract-holder gives up possession of the premises after that date but in connection with the notice, the contract ends—
 - (a) on the day on which the contract-holder gives up possession of the premises, or
 - (b) if a possession order is made, on the date determined in accordance with section 154.
- (3) The notice ceases to have effect if, before the contract ends—
 - (a) the contract-holder withdraws the notice by further notice to the landlord, and
 - (b) the landlord does not object to the withdrawal in writing before the end of a reasonable period.

Contract-holder's notice: further provision

171 Contract-holder's break clause

- (1) A fixed term standard contract may contain provision enabling the contractholder to end the contract before the end of the fixed term by giving the landlord notice that he will give up possession of the premises on a date specified in the notice.
- (2) If it does so, sections 168 to 170 are incorporated as terms of the contract, but with references to the provision mentioned in subsection (1) substituted for references to section 167.

(3) References in this Act to a contract-holder's break clause, in relation to a fixed term standard contract, are to the provision mentioned in subsection (1).

172 Power to prescribe time limits

The appropriate authority may prescribe supplementary provisions specifying a minimum time period between the day on which a notice under section 167 or a contract-holder's break clause is given to the landlord, and the date specified in the notice.

Landlord's notice: fundamental provisions of periodic standard contracts

173 Landlord's notice

The landlord under a periodic standard contract may end the contract by giving the contract-holder notice that he must give up possession of the premises on a date specified in the notice.

174 Minimum period

The date specified in a notice under section 173 may not be less than two months after the day on which the notice is given to the contract-holder.

175 Recovery of possession

- (1) If the landlord gives the contract-holder a notice under section 173, the landlord may on that ground make a claim to the court for recovery of possession of the premises.
- (2) Section 195 provides that if the court is satisfied that the ground is made out, the court must make an order for possession of the premises.

176 Restrictions on section 175: general

The landlord may not make a possession claim on the ground in section 175 —

- (a) before the end of the period of two months starting with the day on which he gives the contract-holder a notice under section 173, or
- (b) after the end of the period of four months starting with that day.

177 Restrictions on section 175: breach of information requirements

- (1) If the landlord does not comply with section 24(1) (duty to provide written statement of contract), he may not make a possession claim on the ground in section 175 before the end of the restricted period.
- (2) The restricted period is six months starting with the day on which the landlord gives a written statement of the contract to the contract-holder.
- (3) The landlord may not make a possession claim on the ground in section 175 at any time when he has not provided a notice he is required to provide under section 68 (duty to provide information about parties).

178 Restrictions on section 175: breach of deposit rules

- (1) The landlord may not make a possession claim on the ground in section 175 at a time when any of the following subsections apply.
- (2) Security required by the landlord in a form not permitted by section 36 has not been returned to the person by whom it was given.
- (3) A deposit has been paid in connection with the contract but the landlord has not provided the information required by section 37(2) and (3).
- (4) A deposit has been paid in connection with the contract but the initial requirements of an authorised deposit scheme have not been complied with.
- (5) A deposit paid in connection with the contract is not being held in accordance with an authorised deposit scheme.

179 Termination of contract

- (1) If the contract-holder gives up possession of the premises on or before the date specified in a notice under section 173, the contract ends on the date specified in the notice.
- (2) If the contract-holder gives up possession of the premises after that date but in connection with the notice, the contract ends—
 - (a) on the day on which the contract-holder gives up possession of the premises, or
 - (b) if a possession order is made, on the date determined in accordance with section 154.
- (3) The notice ceases to have effect if, before the contract ends
 - (a) the landlord withdraws the notice by further notice to the contractholder, and
 - (b) the contract-holder does not object to the withdrawal in writing before the end of a reasonable period.

Landlord's notice: fundamental provision of fixed term standard contracts

180 Landlord's notice in connection with end of term

- (1) The landlord under a fixed term standard contract may, before or on the last day of the term for which the contract was made, give the contract-holder notice that he must give up possession of the premises on a date specified in the notice.
- (2) The specified date
 - (a) must be after the last day of the term for which the contract was made, and
 - (b) may not be less than two months after the day on which the notice is given to the contract-holder.
- (3) If the landlord gives the contract-holder a notice under subsection (1), the landlord may on that ground make a claim to the court for recovery of possession of the premises.
- (4) Section 195 provides that if the court is satisfied that the ground is made out, the court must make an order for possession of the premises.

(5) The landlord may not make a claim on that ground before the end of the fixed term standard contract.

Landlord's notice etc.: fundamental provision of periodic standard contracts arising at end of fixed term

181 Relevance of events under fixed term standard contract

- (1) The landlord under a periodic standard contract which arises under section 165(2) may make a claim to the court for recovery of possession of the premises in reliance on
 - (a) a possession notice, or
 - (b) a notice under section 180,

which he gave to the contract-holder before the end of the fixed term contract.

- (2) Sections 176 to 179 apply to a notice under section 180, and a possession claim on the ground in section 180, as they apply to a notice under section 173 and a possession claim on the ground in section 175.
- (3) In any possession notice the landlord gives to the contract-holder, the landlord may rely on events which occurred before the end of the fixed term standard contract.

Landlord's notice: further provision

182 Landlord's break clause

- (1) A fixed term standard contract may contain provision enabling the landlord to end the contract before the end of the fixed term by giving the contract-holder notice that he must give up possession of the premises on a date specified in the notice.
- (2) If it does so, sections 174 to 179 are incorporated as terms of the contract, but with references to the provision mentioned in subsection (1) substituted for references to section 173.
- (3) References in this Act to a landlord's break clause, in relation to a fixed term standard contract, are to the provision mentioned in subsection (1).

CHAPTER 3

TERMINATION BY LANDLORD ON OTHER GROUNDS

Fundamental provisions of all contracts

183 Breach of contract

- (1) If the contract-holder under an occupation contract breaches the contract, the landlord may on that ground make a claim to the court for recovery of possession of the premises.
- (2) Section 199 provides that the court may not make an order for possession on that ground unless it considers it reasonable to do so.

184 Restrictions on section 183

- (1) Before making a possession claim on the ground in section 183, the landlord must give the contract-holder a possession notice specifying that ground.
- (2) The landlord may make a possession claim in reliance on a breach of section 51 (prohibited conduct) on or after the day on which he gives the contract-holder a possession notice specifying a breach of that section.
- (3) The landlord may not make a possession claim in reliance on a breach of any other provision of the contract before the end of the period of one month starting with the day on which he gives the contract-holder a possession notice specifying a breach of that provision.
- (4) In either case, the landlord may not make a possession claim after the end of the period of six months starting with the day on which he gives the contract-holder the possession notice.

185 Estate management

- (1) The landlord under an occupation contract may make a claim to the court for recovery of possession of the premises on one of the estate management grounds (which are set out in Part 1 of Schedule 6).
- (2) Section 200 provides that the court may not make an order for possession on an estate management ground unless
 - (a) it considers it reasonable to do so, and
 - (b) it is satisfied that suitable alternative accommodation is available to the contract-holder (or will be available to the contract-holder when the order takes effect).
- (3) If the court makes an order for possession on an estate management ground (and on no other ground), the landlord must pay to the contract-holder a sum equal to the reasonable expenses likely to be incurred by the contract-holder in moving from the premises.
- (4) Subsection (3) does not apply if the court makes an order for possession on Ground A or B of the estate management grounds (and on no other ground).

186 Restrictions on section 185

- (1) Before making a possession claim on an estate management ground, the landlord must give the contract-holder a possession notice specifying that ground.
- (2) The landlord may not make the claim
 - (a) before the end of the period of one month starting with the day on which he gives the contract-holder the possession notice, or
 - (b) after the end of the period of six months starting with that day.
- (3) If a redevelopment scheme is approved under Part 2 of Schedule 6 subject to conditions, the landlord may give the contract-holder a possession notice specifying estate management Ground B before the conditions are met.
- (4) The landlord may not give the contract-holder a possession notice specifying estate management ground G (accommodation not required by successor) –

Chapter 3 – Termination by landlord on other grounds

- before the end of the period of six months starting with the day of the previous contract-holder's death, or
- after the end of the period of twelve months starting with that day.
- The landlord may not give the contract-holder a possession notice specifying estate management ground H (departing joint contract-holder) after the end of the period of six months starting with the day on which the joint contractholder's rights and obligations under the contract ended.

Fundamental provisions of standard contracts

187 Serious rent arrears

- If the contract-holder under a standard contract is seriously in arrears with his rent, the landlord may on that ground make a claim to the court for recovery of possession of the premises.
- The contract-holder is seriously in arrears with his rent
 - where the rental period is a week or a fortnight, if at least eight weeks' rent is unpaid,
 - (b) where the rental period is a month, if at least two months' rent is unpaid,
 - where the rental period is a quarter, if at least one quarter's rent is more than three months in arrears,
 - where the rental period is a year, if at least three months' rent is more than three months in arrears.
- Section 196 provides that the court must make an order for possession of the premises if it is satisfied that the contract-holder
 - was seriously in arrears with his rent on the day on which the landlord gave the contract-holder a possession notice, and
 - is seriously in arrears with his rent on the day on which the court hears the possession claim.

188 **Restrictions on section 187**

- Before making a possession claim on the ground in section 187, the landlord must give the contract-holder a possession notice specifying that ground.
- The landlord may not make the claim
 - before the end of the period of one month starting with the day on which he gives the contract-holder the possession notice, or
 - (b) after the end of the period of six months starting with that day.

Estate management: further provision

189 **Redevelopment schemes**

Part 2 of Schedule 6 (approval of redevelopment schemes) makes provision supplementing Ground B of the estate management grounds.

CHAPTER 4

Possession claims under Chapters 2 and 3

Powers of court: general

190 Possession claims

- (1) The court may not entertain a possession claim made by the landlord under an occupation contract if the landlord
 - (a) has failed to comply with the requirements in whichever of sections 169, 176 to 178, 184, 186 or 188 applies, or
 - (b) if he was required to give a possession notice, has failed to comply with section 153.
- (2) Subsection (1) does not apply if the court considers it reasonable to dispense with the requirements.
- (3) Subsection (1) does not apply to
 - (a) an application for an order for possession against a sub-holder under section 127(2), or
 - (b) proceedings which are treated as a possession claim under section 191.

191 Deemed possession claims

- (1) This section applies if
 - (a) the court has granted the landlord under an occupation contract an injunction under section 52 (prohibited conduct), and
 - (b) the landlord claims that there has been a breach of the injunction.
- (2) The landlord may seek an order for possession of the premises as part of any proceedings for breach of the injunction.
- (3) If he does so, the proceedings are to be treated as a possession claim in which the landlord relies on the ground in section 183 (breach of contract).
- (4) In the proceedings, the landlord may rely only on—
 - (a) the facts on which he relied when seeking the injunction, and
 - (b) the facts claimed to constitute the breach of the injunction.

192 Possession orders

- (1) The court may make an order requiring the contract-holder under an occupation contract to give up possession of the premises only on one or more of the grounds in—
 - (a) section 168 (contract-holder's notice),
 - (b) section 175 (landlord's notice),
 - (c) section 180 (landlord's notice in connection with end of fixed term),
 - (d) section 183 (breach of contract),
 - (e) section 185 (estate management), or
 - (f) section 187 (serious rent arrears).

- (2) Where the landlord is required to give the contract-holder a possession notice, the court may not make an order for possession on a ground that is not specified in the landlord's possession notice.
- (3) But the court may allow the ground (or grounds) specified in the possession notice to be altered or added to at any time before the court makes an order for possession.

193 Participation in proceedings

- A person occupying premises subject to an occupation contract who has home rights is entitled, so long as the person remains in occupation —
 - (a) to be a party to any proceedings on a possession claim relating to the premises, or in connection with an order for possession of the premises, or
 - (b) to seek an adjournment, postponement, stay or suspension under section 198 or 201.
- (2) "Home rights" has the meaning given by section 30(2) of the Family Law Act 1996 (c. 27).

194 Deception

- (1) This section applies if, after the landlord under an occupation contract obtains an order for possession against the contract-holder, the court is satisfied that the order was obtained by misrepresentation or concealment of material facts.
- (2) The court may order the landlord to pay to the contract-holder such sum as appears sufficient compensation for damage or loss sustained by the contract-holder as a result of the order.

Mandatory grounds for possession

195 Notice grounds

- (1) If the landlord under an occupation contract makes a possession claim on one of the notice grounds and the court is satisfied that the ground is made out, it must make an order for possession of the premises.
- (2) The notice grounds are the grounds in—
 - (a) section 168 (contract-holder's notice),
 - (b) section 175 (landlord's notice), or
 - (c) section 180 (landlord's notice in connection with end of fixed term).
- (3) This section is subject to section 197.

196 Serious rent arrears ground

- (1) This section applies if the landlord under a standard contract makes a possession claim on the ground in section 187 (serious rent arrears).
- (2) The court must make an order for possession of the premises if it is satisfied that the contract-holder
 - (a) was seriously in arrears with his rent on the day on which the landlord gave the contract-holder a possession notice, and

- (b) is seriously in arrears with his rent on the day on which the court hears the possession claim.
- (3) Section 187(2) applies for determining whether a contract-holder is seriously in arrears with his rent.
- (4) This section is subject to section 197.

197 Review of mandatory grounds

- (1) This section applies if
 - (a) a landlord makes a possession claim in a county court on a notice ground (within the meaning of section 195) or the ground in section 187 (serious rent arrears), and
 - (b) the landlord's decision to make a possession claim on that ground is subject to judicial review.
- (2) The contract-holder may make an application in the possession proceedings for a review of the decision by the county court.
- (3) The county court may confirm or quash the decision.
- (4) In considering whether to confirm or quash the decision, the county court must apply the principles applied by the High Court on an application for judicial review.
- (5) If the county court quashes the decision it may
 - (a) set aside the possession notice, or the landlord's notice under section 173 or 180, and dismiss the possession proceedings,
 - (b) make any order the High Court could make when making a quashing order on an application for judicial review.
- (6) The contract-holder may not make an application under subsection (2) after an order for possession has been made in respect of the premises.

198 Powers to postpone possession

- (1) This section applies if the court makes an order for possession of premises under section 195 or 196.
- (2) The court may not postpone the giving up of possession to a date later than 14 days after the making of the order, unless it appears to the court that exceptional hardship would be caused if the giving up of possession were not postponed to a later date.
- (3) The giving up of possession may not in any event be postponed to a date later than six weeks after the making of the order.
- (4) The giving up of possession may be postponed by the order for possession, or by suspending or staying execution of the order for possession.

Discretionary grounds for possession

199 Breach of contract ground

(1) This section applies if the landlord under an occupation contract makes a possession claim on the ground in section 183 (breach of contract).

- (2) The court may not make an order for possession on that ground unless it considers it reasonable to do so.
- (3) The court is not prevented from making an order for possession on that ground merely because the contract-holder ceased to be in breach of the contract before the landlord made the possession claim.
- (4) Schedule 7 makes provision as regards the reasonableness of making an order for possession.

200 Estate management grounds

- (1) This section applies if the landlord under an occupation contract makes a possession claim under section 185 on one of the estate management grounds.
- (2) The court may not make an order for possession on that ground unless
 - (a) it considers it reasonable to do so, and
 - (b) it is satisfied that suitable alternative accommodation is available to the contract-holder (or will be available to the contract-holder when the order takes effect).
- (3) Schedule 7 makes provision as regards the reasonableness of making an order for possession.
- (4) Whether suitable alternative accommodation is, or will be, available to the contract-holder is to be determined in accordance with Schedule 5.
- (5) If the landlord makes a possession claim on Ground B and the redevelopment scheme is approved under Part 2 of Schedule 6 subject to conditions, the court may not make an order for possession unless it is satisfied that the conditions are or will be met.
- (6) If the court makes an order for possession and the landlord is required to pay the contract-holder a sum under section 185(3), the sum payable
 - (a) if not agreed between the landlord and contract-holder, is to be determined by the court, and
 - (b) is recoverable from the landlord as a civil debt.

201 Powers to adjourn and postpone

- (1) If a landlord's possession claim relies on the ground in section 183 (breach of contract) or on one of the estate management grounds, the court may adjourn proceedings on the claim for such period or periods as it considers reasonable.
- (2) If the court makes a possession order under section 199 or 200, it may (on making the order or at any time before the order is executed) postpone the giving up of possession for such period or periods as it thinks fit.
- (3) The giving up of possession may be postponed by the order for possession, or by suspending or staying execution of the order for possession.
- (4) On an adjournment or postponement under this section, the court must impose conditions as regards
 - (a) payment by the contract-holder of arrears of rent (if any), and
 - (b) continued payment of rent (if any),

unless it considers that to do so would cause exceptional hardship to the contract-holder or would otherwise be unreasonable.

- (5) The court may impose any other conditions it thinks fit.
- (6) If the contract-holder complies with the conditions, the court may if it considers it reasonable to do so discharge the order for possession.
- (7) Schedule 7 makes provision as regards the reasonableness of an adjournment or postponement.

Part 7

MISCELLANEOUS

Implied tenancies and licences

202 Implied tenancies and licences

- (1) This section applies if
 - (a) premises which are not subject to an occupation contract are occupied as a home by a person ("T") who is a trespasser in relation to those premises, and
 - (b) T makes payments in respect of his occupation of the premises to a person ("P") who would be entitled to bring proceedings to evict T as a trespasser.
- (2) If P accepts such payments from T
 - (a) knowing that T is a trespasser in relation to the premises, or
 - (b) at a time when he ought reasonably to know that T is a trespasser in relation to the premises,

P is to be treated as having made a periodic contract with T immediately after the end of the relevant period.

- (3) The relevant period is the period of two months starting with the day on which P first accepts a payment from T as mentioned in subsection (2).
- (4) Subsection (2) does not apply if before the end of the relevant period P brings proceedings to evict T as a trespasser or otherwise shows an intention to treat T as a trespasser.
- (5) A contract under subsection (2) is either a tenancy or a licence.
- (6) The tenancy or licence is to be treated as entitling T to occupy the premises as a home from the day immediately after the last day of the relevant period.
- (7) The amount of rent and rental periods are to be determined having regard to the amount and frequency of the payment or payments made by T and any other relevant circumstances.
- (8) A tenancy or licence under which T is entitled to occupy the premises as a home may not be implied except as provided in this section; but nothing in this section prevents P and T expressly making such a tenancy or licence before the end of the relevant period.

Minors

203 Effect of reaching 16

- (1) This section applies to a tenancy or licence which is not an occupation contract because paragraph 3(2) of Schedule 1 (all those with whom tenancy or licence made under 16) applies to it.
- (2) When the relevant person reaches the age of 16, the following questions are to be determined as if the tenancy or licence were made on the day the person reaches that age
 - (a) whether the tenancy or licence is an occupation contract,
 - (b) the identity of the contract-holders under the contract,
 - (c) whether it is a secure contract or a standard contract.
- (3) The relevant person
 - (a) if the tenancy or licence is made with one person, is that person, and
 - (b) if the tenancy or licence is made with more than one person, is the first of them to reach the age of 16.

204 Contract-holders aged 16 and 17

- (1) This section applies where a person aged 16 or 17 is a contract-holder under an occupation contract.
- (2) The contract-holder is not entitled to repudiate the contract merely because it was made when he was under 18.
- (3) A court may not in any proceedings treat the contract as unenforceable against the contract-holder merely because it was made when he was under 18.
- (4) This Act applies to the contract-holder as if he were 18.

Unfair terms

205 Regulations about unfair terms in occupation contracts

- (1) The Secretary of State may make regulations as regards unfair terms in occupation contracts.
- (2) Regulations under this section may in particular make provision as to
 - (a) the parties to whom, and the occupation contracts to which, the regulations apply,
 - (b) the circumstances in which the regulations do not apply to a term of an occupation contract,
 - (c) the circumstances in which a landlord may not rely on the terms of an occupation contract,
 - (d) the terms which are to apply in those circumstances.

Pilot schemes for recovery of rent arrears

206 Pilot schemes

- (1) The Secretary of State may establish one or more pilot schemes for rent cases falling to be heard in a particular county court (or particular county courts).
- (2) A case is a rent case if
 - (a) the only ground on which a landlord relies in making a possession claim in relation to premises subject to an occupation contract is the ground in section 183 (breach of contract), and
 - (b) the only breach consists in a failure to pay rent.
- (3) A case is also a rent case if the landlord could have made such a possession claim, but for the effect of a pilot scheme.
- (4) A pilot scheme may include
 - (a) provision for a new action for the recovery of arrears of rent (a "rent arrears claim"),
 - (b) provision for a possession claim in a rent case to be treated as a rent arrears claim,
 - (c) provision for the court to adjourn proceedings on a possession claim, subject to issuing a warning to the contract-holder as to the consequences of failing to pay rent,
 - (d) provision for the court to adjourn proceedings on a possession claim, subject to an order directing the contract-holder to pay the rent and arrears (if any).
- (5) In this Part "rent case" has the meaning given by this section.

207 Implementation

- (1) The Secretary of State may by order make such provision as he considers appropriate for and in connection with the implementation of a pilot scheme under section 206.
- (2) An order under subsection (1) may include provision modifying any enactment.
- (3) Before making an order under subsection (1) with respect to rent cases falling to be heard by a county court in Wales, the Secretary of State must consult the National Assembly for Wales.
- (4) The Secretary of State must make such arrangements as he thinks fit for bringing
 - (a) a pilot scheme under section 206, and
 - (b) an order under subsection (1) relating to that scheme, to the attention of persons affected by the scheme.
- (5) To the extent that a pilot scheme has effect with respect to rent cases falling to be heard by a county court in Wales, subsection (4) is to be treated as if it imposed a duty on the National Assembly for Wales as well as the Secretary of State.

208 Review

- (1) The Secretary of State must review the operation of each pilot scheme.
- (2) If a pilot scheme has effect with respect to rent cases falling to be heard by a county court in Wales, the Secretary of State must give the National Assembly for Wales an opportunity to comment on any matter relevant to the review.
- (3) Subject to that, the procedure on a review is to be determined by the Secretary of State.

209 Pilot period

- (1) The Secretary of State may not establish a pilot scheme that comes into effect after the end of the period of three years starting with the day on which section 206 comes into force.
- (2) A scheme may not have effect with respect to
 - (a) rent cases brought by a landlord after the end of the period of four years starting with that day, or
 - (b) rent cases brought by a landlord at any time, but not concluded before the end of the period of six years starting with that day.
- (3) The Secretary of State may end a particular pilot scheme, or all pilot schemes, at any time.

210 Permanent provision

- (1) If it appears to the Secretary of State that it would be desirable for the provision made by a pilot scheme to be applied generally and on a permanent basis to—
 - (a) all rent cases, or
 - (b) rent cases of a particular description,

he may by order make such provision for and in connection with that purpose as he considers appropriate.

- (2) An order under subsection (1) may include provision amending or repealing any enactment.
- (3) An order under subsection (1) must make the same provision as regards rent cases (or rent cases of a particular description) throughout England and Wales.
- (4) Before making an order under subsection (1) the Secretary of State must consult the National Assembly for Wales.

Additional obligations of community landlord

211 Management code

- (1) A community landlord may prepare and issue a management code (or a revised management code) in respect of
 - (a) all the premises in relation to which it is the landlord under an occupation contract, or
 - (b) such of those premises as are specified in the code.
- (2) Before issuing a management code under subsection (1) the landlord must agree the contents of the code with the persons who are contract-holders in

- relation to the premises to which the code will apply ("the relevant contract-holders").
- (3) The appropriate authority may by regulations make provision about preparing and issuing a management code (or revised management code).
- (4) Regulations under subsection (3) may in particular
 - (a) make provision as to the procedure for obtaining agreement for the purposes of subsection (2),
 - (b) provide that the relevant contract-holders are to be treated as having agreed in prescribed circumstances, and
 - (c) make provision as to the manner in which the landlord is to issue the code (or the revised code).
- (5) The circumstances which may be prescribed under subsection (4)(b) include in particular
 - (a) agreement with representatives of the relevant contract-holders,
 - (b) agreement with the majority of the relevant contract-holders, or with the majority of those relevant contract-holders who make their views known.
- (6) A management code is a document setting out how a landlord intends to exercise his rights, or comply with his obligations, in relation to premises.

212 Consultation arrangements

- (1) A community landlord must make and maintain such arrangements as it considers appropriate—
 - (a) for informing contract-holders of relevant proposals on housing management matters that are likely substantially to affect the contract-holders, and
 - (b) for giving the contract-holders a reasonable opportunity to comment on the proposals.
- (2) Before making any decision on a relevant proposal, the landlord must give due consideration to any comments made by contract-holders in accordance with the arrangements.
- (3) A matter is a housing management matter if, in the opinion of the landlord, it relates to
 - (a) the management, maintenance, improvement or demolition of premises subject to occupation contracts, or
 - (b) the provision by the landlord, in his capacity as landlord, of services or amenities in connection with such premises.
- (4) A matter is not a housing management matter so far as it relates to
 - (a) the rent payable or other consideration due to the landlord, or
 - (b) charges for services and facilities provided by the landlord.
- (5) "Relevant proposal on a housing management matter" means a proposal that, in the opinion of the landlord—
 - (a) is about a new programme of maintenance, improvement or demolition, or a change in the practice or policy of the landlord in relation to management, maintenance, improvement or demolition, and

- (b) is likely substantially to affect all contract-holders of the landlord, or a relevant group of such contract-holders.
- (6) "Relevant group" means a group that—
 - (a) forms a distinct social group, or
 - (b) occupies premises which constitute a distinct class (whether by reference to the kind of premises, or the housing estate or other larger area in which they are situated).

213 Statement of consultation arrangements

- (1) A landlord required to make arrangements under section 212 must prepare and publish a statement of the arrangements.
- (2) If the landlord is a local housing authority, it must make a copy of the statement available at the landlord's principal office for inspection at all reasonable times, without charge, by members of the public.
- (3) If the landlord is a registered social landlord, it must send a copy of the statement—
 - (a) to the Housing Corporation and the local housing authority for the area where the premises are situated, or
 - (b) in Wales, to the National Assembly for Wales and the local housing authority for the area where the premises are situated.
- (4) A local housing authority to which a copy is sent under subsection (3) must make it available at its principal office for inspection at all reasonable times, without charge, by members of the public.
- (5) The landlord must give a copy of the statement
 - (a) to any contract-holder of the landlord who asks for one, free of charge, and
 - (b) to any other person who asks for one, on payment of a reasonable fee.
- (6) The landlord must also
 - (a) prepare a summary of the statement, and
 - (b) provide a copy of the summary without charge to any person who asks for one.

Anti-social behaviour injunctions

214 Availability of anti-social behaviour injunctions

In section 153A(4) of the Housing Act 1996 (c. 52) (availability of anti-social behaviour injunctions), paragraph (d) is repealed.

Notices, statements etc.

215 Form of notices etc.

- (1) This section applies to any notice or other document required or authorised to be given or made by or because of this Act.
- (2) The notice or document must be in writing.

- (3) The appropriate authority may prescribe the form of the notice or document and, unless the regulations provide otherwise, a notice or document not in the prescribed form is of no effect.
- (4) The notice or document may be in electronic form provided it—
 - (a) has the certified electronic signature of each person by whom it is required to be signed or executed, and
 - (b) complies with such other conditions as may be prescribed.
- (5) A notice or document within subsection (4) is to be treated as signed by each individual, and executed by each corporation, whose certified electronic signature it has.
- (6) If a notice or document in electronic form is authenticated by a person as agent, it is to be regarded for the purposes of any enactment as authenticated by him under the written authority of his principal.
- (7) References to an electronic signature and to the certification of such a signature are to be read in accordance with section 7(2) and (3) of the Electronic Communications Act 2000 (c. 7).

216 Giving notices etc.

- (1) A document required or authorised to be given to a person by or because of this Act may be given to him by leaving it at, or posting it to, one of the places mentioned in subsection (2).
- (2) The places are
 - (a) the person's last known residence or place of business,
 - (b) any place specified by the person as a place where he may be given documents, or
 - (c) if the document is given to a person in his capacity as a contract-holder, the premises.
- (3) A document required or authorised to be given to a person by or because of this Act may be given to him by transmitting the text of the document to him in an electronic form.
- (4) But subsection (3) applies only if
 - (a) the person to whom the document is to be given has agreed,
 - (b) the text is received by the person in legible form, and
 - (c) the text is capable of being used for subsequent reference.

Land registration

217 Registration of tenancies

Nothing in this Act affects the operation of the Land Registration Act 2002 (c. 9) in relation to an occupation contract which is a tenancy.

Existing tenancies and licences

218 Abolition of assured, secure and other tenancies

- (1) On and after the appointed day, no tenancy or licence (whenever made) can be—
 - (a) a restricted contract,
 - (b) a protected shorthold tenancy,
 - (c) a secure tenancy,
 - (d) an assured tenancy,
 - (e) an introductory tenancy,
 - (f) a demoted tenancy.
- (2) If, immediately before the appointed day, the landlord under a protected or statutory tenancy might have recovered possession of the dwelling-house subject to the tenancy under Case 19 of Schedule 15 to the Rent Act 1977 (c. 42) (former protected shorthold tenancies), the tenancy ceases to be a protected or statutory tenancy on the appointed day.
- (3) Nothing in this section ends a tenancy or licence within subsection (1) or (2).

219 Conversion of existing tenancies and licences

- (1) For the purposes of determining the matters in subsection (2), a tenancy or licence which existed immediately before the appointed day is to be treated as if it were made on the appointed day.
- (2) The matters are
 - (a) whether the tenancy or licence is an occupation contract,
 - (b) the identity of the contract-holders under the contract,
 - (c) whether the contract is a secure contract or a standard contract.
- (3) Subsections (4) to (7) apply to a tenancy or licence which becomes an occupation contract on the appointed day.
- (4) The fundamental provisions applicable to the contract are incorporated as terms of the contract.
- (5) The existing terms of the contract continue to have effect, except to the extent that they
 - (a) are inconsistent with a fundamental provision incorporated as a term of the contract, or
 - (b) are terms of the contract because of an enactment repealed under this Act.
- (6) The supplementary provisions applicable to the contract are incorporated as terms of the contract, except to the extent that they are inconsistent with the existing terms of the contract.
- (7) The unfair terms regulations apply to the contract (whenever made).
- (8) This section is subject to Schedule 8 (which modifies the application of this Act).

220 Pre-existing contracts

- (1) This section applies where, on or after the appointed day, a tenancy or licence is made in pursuance of a contract made before the day on which the order specifying the appointed day is made by the appropriate authority.
- (2) Section 219 and Schedule 8 apply to the tenancy or licence as if
 - (a) the day on which it is made is the appointed day, and
 - (b) immediately before that day it was a tenancy or licence of the kind it would have been on that day but for this Act.
- (3) Paragraphs 3(3), 5(1) and (3), 12, 13, 15 and 18(3) and (7) of Schedule 8 do not apply in relation to the tenancy or licence.

221 Power to end protected and statutory tenancies under Rent Act 1977

- (1) The appropriate authority may by order provide that, on a date specified in the order
 - (a) every tenancy which immediately before the specified date is a protected or statutory tenancy ceases to be such a tenancy, and
 - (b) paragraph 3(3)(c) of Schedule 1 ceases to have effect.
- (2) The order may make provision as to the terms of
 - (a) occupation contracts which were protected or statutory tenancies immediately before the specified date, and
 - (b) occupation contracts made on or after the specified date with a contract-holder who was previously a contract-holder under a contract within paragraph (a) or this paragraph.
- (3) The order may modify any enactment as it applies to contracts within subsection (2).
- (4) The order may make consequential amendments to and repeals of any enactment.

222 Power to end protected occupancies etc. under Rent (Agriculture) Act 1976

- (1) The appropriate authority may by order provide that, on a date specified in the order
 - (a) every tenancy or licence which immediately before the specified date was a protected occupancy or statutory tenancy ceases to be such an occupancy or tenancy, and
 - (b) paragraph 3(3)(b) of Schedule 1 ceases to have effect.
- (2) The order may make provision as to the terms of
 - (a) tenancies and licences which were protected occupancies or statutory tenancies immediately before the specified date, and
 - (b) tenancies and licences made on or after the specified date with a person who was previously a tenant or licensee under a tenancy or licence within paragraph (a) or this paragraph.
- (3) The order may modify any enactment as it applies to tenancies and licences within subsection (2).
- (4) The order may make consequential amendments to and repeals of any enactment.

(5) For the purposes of this section "protected occupancy" and "statutory tenancy" have the meaning given by the Rent (Agriculture) Act 1976 (c. 80).

223 Interpretation

In this Part —

- "the appointed day" is the day appointed under section 243 as the day on which section 218 comes into force,
- "assured shorthold tenancy" and "assured tenancy" have the same meaning as in the Housing Act 1988 (c. 50),
- "demoted tenancy" means a tenancy to which section 143A of the Housing Act 1996 (c. 52) applies,
- "introductory tenancy" has the same meaning as in the Housing Act 1996,
- "protected shorthold tenancy", "protected tenancy", "restricted contract" and (except in section 222) "statutory tenancy" have the same meaning as in the Rent Act 1977 (c. 42), and
- "secure tenancy" has the same meaning as in the Housing Act 1985 (c. 68).

Consequential and transitional provision

224 Consequential amendments

The appropriate authority may by order make consequential amendments to, and repeals and modifications of, any enactment.

225 Transitional provision

The appropriate authority may by order make transitional provision and savings, including provision amending, repealing or modifying any enactment.

Part 8

FINAL PROVISIONS

Interpretation

226 Community landlord and private landlord

- (1) In this Act "community landlord" means—
 - (a) an authority falling within subsection (2), or
 - (b) a registered social landlord, other than a fully mutual housing association or a co-operative housing association.
- (2) The authorities are
 - (a) a local authority,
 - (b) a new town corporation,
 - (c) a housing action trust,
 - (d) an urban development corporation,
 - (e) a housing co-operative to which subsection (3) applies.

- (3) This subsection applies to a housing co-operative (within the meaning of section 27B of the Housing Act 1985 (c. 68)) to the extent that any premises subject to an occupation contract are comprised in a housing co-operative agreement within the meaning of that section.
- (4) In this Act "private landlord" means a landlord other than a community landlord.
- (5) In this Act "registered social landlord" means a body registered in the register maintained under section 1 of the Housing Act 1996 (c. 52) or section 57 of the Housing (Scotland) Act 2001 (asp 10).
- (6) In this Act "fully mutual housing association" and "co-operative housing association" have the same meaning as in the Housing Associations Act 1985 (c. 69) (see section 1(2)).

227 Local authority and other authorities

- (1) This section applies for the interpretation of this Act.
- (2) The following are local authorities
 - (a) a county council,
 - (b) a county borough council,
 - (c) a district council,
 - (d) a London borough council,
 - (e) the Common Council of the City of London,
 - (f) the Council of the Isles of Scilly,
 - (g) the Broads Authority,
 - (h) a joint authority established under Part 4 of the Local Government Act 1985 (c. 51),
 - (i) the London Fire and Emergency Planning Authority,
 - (j) a police authority established under section 3 of the Police Act 1996 (c. 16).
- (3) "Local housing authority", in relation to England, means—
 - (a) a unitary authority,
 - (b) a district council so far as it is not a unitary authority,
 - (c) a London borough council,
 - (d) the Common Council of the City of London,
 - (e) the Council of the Isles of Scilly.
- (4) In subsection (3) "unitary authority" means
 - (a) the council of a county so far as it is the council for an area for which there are no district councils,
 - (b) the council of any district comprised in an area for which there is no county council.
- (5) "Local housing authority", in relation to Wales, means a county council or a county borough council.
- (6) "Housing action trust" means a housing action trust established under Part 3 of the Housing Act 1988 (c. 50) and includes any body established under section 88 of the Housing Act 1988.

- (7) "New town corporation" has the same meaning as in the Housing Act 1985 (c. 68) (see section 4) and includes any body established under paragraph 7 of Schedule 9 to the New Towns Act 1981 (c. 64).
- (8) "Urban development corporation" has the same meaning as in the Housing Act 1985 (see section 4) and includes any body established under section 165B of the Local Government, Planning and Land Act 1980 (c. 65).

228 Appropriate authority

References in this Act to the appropriate authority are to be read —

- (a) in relation to Wales, as references to the National Assembly for Wales, and
- (b) in any other case, as references to the Secretary of State.

229 Landlord, lodger and permitted occupier

- (1) This section applies for the interpretation of this Act.
- (2) The landlord, in relation to an occupation contract, is the person who is (or purports to be) entitled to confer on an individual a right to occupy the premises as a home.
- (3) A person lives in premises as a lodger if the tenancy or licence under which he occupies the premises falls within paragraph 10 of Schedule 1 (accommodation shared with landlord).
- (4) But a person does not live in premises as a lodger if he is given notice under paragraph 6 of Schedule 1 that he is to be regarded as occupying under an occupation contract.
- (5) A person is a permitted occupier of premises subject to an occupation contract if
 - (a) he lives in the premises as a lodger or sub-holder of the contract-holder, or
 - (b) he is not a lodger or sub-holder but is permitted by the contract-holder to live in the premises as a home.

230 Members of a family

- (1) A person is a member of another's family for the purposes of this Act if
 - (a) he is the spouse or civil partner of that person,
 - (b) he and that person live together as if they were husband and wife or as if they were civil partners, or
 - (c) he is that person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.
- (2) For the purposes of subsection (1)(c)
 - (a) a relationship by marriage or civil partnership is to be treated as a relationship by blood,
 - (b) a relationship between persons who have only one parent in common is to be treated as a relationship between persons who have both parents in common, and
 - (c) except for the purposes of paragraph (b), the stepchild of a person is to be treated as his child.

231 The court

- (1) In this Act "the court" means the High Court or a county court.
- (2) Provision made by or under this Act conferring jurisdiction on a court is subject to provision made under section 1 of the Courts and Legal Services Act 1990 (c. 41) (allocation of business between the High Court and county courts).
- (3) Rules of court may make provision about proceedings brought under or because of any provision of this Act.

232 Lease, tenancy and related expressions

- (1) In this Act "lease" and "tenancy" have the same meaning.
- (2) Both expressions include
 - (a) a sub-lease or a sub-tenancy, and
 - (b) a lease or tenancy (or a sub-lease or sub-tenancy) in equity.
- (3) The expressions "lessor" and "lessee" and "landlord" and "tenant", and references to letting, to the grant or making of a lease or to covenants or terms, are to be read accordingly.

233 Premises

- (1) For the purposes of this Act "premises"
 - (a) does not include any structure or vehicle which is capable of being moved from one place to another, but
 - (b) includes any land occupied together with the premises, unless the land is agricultural land exceeding 0.809 hectares.
- (2) "Agricultural land" has the same meaning as in section 184(1) of the Housing Act 1985 (c. 68).
- (3) Premises, in relation to an occupation contract, means the premises subject to the contract.

234 Supported accommodation etc.

- (1) For the purposes of this Act accommodation is "supported accommodation" if—
 - (a) it is provided by a community landlord or a registered charity,
 - (b) the landlord or charity (or a person acting on behalf of the landlord or charity) provides support services to a person entitled to occupy the accommodation, and
 - (c) there is a connection between provision of the accommodation and provision of the support services.
- (2) Accommodation in a care institution (within the meaning of paragraph 7 of Schedule 1) is not supported accommodation.
- (3) "Support services" include (but are not limited to)
 - (a) support in controlling or overcoming addiction,
 - (b) support in finding employment or alternative accommodation, and
 - (c) supporting someone who finds it difficult to live independently because of age, illness, disability or any other reason.

- (4) "Support" includes the provision of advice, training, guidance and counselling.
- (5) For the purposes of this Act "unit", in relation to premises which are supported accommodation, means
 - (a) if the premises form part only of a building, the building, and
 - (b) if that building is one of a number of buildings managed as a single entity, all of those buildings.

235 Effective date

In this Act, the effective date of an occupation contract is the day on which the contract-holder is entitled to begin occupying the premises.

236 Unfair terms regulations and consumer protection regulations

- (1) In this Act "unfair terms regulations" means
 - (a) the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083), and
 - (b) if regulations under section 205 (unfair terms in occupation contracts) so provide, regulations under that section.
- (2) In this Act "consumer protection regulations" means the Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334).
- (3) The Secretary of State may by order amend the definitions in subsections (1)(a) and (2).

237 Family property order

- (1) For the purposes of this Act a family property order is an order under
 - (a) section 24 of the Matrimonial Causes Act 1973 (c. 18) (property adjustment orders in connection with matrimonial proceedings),
 - (b) section 17 or 22 of the Matrimonial and Family Proceedings Act 1984 (c. 42) (property adjustment orders etc. after overseas divorce),
 - (c) paragraph 1 of Schedule 1 to the Children Act 1989 (c. 41) (orders for financial relief against parents),
 - (d) Schedule 7 to the Family Law Act 1996 (c. 27) (transfer of tenancies on divorce or separation),
 - (e) Part 2 of Schedule 5 to the Civil Partnership Act 2004 (c. 33) (property adjustment orders in connection with civil partnership), or
 - (f) paragraph 9 or 13 of Schedule 7 to that Act (property adjustment orders etc. on overseas dissolution of civil partnership).
- (2) An order under Schedule 1 to the Matrimonial Homes Act 1983 (c. 19) (as it continues to have effect because of Schedule 9 to the Family Law Act 1996) is also a family property order.
- (3) When paragraphs 5 and 6 of Schedule 2 to the Family Law Act 1996 come into force, subsection (1)(a) has effect as if for "section 24" there were substituted "sections 23A or 24".

238 Minor definitions

In this Act –

- "charity" has the same meaning as in the Charities Act 1993 (c. 10) (see section 96),
- "common parts", in relation to premises subject to an occupation contract, means
 - (a) any part of a building comprising those premises, and
 - (b) any other premises,

which the contract-holder is entitled under the terms of the contract to use in common with others,

- "contract of employment" means a contract of service or apprenticeship, whether express or implied and (if it is express) whether oral or in writing,
- "district", in relation to a local housing authority, has the same meaning as in the Housing Act 1985 (c. 68) (see section 2),
- "enactment" includes subordinate legislation,
- "fixed term contract" means an occupation contract that is not a periodic contract,
- "housing association" has the same meaning as in the Housing Associations Act 1985 (c. 69) (see section 1),
- "housing trust" has the same meaning as in that Act (see section 2),
- "prescribed" means prescribed by regulations made by the appropriate authority (and related expressions are to be read accordingly),
- "registered charity" means a charity registered under the Charities Act 1993,
- "rent" includes a sum payable under a licence,
- "rental period" means a period in respect of which a payment of rent falls to be made.

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Crown application

240 Crown application

This Act applies to the Crown.

Orders and regulations

241 Orders and regulations

- (1) Any power to make an order or regulations under this Act
 - (a) is exercisable by statutory instrument,
 - (b) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas,
 - (c) may be exercised so as to make different provision for different kinds of occupation contracts, and
 - (d) includes power to make incidental, supplementary, consequential, transitory, transitional or saving provision.
- (2) No order or regulations to which this subsection applies may be made by the Secretary of State unless a draft of the order or regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (3) Subsection (2) applies to orders or regulations under
 - (a) section 62 (power to amend section 51),
 - (b) section 210 (power to make rent arrears pilot scheme permanent),
 - (c) section 221 (power to end protected and statutory tenancies under Rent Act 1977 (c. 42)),
 - (d) section 222 (power to end protected occupancies under Rent (Agriculture) Act 1976 (c. 80)),
 - (e) paragraph 15 of Schedule 1 (power to amend Schedule 1),
 - (f) paragraph 17 of Schedule 2 (power to amend Schedule 2).
- (4) A statutory instrument containing an order or regulations made by the Secretary of State under any other provision of this Act (except section 243) is subject to annulment in pursuance of a resolution of either House of Parliament.

Short title, commencement and extent

242 Short title

This Act may be cited as the Rented Homes Act 2006.

243 Commencement

- (1) Sections 240 to 244 come into force on the day on which this Act is passed.
- (2) Sections 205 to 210 come into force on such day as the Secretary of State may by order appoint.
- (3) The remaining provisions of this Act come into force
 - (a) except in relation to Wales, on such day as the Secretary of State may by order appoint, and
 - (b) in relation to Wales, on such day as the National Assembly for Wales may by order appoint.
- (4) Different days may be appointed for different purposes.

244 Extent

- (1) Subject to subsection (2), this Act extends to England and Wales only.
- (2) Paragraph 15(2) of Schedule 6 also extends to Scotland.
- (3) This Act applies to the Isles of Scilly subject to such exceptions, adaptations and modifications as the Secretary of State may by order direct.

SCHEDULES

SCHEDULE 1

Section 1

EXCEPTIONS TO SECTION 1

Part 1

INCLUSION OF TENANCIES AND LICENCES NOT WITHIN SECTION 1

The rule

- 1 (1) A tenancy or licence which is not within section 1(2) or (3) may be an occupation contract if
 - (a) it confers the right to occupy premises as a home on an individual ("the beneficiary") other than the person with whom it is made, and
 - (b) the notice condition is met.
 - (2) A tenancy or licence which is not within section 1 because no rent or other consideration is payable under it (and to which sub-paragraph (1) does not apply) may be an occupation contract if the notice condition is met.
 - (3) The notice condition is met if, before or at the time when the tenancy or licence is made, the landlord gives a notice to the person with whom it is made stating that it is to be an occupation contract.
 - (4) References to a tenancy or licence to which this paragraph applies are to a tenancy or licence
 - (a) which is within sub-paragraph (1)(a), or
 - (b) under which no rent or other consideration is payable.

Contracts for another's benefit: further provision

- 2 (1) This paragraph applies where a notice under paragraph 1(3) is given in relation to a tenancy or licence within paragraph 1(1)(a).
 - (2) The notice may specify provisions of this Act and subordinate legislation made under it which are to have effect in relation to the occupation contract as if references to the contract-holder were references to the beneficiary.
 - (3) If it does so, the provisions specified in the notice have effect accordingly.
 - (4) Section 11(2)(b) and (3)(b) applies to fundamental provisions specified in the notice as if references to the contract-holder were references to the beneficiary.

Part 2

EXCLUDED TENANCIES AND LICENCES

Tenancies and licences that are never occupation contracts

The rule

- 3 (1) A tenancy or licence is not an occupation contract at any time when this paragraph applies to it.
 - (2) This paragraph applies to a tenancy or licence if all the persons with whom it is made are excluded from being contract-holders by section 1(5) (individuals who have not reached the age of 16).
 - (3) This paragraph also applies to—
 - (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
 - (b) a protected occupancy or a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976 (c. 80),
 - (c) a protected tenancy or a statutory tenancy within the meaning of the Rent Act 1977 (c. 42),
 - (d) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5),
 - (e) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8),
 - (f) a long tenancy (see paragraph 4),
 - (g) a tenancy or licence which relates to direct access accommodation (see paragraph 5).

Meaning of "long tenancy"

- 4 (1) "Long tenancy" means—
 - (a) a tenancy for a fixed term of more than 21 years (whether or not it is or may become terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture),
 - (b) a tenancy for a term fixed by law because of a covenant or obligation for perpetual renewal, other than a tenancy by sub-demise from one which is not a long tenancy, or
 - (c) a tenancy made in pursuance of Part 5 of the Housing Act 1985 (c. 68) (the right to buy), including a tenancy made in pursuance of that Part as it has effect because of section 17 of the Housing Act 1996 (c. 52) (the right to acquire).
 - (2) But a tenancy terminable by notice after a death is not a long tenancy unless it is a shared ownership tenancy.
 - (3) A shared ownership tenancy is a tenancy which—
 - (a) was made by a housing association which was a registered social landlord,
 - (b) was made for a premium calculated by reference to a percentage of the value of the premises or of the cost of providing them, and
 - (c) when made complied with the requirements of the shared ownership regulations then in force.

- (4) A tenancy made before any shared ownership regulations were in force is to be treated as within sub-paragraph (3)(c) if, when it was made, it complied with the requirements of the first such regulations to be in force.
- (5) "Shared ownership regulations" means regulations under
 - (a) section 140(4)(b) of the Housing Act 1980 (c. 51), or
 - (b) paragraph 4(2)(b) of Schedule 4A to the Leasehold Reform Act 1967 (c. 88).

Meaning of "direct access accommodation"

- 5 (1) Direct access accommodation is accommodation which—
 - (a) is provided by a community landlord or a registered charity,
 - (b) (subject to availability) is provided on demand to any person who appears to satisfy criteria determined by the community landlord or charity, and
 - (c) is provided only for periods of 24 hours (or less) at a time.
 - (2) Accommodation may be direct access accommodation even if it is provided to the same person for several periods in succession.

Tenancies and licences that are not occupation contracts unless notice is given

The rule

- 6 (1) A tenancy or licence within section 1, but to which sub-paragraph (2) applies, is not an occupation contract unless the notice condition is met.
 - (2) This sub-paragraph applies to a tenancy or licence
 - (a) which confers the right to occupy premises for the purposes of a holiday,
 - (b) which relates to the provision of accommodation in a care institution (see paragraph 7),
 - (c) which relates to the provision of accommodation in barracks (see paragraph 8),
 - (d) which is a temporary expedient (see paragraph 9), or
 - (e) to which the shared accommodation exception applies (see paragraph 10).
 - (3) The notice condition is met if, before or at the time when the tenancy or licence is made, the landlord gives a notice to the person with whom it is made stating that it is to be an occupation contract.

Meaning of "care institution"

- 7 "Care institution" means
 - (a) a health service hospital within the meaning of the National Health Service Act 1977 (c. 49) (see section 128(1)),
 - (b) an independent hospital, a care home or a residential family centre within the meaning of the Care Standards Act 2000 (c. 14) (see sections 2 to 4), or
 - (c) a children's home in respect of which a person is registered under Part 2 of that Act.

Meaning of "barracks"

- 8 (1) "Barracks" means a building or structure, or part of a building or structure, which—
 - (a) is occupied for the purposes of any of the armed forces of the Crown, and
 - (b) is used for the provision of sleeping accommodation for one or more persons who are members of any of those forces.
 - (2) But "barracks" does not include a house or flat let or licensed as a separate dwelling.

Meaning of "temporary expedient"

- 9 (1) A tenancy or licence is a temporary expedient if it is made as a temporary expedient with a person who entered the premises to which it relates (or any other premises) as a trespasser.
 - (2) It is irrelevant whether or not, before the beginning of the tenancy or licence, another tenancy or licence to occupy the premises (or any other premises) had been made with the person.
 - (3) A tenancy or licence which arises under section 202 is not a temporary expedient.

Meaning of "shared accommodation"

- 10 (1) The shared accommodation exception applies if
 - (a) the terms of the tenancy or licence provide for the tenant or licensee to share any accommodation with the landlord, and
 - (b) immediately before the tenancy or licence is made the landlord occupies as his only or principal home premises which include all or part of the shared accommodation.
 - (2) But the exception applies only for so long as the person who is from time to time the landlord in relation to the tenancy or licence continues to occupy such premises as his only or principal home.
 - (3) A tenant or licensee shares accommodation with the landlord if the tenant or licensee has the use of it in common with the landlord (whether or not in common with others).
 - (4) "Accommodation" does not include an area used for storage, or a staircase, passage, corridor or other means of access.
 - (5) If two or more persons are the landlord in relation to a tenancy or licence, references to the landlord are references to any one of them.

Tenancies and licences to which special rules apply

Homelessness

A tenancy or licence within section 1, but made with an individual by a local housing authority because of the authority's functions under Part 7 of the Housing Act 1996 (c. 52) (homelessness), is not an occupation contract unless the authority has decided—

- (a) that the individual is eligible for assistance within the meaning of section 183 of that Act, and
- (b) that the authority owes him a duty under section 193 of that Act (duty to secure availability of accommodation for two years).
- 12 (1) This paragraph applies where a local housing authority, in pursuance of any of the authority's housing functions under section 188, 190, 200 or 204(4) of the Housing Act 1996 (c. 52) (interim housing duties), makes arrangements with a relevant landlord for the provision of accommodation.
 - (2) A tenancy or licence within section 1 but made by a relevant landlord in pursuance of the arrangements is not an occupation contract until immediately after the end of the relevant period.
 - (3) Sub-paragraph (2) does not apply if, before the end of the relevant period, the landlord gives the person with whom the tenancy or licence is made notice that it is an occupation contract.
 - (4) The relevant period is the period of 12 months starting with
 - (a) the day on which that person was notified of the authority's decision under section 184(3) or 198(5) of the Housing Act 1996, or
 - (b) if there is a review of that decision under section 202 of that Act or an appeal to the court under section 204 of that Act, the day on which he is notified of the decision on review or the appeal is finally determined.
 - (5) "Relevant landlord" means
 - (a) a community landlord which is a registered social landlord, or
 - (b) a private landlord.

Supported accommodation

- 13 (1) A tenancy or licence within section 1, but which relates to supported accommodation, is not an occupation contract if it is intended that accommodation will be provided under it for a period which is no longer than the relevant period.
 - (2) But if the tenancy or licence continues after the end of the relevant period, it becomes an occupation contract immediately after the end of the relevant period.
 - (3) The effective date of an occupation contract under sub-paragraph (2) is the day immediately after the last day of the relevant period.
 - (4) The relevant period is the period of four months starting with the start date of the tenancy or licence, but this is subject to paragraph 14.
 - (5) In this Schedule, the start date of a tenancy or licence is the day on which the tenant or licensee is first entitled to occupy the premises subject to the tenancy or licence.
- 14 (1) This paragraph applies if
 - (a) the tenant or licensee was previously entitled to occupy supported accommodation under one or more relevant tenancies or licences ("the previous contracts"), and
 - (b) the current tenancy or licence is the immediate successor of the previous contract (or one of the previous contracts).

- (2) A relevant tenancy or licence is a tenancy or licence which relates to supported accommodation and to—
 - (a) the premises to which the current tenancy or licence relates, or
 - (b) premises in the same unit as the premises to which the current tenancy or licence relates.
- (3) If there is a sole tenant or licensee and one previous contract, the relevant period is the period of four months starting with the start date of the previous contract.
- (4) If there is a sole tenant or licensee and two or more previous contracts, the relevant period is the period of four months starting with the start date of the most recent of the previous contracts which was not itself the immediate successor of a relevant tenancy or licence.
- (5) If there are joint tenants or licensees, the relevant period is the period of four months starting with the date identified by
 - (a) identifying, in relation to each joint tenant or licensee, the date on which the relevant period would start under sub-paragraphs (3) and (4) if he were the sole tenant or licensee, and
 - (b) taking the earliest of those dates.
- (6) A tenancy or licence ("contract 2") is the immediate successor of another tenancy or licence ("contract 1") if contract 1 ends immediately before the start date of contract 2.

Part 3

POWER TO AMEND SCHEDULE

- 15 (1) The appropriate authority may by order amend this Schedule.
 - (2) An order under sub-paragraph (1) may make consequential amendments to and repeals of any enactment.

SCHEDULE 2

Sections 4 and 5

OCCUPATION CONTRACTS WHICH MAY BE STANDARD CONTRACTS

Occupation contracts by notice

An occupation contract which would not be an occupation contract but for a notice under paragraph 1 or 6 of Schedule 1.

Supported accommodation

2 An occupation contract which relates to supported accommodation.

Probationary occupation

3 (1) An occupation contract within this paragraph which does not relate to supported accommodation.

- (2) An occupation contract is within this paragraph unless, immediately before the relevant date
 - (a) a contract-holder under it was a contract-holder under a secure contract, and
 - (b) the landlord under the secure contract was a community landlord.
- (3) The relevant date—
 - (a) in relation to a contract made by a community landlord, is the effective date, and
 - (b) in relation to a contract under which a community landlord becomes the landlord, is the day on which it becomes the landlord.

Accommodation for asylum seekers

An occupation contract made in order to provide accommodation under Part 6 of the Immigration and Asylum Act 1999 (c. 33) (support for asylum seekers).

Accommodation for displaced persons

An occupation contract made under the Displaced Persons (Temporary Protection) Regulations 2005 (S.I. 2005/1379).

Accommodation for homeless persons

An occupation contract made as described in paragraph 11 or 12 of Schedule 1 (accommodation for homeless persons).

Service occupancy: general

- 7 (1) An occupation contract where the contract-holder
 - (a) is employed by a relevant employer, and
 - (b) is required by his contract of employment to occupy the premises.
 - (2) "Relevant employer" means
 - (a) a local authority,
 - (b) a new town corporation,
 - (c) a housing action trust,
 - (d) an urban development corporation,
 - (e) a registered social landlord (other than a fully mutual housing association or a co-operative housing association),
 - (f) a manager who exercises a local housing authority's management functions under a management agreement, or
 - (g) the governors of a voluntary aided school.
 - (3) "Management agreement" means an agreement under section 27 of the Housing Act 1985 (c. 68) and "manager" means a person with whom the agreement is made.
 - (4) "Voluntary aided school" has the same meaning as in the School Standards and Framework Act 1998 (c. 31).

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Service occupancy: police

- 8 An occupation contract where –
 - the contract-holder is a member of a police force, and
 - (b) the premises are provided for the contract-holder free of rent under regulations made under section 50 of the Police Act 1996 (c. 16) (general regulations as to government, administration and conditions of service).

Service occupancy: fire and rescue services

- An occupation contract where
 - the contract-holder is an employee of a fire and rescue authority,
 - the contract-holder's contract of employment requires him to live in close proximity to a particular fire station, and
 - the premises were provided to him by the fire and rescue authority in consequence of that requirement.

Student accommodation

- 10 (1) An occupation contract where the right to occupy is conferred for the purpose of enabling the contract-holder to attend a designated course at an educational establishment.
 - (2) "Designated course" means a course of any kind prescribed for the purposes of this paragraph.
 - (3) "Educational establishment" means an institution or university which provides further education or higher education (or both); and "further education" and "higher education" have the same meaning as in the Education Act 1996 (c. 56) (see sections 2 and 579).

Temporary accommodation: land acquired for development

- 11 (1) An occupation contract where
 - the premises are, or are part of, land which has been acquired for development, and
 - the premises are used by the landlord as temporary housing accommodation pending development of the land.
 - (2) "Development" has the meaning given by section 55 of the Town and Country Planning Act 1990 (c. 8).

Temporary accommodation: persons taking up employment

- 12 (1) An occupation contract where
 - (a) immediately before the making of the contract the contract-holder was not living in the district in which the premises are situated,
 - before the making of the contract the contract-holder obtained employment or an offer of employment in the district or its surrounding area, and
 - the right to occupy was conferred for the purpose of meeting the contract-holder's need for temporary accommodation in the district

or its surrounding area in order to work there, and enabling him to find permanent accommodation there.

(2) In this paragraph –

"district" means district of a local housing authority, and

"surrounding area", in relation to a district, means the area consisting of each district that adjoins it.

Temporary accommodation: short-term arrangements

13 An occupation contract where –

- (a) the premises have been let to the landlord with vacant possession for use as temporary housing accommodation,
- (b) the terms on which they have been let include provision for the lessor to obtain vacant possession from the landlord at the end of a specified period or when required by the lessor,
- (c) the lessor is not a community landlord, and
- (d) the landlord has no interest in the premises other than under the lease in question or as mortgagee.

Temporary accommodation: accommodation during works

14 (1) An occupation contract where –

- (a) the premises (the "temporary premises") have been made available for occupation by the contract-holder ("C") (or C's predecessor) while works are carried out on the premises previously occupied by C (or C's predecessor) as a home,
- (b) the landlord of the temporary premises is not the same as the landlord of the premises previously occupied by C (or C's predecessor) (the "old premises"), and
- (c) C (or C's predecessor) was not a contract-holder under a secure contract of the old premises at the time when C (or C's predecessor) ceased to occupy them as a home.
- (2) A person is a predecessor of a contract-holder under an occupation contract if he was an earlier contract-holder under the same contract.

Accommodation which is not social accommodation

- 15 (1) An occupation contract where the landlord is a registered social landlord and
 - (a) the allocation rules did not apply to the making of the contract, or
 - (b) the premises are made available to the contract-holder because he is a key worker.
 - (2) The allocation rules are the landlord's rules for determining priority as between applicants in the allocation of housing accommodation, and include any rule or practice whereby the landlord provides accommodation to persons nominated by a local housing authority.
 - (3) Whether a contract-holder is a "key worker" is to be determined in accordance with regulations made by the appropriate authority.

- (4) The regulations may include provision identifying key workers by reference to the nature of their employment, the identity of their employer, and the amount of their earnings.
- (5) The Secretary of State must consult the Housing Corporation before making regulations under this paragraph.

Premises intended for transfer

- 16 An occupation contract where
 - (a) the community landlord is a registered social landlord,
 - (b) the landlord has acquired or built or otherwise developed the premises with the intention of transferring them to a fully mutual housing association or a co-operative housing association, and
 - (c) the occupation contract is made in anticipation of the transfer of the premises.

Power to amend

- 17 (1) The appropriate authority may by order amend this Schedule; but the National Assembly for Wales may do so only if it has not made an order under section 9.
 - (2) An order under sub-paragraph (1) may make consequential amendments to and repeals of any enactment.

SCHEDULE 3

Section 57

POWER OF COURT TO REMAND

Introductory

- 1 (1) This Schedule applies where the court has power to remand a person under section 57.
 - (2) In this Schedule "court" includes the relevant judge.

Remand in custody or on bail

- 2 (1) The court may
 - (a) remand the person in custody (that is, commit him to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require), or
 - (b) remand him on bail in accordance with sub-paragraph (2).
 - (2) The court may remand him on bail—
 - (a) by taking from him a recognizance (with or without sureties) conditioned as provided in paragraph 3, or
 - (b) by fixing the amount of the recognizances with a view to their being taken subsequently in accordance with paragraph 6 and in the meantime committing him to custody in accordance with subparagraph (1)(a).

- (3) Where a person is brought before the court after remand, the court may further remand him.
- 3 (1) If a person is remanded on bail under paragraph 2(1)(b), the court may direct that his recognizance be conditioned for his appearance
 - (a) before that court at the end of the period of remand, or
 - (b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.
 - (2) If a recognizance is conditioned for a person's appearance as mentioned in sub-paragraph (1)(b), the fixing of any time for him next to appear is to be treated as a remand.
 - (3) Nothing in this paragraph deprives the court of the power at a subsequent hearing to remand him afresh.
- 4 (1) The court may not remand a person for a period exceeding eight clear days, except that—
 - (a) if the court remands him on bail, it may remand him for a longer period if he and the landlord on whose application the injunction was granted consent, and
 - (b) if the court adjourns a case under section 58(1), the court may remand him for the period of the adjournment.
 - (2) Where the court has power to remand a person in custody it may, if the remand is for a period not exceeding three clear days, remit him to the custody of a constable.

Further remand

- 5 (1) If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the end of the period for which he was remanded, the court may, in his absence, remand him for a further time.
 - (2) In the case of a person who was remanded on bail, the power under subparagraph (1) may be exercised by enlarging his recognizance (and those of any sureties for him) to a later time.
 - (3) Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand him under sub-paragraph (1), the court may in his absence enlarge his recognizance (and those of any sureties for him) to a later time; and the enlargement of his recognizance is to be treated as a further remand.
 - (4) Paragraph 4(1) does not apply to the exercise of the powers conferred by this paragraph.

Postponement of taking of recognizance

Where under paragraph 2(2)(b) the court fixes the amount in which the principal (and his sureties, if any) are to be bound, the recognizance may afterwards be taken by such person as may be specified by rules of court, with the same consequences as if it had been entered before the court.

SCHEDULE 4

Sections 109 and 121

REASONABLENESS OF WITHHOLDING CONSENT, ETC.

Introductory

- 1 This Schedule applies for the purposes of assessing whether—
 - (a) it is reasonable for a landlord to refuse consent to a transaction, or
 - (b) a condition subject to which the landlord gives consent is reasonable.

Status of occupation contract

The relevant circumstances may include whether any party to the contract has taken steps towards ending the contract or done any act which may cause the contract to end.

The premises

- 3 (1) The following circumstances may be relevant.
 - (2) The size and suitability of the premises affected by the transaction.
 - (3) Whether, as a result of the transaction, the premises will—
 - (a) constitute an overcrowded dwelling for the purposes of Part 10 of the Housing Act 1985 (c. 68) (see section 324),
 - (b) provide substantially more extensive accommodation than is reasonably required by the persons who will occupy the premises as a home, or
 - (c) provide accommodation that is not suitable to the needs of the persons who will occupy the premises as a home.
 - (4) Whether, if the transaction were to take place, an estate management ground would become available to the landlord.
 - (5) If the landlord has established requirements as to—
 - (a) the number of persons who are to occupy the premises affected by the transaction as a home, or
 - (b) the age or general characteristics of those persons, whether the persons who will occupy the premises as a home will comply with those requirements.
 - (6) But the landlord's requirements are to be taken into account under subparagraph (5) only to the extent that they are reasonable.

Circumstances of contract-holder, etc.

- 4 (1) The relevant circumstances may include the probable effect of the transaction on the private and family life of
 - (a) the parties to the transaction, and
 - (b) any other person who occupies, or as a result of the transaction will occupy, the premises affected by the transaction as a home.
 - (2) The relevant circumstances may include the financial interests of the contract-holder; but this sub-paragraph does not apply if the occupation contract is a secure contract and the landlord is a community landlord.

- 5 (1) The relevant circumstances may include the conduct of the contract-holder (including, in particular, whether he is or has been in breach of the occupation contract).
 - (2) If the contract-holder is in breach of the occupation contract when he requests the landlord's consent to the transaction, it is reasonable for the landlord to impose a condition that—
 - (a) his consent is to take effect only after the contract-holder ceases to be in breach, or
 - (b) despite anything in this Act or the occupation contract the person, or all the persons, who will be contract-holders after the transaction are to be liable in respect of the breach.

Landlord's circumstances

- 6 (1) The following circumstances may be relevant.
 - (2) The landlord's interests, including his financial interests.
 - (3) If the landlord is a community landlord, the probable effect of the transaction on its ability to fulfil its housing functions.
 - (4) Whether (and if so, when) a person would obtain premises (or premises similar to the premises affected by the transaction) from the landlord if the transaction did not take place.
 - (5) If the landlord is required to publish a summary of rules under section 106 of the Housing Act 1985 (c. 68) (allocation of housing accommodation), those rules.
 - (6) If the landlord is a local housing authority, its allocation scheme (within the meaning of section 167 of the Housing Act 1996 (c. 52)) and any information available under section 167(4A) of that Act to a person applying for an allocation of housing accommodation.
 - (7) If neither sub-paragraph (5) nor sub-paragraph (6) applies but the landlord has criteria for the allocation of accommodation, those criteria.
 - (8) Whether the transaction accords (or the conditions to which the transaction is subject accord) with a management code issued under section 211.
- 7 (1) The landlord's refusal of consent is reasonable if
 - (a) the landlord is a local housing authority, and
 - (b) as a result of the transaction a person who is ineligible (or is to be treated as ineligible) for an allocation of housing accommodation by the landlord will become a contract-holder.
 - (2) Sub-paragraph (1) does not apply to a transfer to a potential successor under section 131 or to a secure contract-holder under section 132.
 - (3) Whether a person is ineligible, or is to be treated as ineligible, for an allocation of housing accommodation by the landlord is to be determined in accordance with section 160A of the Housing Act 1996 and regulations under that section.

Proposed joint contract-holder

- 8 (1) If the contract-holder under the occupation contract seeks the landlord's consent to adding a joint contract-holder under section 108, the relevant circumstances may include—
 - (a) whether the proposed joint contract-holder is a suitable contract-holder,
 - (b) whether he is a member of the contract-holder's family and, if so, the nature of the relationship,
 - (c) whether he is likely to become a sole contract-holder in relation to the premises,
 - (d) whether he is likely, but for being made a joint contract-holder, to succeed to the contract under section 141.
 - (2) Circumstances relevant to paragraph 8(1)(a) may include whether the proposed joint contract-holder
 - (a) is likely to comply with the contract, and
 - (b) has complied with other occupation contracts (whether as contractholder under those contracts or otherwise).
 - (3) Circumstances relevant to paragraph 8(1)(c) may include
 - (a) whether the landlord would have been able to refuse consent if the contract-holder requested the landlord's consent to a transfer of the contract to the proposed joint contract-holder, and
 - (b) any circumstances that would be relevant if the landlord were considering whether to make a new occupation contract in relation to the premises with that person.
 - (4) Circumstances relevant to paragraph 8(1)(d) may include the probable effect of giving consent as regards
 - (a) the persons who may in future be qualified to succeed to the occupation contract, and
 - (b) the period for which the occupation contract is likely to continue in force if one or more of those persons do succeed to it.
 - (5) If the landlord considers that the probable effect of giving consent is to lengthen substantially the period during which the occupation contract is likely to continue in force, it is reasonable for the landlord to impose the condition mentioned in sub-paragraph (6).
 - (6) The condition is that the joint contract-holder is to be treated for the purposes of this Act as a priority successor or as a reserve successor in relation to the occupation contract.

Potential successor

- 9 (1) This paragraph applies if the contract-holder under the occupation contract seeks the landlord's consent to a transfer of the contract to a potential successor in accordance with section 131.
 - (2) The relevant circumstances may include the probable effect of giving consent as regards—
 - (a) the persons who may in future be qualified to succeed to the occupation contract, and

- (b) the period for which the occupation contract is likely to continue in force if one or more of those persons do succeed to it.
- (3) If the landlord considers that the probable effect of giving consent is to lengthen substantially the period during which the occupation contract is likely to continue in force, it is reasonable for the landlord to impose the condition mentioned in sub-paragraph (4).
- (4) The condition is that the potential successor is to be treated for the purposes of this Act as a priority successor or as a reserve successor in relation to the occupation contract.

Transfer to secure contract-holder

- 10 (1) This paragraph applies if the contract-holder under a secure contract ("the transferor") seeks to transfer the contract in accordance with section 132 to a person ("the transferee") who is a contract-holder under another secure contract.
 - (2) The relevant circumstances may include whether the transfer is to be part of a series of transactions and, if it is, all the circumstances relating to the other transactions intended to be part of the series.
 - (3) If the transfer is to be part of a series of transactions it is reasonable to impose a condition that the transfer may take place only if the other transactions take place.
 - (4) The relevant circumstances may include whether the transferee is a priority or reserve successor in relation to the secure contract under which he is a contract-holder before the transfer.
 - (5) If he is, it is reasonable to impose a condition requiring that the transferee is to be treated for the purposes of this Act as a successor of that kind in relation to the secure contract transferred to him by the transferor.

SCHEDULE 5

Sections 162 and 200.

SUITABLE ALTERNATIVE ACCOMMODATION

Introductory

- 1 (1) This Schedule applies for the purposes of
 - (a) an order under section 162(3)(b) (appeal following possession for abandonment), or
 - (b) a possession order under section 200 (estate management grounds).
 - (2) In this Schedule the premises previously occupied by the contract-holder or of which possession is sought are referred to as "the existing premises", and the occupation contract to which those premises were or are subject is referred to as "the existing contract".

Certificate of local housing authority

2 (1) This paragraph applies if this Schedule applies because of section 200 and the landlord under the existing contract is not a local housing authority.

(2) A certificate of the local housing authority for the district in which the existing premises are situated, certifying that the authority will provide suitable alternative accommodation for the contract-holder by a date specified in the certificate, is conclusive evidence that suitable alternative accommodation will be available for him by that date.

Suitable accommodation

- 3 (1) This paragraph applies if
 - (a) this Schedule applies because of section 162, or
 - (b) this Schedule applies because of section 200 and either no certificate under paragraph 2 is produced to the court, or the landlord in relation to the existing premises is a local housing authority.
 - (2) Accommodation is suitable if
 - (a) it is to be occupied by the contract-holder under an occupation contract that affords him security of tenure reasonably equivalent to that afforded by the existing contract, and
 - (b) in the opinion of the court it is reasonably suitable to the needs of the contract-holder and his family.
 - (3) If the existing contract relates to a separate dwelling, accommodation is not suitable unless it is a separate dwelling.

Needs of contract-holder and his family

- 4 (1) The court must determine whether accommodation is reasonably suitable to the needs of the contract-holder and his family in accordance with this paragraph.
 - (2) The court must consider
 - (a) the needs of the contract-holder and his family as regards extent of accommodation,
 - (b) if the landlord is a private landlord, the needs of the contract-holder and his family as regards character of accommodation,
 - (c) the means of the contract-holder and his family,
 - (d) if the contract-holder or a member of his family works or is being educated, the distance of the accommodation from the place (or places) of work or education,
 - (e) if proximity to the home of any member of the contract-holder's family is essential to the well-being of the contract-holder or that member of his family, the proximity of the accommodation to that home,
 - (f) the terms of the existing contract and the terms of the occupation contract under which the accommodation is to be occupied, and
 - (g) if furniture was provided by the landlord under the existing contract, whether furniture is to be provided for use by the contract-holder and his family and, if so, the nature of that furniture.
 - (3) If the landlord is a community landlord, the court must also consider the nature of the accommodation which it is the practice of the landlord to allocate to persons with similar needs.
 - (4) If the landlord is a private landlord the court may consider, as an alternative to the matters in sub-paragraph (2)(a) to (c), whether the accommodation is

- similar as regards rent and extent to the accommodation provided in the neighbourhood by community landlords for comparable persons.
- (5) "Comparable persons" are those whose needs, as regards extent, are in the opinion of the court similar to those of the contract-holder and the contract-holder's family.
- (6) For the purposes of sub-paragraph (4) a certificate of a local housing authority stating
 - (a) the extent of the accommodation provided by the authority to meet the needs of persons with families of such number as may be specified in the certificate, and
 - (b) the amount of rent charged by the authority for accommodation of that extent,

is to be conclusive evidence of the facts so stated.

(7) In considering the matters in sub-paragraph (2)(f) the court may not take into account any terms of the occupation contract that relate to lodgers and sub-holders.

Overcrowding

Accommodation is not suitable to the needs of the contract-holder and his family if, as a result of their occupation of the accommodation, the accommodation would constitute an overcrowded dwelling for the purposes of Part 10 of the Housing Act 1985 (c. 68) (see section 324).

Evidence of certificate of local housing authority

- A document that purports to be a certificate of the local housing authority named in the certificate, issued for the purposes of this Schedule, and signed by the proper person on behalf of the authority
 - (a) is to be received in evidence, and
 - (b) unless the contrary is shown, is to be treated as such a certificate without further proof.

SCHEDULE 6

Sections 185 and 189

ESTATE MANAGEMENT GROUNDS

Part 1

THE GROUNDS

Ground A

- The landlord intends, within a reasonable time of obtaining possession of the premises—
 - (a) to demolish or reconstruct the building or part of the building comprising the premises, or
 - b) to carry out work on that building or on land treated as part of the premises,

and cannot reasonably do so without obtaining possession of the premises.

Ground B

- 2 (1) This ground arises if the premises satisfy the first condition or the second condition.
 - (2) The first condition is that the premises are in an area which is the subject of a redevelopment scheme approved in accordance with Part 2 of this Schedule, and the landlord intends within a reasonable time of obtaining possession to dispose of the premises in accordance with the scheme.
 - (3) The second condition is that part of the premises is in such an area and the landlord intends within a reasonable time of obtaining possession to dispose of that part in accordance with the scheme and for that purpose reasonably requires possession of the premises.

Ground C

- 3 (1) The landlord is a charity and the contract-holder's continued occupation of the premises would conflict with the objects of the charity.
 - (2) But this ground is not available to the landlord ("L") unless, at the time the contract was made and at all times after that, the person in the position of landlord (whether L or another person) has been a charity.

Ground D

- The premises have features which are substantially different from those of ordinary premises and which are designed to make them suitable for occupation by a physically disabled person who requires accommodation of a kind provided by the premises and
 - (a) there is no longer such a person living in the premises, and
 - (b) the landlord requires them for occupation by such a person (whether alone or with members of his family).

Ground E

- 5 (1) The landlord is a housing association or housing trust which makes premises available only for occupation (whether alone or with others) by persons who are difficult to house, and
 - (a) either there is no longer such a person living in the premises or a local housing authority has offered the contract-holder a right to occupy other premises under a secure contract, and
 - (b) the landlord requires the premises for occupation by such a person (whether alone or with members of his family).
 - (2) A person is difficult to house if his circumstances (other than merely financial circumstances) make it especially difficult for him to satisfy his need for housing.

Ground F

- The premises constitute part of a group of premises which it is the practice of the landlord to make available for occupation by persons with special needs and
 - (a) a social service or special facility is provided in close proximity to the group of premises in order to assist persons with those special needs,

- (b) there is no longer a person with those special needs living in the premises, and
- (c) the landlord requires the premises for occupation by a person who has those special needs (whether alone or with members of his family).

Ground G

The contract-holder succeeded to the occupation contract under section 141 as a reserve successor of the previous contract-holder, and the accommodation comprised in the premises is more extensive than is reasonably required by the contract-holder.

Ground H

- 8 (1) This ground arises if the first condition and the second condition are met.
 - (2) The first condition is that a joint contract-holder's rights and obligations under the contract have been ended in accordance with
 - (a) section 112 or 114 (withdrawal), or
 - (b) section 115, 117 or 119 (exclusion).
 - (3) The second condition is that—
 - (a) the accommodation comprised in the premises is more extensive than is reasonably required by the remaining contract-holder (or contract-holders), or
 - (b) where the landlord is a community landlord, the remaining contract-holder does not (or the remaining contract-holders do not) meet the landlord's criteria for the allocation of housing accommodation.

Ground I

- 9 (1) This ground arises where it is desirable for some other substantial estate management reason that the landlord should obtain possession of the premises.
 - (2) An estate management reason may, in particular, relate to—
 - (a) all or part of the premises, or
 - (b) any other premises of the landlord to which the premises are connected, whether by reason of proximity or the purposes for which they are used, or in any other manner.

Part 2

APPROVAL OF REDEVELOPMENT SCHEMES

Approval and variation of scheme

- 10 (1) The appropriate authority may, on the application of a landlord, approve for the purposes of Ground B a scheme for the disposal and redevelopment of an area of land consisting of or including the whole or part of premises subject to an occupation contract.
 - (2) For the purposes of this paragraph –

- (a) "disposal" means a disposal of any interest in the land (including the grant of an option), and
- (b) "redevelopment" means the demolition or reconstruction of buildings or the carrying out of other works to buildings or land,
- and it is immaterial whether the disposal is to precede or follow the redevelopment.
- (3) The appropriate authority may on the application of the landlord approve a variation of a scheme previously approved by it and may, in particular, approve a variation adding land to the area subject to the scheme.

Notice to contract-holders affected

- 11 (1) If a landlord proposes to apply to the appropriate authority for the approval (or variation) of a scheme, the landlord must give a notice to the contract-holder under any affected occupation contract.
 - (2) An occupation contract is affected if the premises subject to it are affected by the proposal.
 - (3) The notice must state
 - (a) the main features of the proposed scheme (or the scheme as proposed to be varied),
 - (b) that the landlord proposes to apply to the appropriate authority for approval of the scheme (or variation), and
 - (c) that, because of section 185 and Ground B, the effect of such approval will be to enable the landlord to make a possession claim in respect of the premises.
 - (4) The notice must also inform the contract-holder that—
 - (a) he may make representations to the landlord about the proposal, and
 - (b) the representations must be made before the end of the period of 28 days starting with the day on which the notice is given to him (or such longer period as the landlord may specify in the notice).
 - (5) The landlord may not apply to the appropriate authority until the landlord has considered the representations made to him before the end of that period.

Decision on approval or variation

- 12 (1) In considering whether to give its approval to a scheme (or variation) the appropriate authority must, in particular, take into account—
 - (a) the effect of the scheme on the extent and character of housing accommodation in the neighbourhood,
 - (b) the period of time proposed in the scheme as the period within which the proposed disposal and redevelopment will take place, and
 - (c) the extent to which the scheme includes provision for housing provided under the scheme to be sold to, or occupied under occupation contracts by, relevant persons.
 - (2) "Relevant persons" means existing contract-holders of the landlord and, if the landlord is a community landlord, persons nominated by the landlord.
 - (3) The appropriate authority must also take into account
 - (a) any representations made to it, and

- (b) so far as they are brought to the appropriate authority's notice, any representations made to the landlord.
- (4) The landlord must give to the appropriate authority such information as to the representations made to the landlord, and other relevant matters, as the appropriate authority may determine.
- (5) Sub-paragraph (6) applies in the case of a landlord under an occupation contract who would (but for this paragraph) be required under section 212 to consult the contract-holder as regards a redevelopment scheme (or a variation of a redevelopment scheme).
- (6) This paragraph is to apply in relation to the landlord's consultation with the contract-holder instead of that section.

Scheme affecting part of premises etc.

- The appropriate authority may not approve a scheme (or variation) so as to include in the area subject to the scheme
 - (a) part only of any premises subject to an occupation contract, or
 - (b) any premises subject to an occupation contract that are not affected by the works involved in the redevelopment but are proposed to be disposed of along with other land which is so affected,

unless it is satisfied that the inclusion is justified in the circumstances.

Conditions

- 14 (1) The approval may be given subject to conditions and may be expressed to end after a specified period.
 - (2) The appropriate authority, on the application of the landlord or otherwise, may vary an approval so as to—
 - (a) add, remove or vary conditions to which the approval is subject, or
 - (b) extend or restrict the period after which the approval is to end.

Premises of registered social landlords etc.

- 15 (1) The functions of the appropriate authority under this Part of this Schedule are to be exercised by the Housing Corporation if
 - (a) the landlord is a social landlord registered in the register maintained under section 1(1) of the Housing Act 1996 (c. 52), and
 - (b) under section 56 of that Act, the Housing Corporation is the relevant authority in relation to the landlord.
 - (2) The functions of the appropriate authority under this Part of this Schedule are to be exercised by the Scottish Ministers if the landlord is a social landlord registered in the register of social landlords under section 57 of the Housing (Scotland) Act 2001 (asp 10).

Special provision for community landlords

For the purposes of this Part of this Schedule a community landlord is to be treated as being a landlord in relation to premises if it has an interest of any description in those premises.

SCHEDULE 7

Sections 199, 200 and 201.

POSSESSION ORDERS ETC.: REASONABLENESS

Introductory

- This Schedule applies for the purpose of determining whether it is reasonable—
 - (a) to make an order for possession under section 199 (breach of contract) or 200 (estate management grounds), or
 - (b) to make a decision under section 201 to adjourn proceedings on a possession claim or postpone the giving up of possession.
- In determining whether to make such an order or decision the court must consider whether it is reasonable, having regard to the circumstances relevant to the particular case, to make that order or decision instead of
 - (a) no order or decision, or
 - (b) any other order or decision available to the court.

Relevant circumstances: general

- If a possession claim is made on the ground in section 183 (breach of contract) the relevant circumstances may include—
 - (a) the nature, frequency or duration of the breach or breaches,
 - (b) the degree to which the contract-holder (or a permitted occupier of the premises) is responsible for the breach,
 - (c) how likely it is that the breach will recur, and
 - (d) any action to end, or prevent a recurrence of, the breach that was taken by the landlord before making a possession claim.
- The relevant circumstances may include whether the landlord has offered or undertakes to offer a new occupation contract (whether for the same or other premises) to one or more of the persons occupying or living in the premises.
- The likelihood that a person will be assisted under Part 7 of the Housing Act 1996 (c. 52) (homelessness) is not a relevant circumstance.

Relevant circumstances as regards the contract-holder

- 6 The relevant circumstances as regards the contract-holder may include
 - (a) the probable effect of the order on the contract-holder's private and family life (or on the private and family life of permitted occupiers of the premises), and
 - (b) if the case is one in which the court may decide to postpone the giving up of possession, the likelihood that the contract-holder will comply with any terms that may be imposed.

Relevant circumstances as regards the landlord

- 7 The relevant circumstances as regards the landlord may include
 - (a) the probable effect of not making the order on the landlord's interests, including his financial interests, and
 - (b) if the landlord is a community landlord, the probable effect of not making the order on the landlord's ability to fulfil its housing

functions, including the assistance of other persons in need of accommodation.

If the landlord has issued a management code under section 211 which relates to the premises, the relevant circumstances may include whether he has taken it into account in making a possession claim in relation to the premises.

Relevant circumstances as regards other persons

- 9 (1) The relevant circumstances may include the effect of making the order on
 - (a) contract-holders and permitted occupiers of other premises of the landlord,
 - (b) persons who have asked the landlord to provide them with housing accommodation, and
 - (c) persons living, visiting or otherwise engaging in a lawful activity in the locality (and persons who wish to live, visit or engage in lawful activities in the locality).
 - (2) The relevant circumstances under sub-paragraph (1) may in particular include the effect of the circumstances listed in paragraph 3 on the persons listed in that sub-paragraph.
- If the landlord makes a possession claim relying on a breach of section 51 (prohibited conduct), the relevant circumstances may include the general public interest in restraining the conduct prohibited by that section.

Relevant circumstances relating to Ground G

- If the landlord makes a possession claim relying wholly or partly on Ground G of the estate management grounds (accommodation not required by successor), the relevant circumstances include—
 - (a) the age of the contract-holder,
 - (b) the period during which the contract-holder has occupied the premises as his only or principal home, and
 - (c) any financial or other support given by the contract-holder to the previous contract-holder (or, if the previous contract-holder was the successor of an earlier contract-holder, to that earlier contract-holder).

Relevant circumstances relating to Ground H

- If the landlord makes a possession claim relying wholly or partly on Ground H of the estate management grounds (departing joint contract-holder), the relevant circumstances include—
 - (a) the age of the remaining contract-holder (or each of the remaining contract-holders), and
 - (b) the period during which the remaining contract-holder (or each of the remaining contract-holders) has occupied the premises as his only or principal home.

SCHEDULE 8

Section 219

CONVERSION OF EXISTING TENANCIES AND LICENCES

Definitions

1 In this Schedule –

- "converted contract" means a tenancy or licence which existed immediately before the appointed day and became an occupation contract on that day,
- "converted secure contract" means a converted contract which became a secure contract on the appointed day,
- "converted standard contract" means a converted contract which became a standard contract on the appointed day, and
- "the initial notice period" is the period of two months starting with the appointed day.

Deemed tenancies and licences

- 2 (1) This paragraph applies where immediately before the appointed day
 - (a) premises are occupied as a home by a person who is a trespasser, but previously occupied the premises as a tenant or licensee, and
 - (b) there is in relation to the tenancy or licence under which he occupied the premises an order for recovery of possession of the premises which has not been executed.
 - (2) This Act applies as if the tenancy or licence existed immediately before the appointed day; but the order for recovery of possession remains in force.

Determination of whether existing tenancy or licence is occupation contract

- 3 (1) Schedule 1 applies to
 - (a) a tenancy or licence which immediately before the appointed day was a secure tenancy, an assured tenancy, an introductory tenancy or a demoted tenancy, and
 - (b) a tenancy which existed immediately before the appointed day but is not within paragraph (a),
 - as if paragraphs 6(2)(b) and 7 (care institutions) were omitted.
 - (2) Schedule 1 applies to a tenancy which immediately before the appointed day was a secure tenancy, an assured tenancy, an introductory tenancy or a demoted tenancy as if paragraphs 6(2)(d) and 9 (temporary expedients) were omitted.
 - (3) The landlord may, in relation to a tenancy or licence which existed immediately before the appointed day, give notice under paragraph 1 or 6 of Schedule 1 at any time before the end of the initial notice period.
 - (4) If he does so, the tenancy or licence is to be treated as having become an occupation contract on the appointed day.

Determination of whether converted contract is secure contract or standard contract

4 Sections 4 to 10 (community landlords and private landlords) apply to a converted contract—

- (a) under which the landlord is a private landlord, and
- (b) which immediately before the appointed day was a secure tenancy under which the landlord was a private landlord,

as if the landlord were a community landlord.

- 5 (1) The landlord under a converted contract may give notice under section 4(2)(c) (notice of standard contract) at any time before the end of the initial notice period.
 - (2) If he does so, the contact is to be treated as having become a standard contract on the appointed day.
 - (3) The landlord under a converted contract may give notice under section 10(1) (notice of secure contract) at any time before the end of the initial notice period.
 - (4) If he does so, the contact is to be treated as having become a secure contract on the appointed day.
- A converted contract which immediately before the appointed day was an introductory tenancy has effect as a probationary standard contract.
- A converted contract has effect as a prohibited conduct standard contract if immediately before the appointed day
 - (a) section 20B of the Housing Act 1988 (c. 50) (demoted assured shorthold tenancies) applied to it, or
 - (b) section 143A of the Housing Act 1996 (c. 52) (demoted tenancies) applied to it.
- 8 (1) A converted contract to which sub-paragraph (2) applies is an additional exception to section 4(1) (contracts made by community landlord are secure contracts).
 - (2) This sub-paragraph applies to a converted contract which immediately before the appointed day was a tenancy or licence for a fixed term, provided that
 - (a) a premium was paid for the contract, and
 - (b) before the end of the period of one month starting with the appointed day, the contract-holder elects that the contract should become a fixed term standard contract.
 - (3) Before the appointed day, a community landlord who is the landlord under a tenancy or licence for a fixed term, and for which a premium was paid, must—
 - (a) inform the contract-holder of his right to make an election under subparagraph (2)(b) and of the time by which the election must be made, and
 - (b) explain how section 4 will apply to the contract if the contract-holder does not make the election.
- 9 (1) This paragraph applies where a community landlord becomes the landlord under a fixed term standard contract before the end of the period of one month starting with the appointed day.
 - (2) Clause 5 (contracts adopted by community landlord) applies as if in subsection (8)(b), for "before the community landlord becomes the landlord"

- there were substituted "before the end of the period of one month starting with the appointed day".
- (3) The landlord must give the contract-holder the notice required by clause 8(1) on the appointed day.
- 10 (1) The following are additional exceptions to sections 4(1) and 5(3) (contracts made or adopted by community landlord are secure contracts).
 - (2) A converted contract which before the appointed day
 - (a) had been a secure tenancy, but
 - (b) had ceased to be such a tenancy because of section 89, 91 or 93 of the Housing Act 1985 (c. 68) (succession, assignment and sub-letting).
 - (3) A converted contract which before the appointed day
 - (a) had been an introductory tenancy, but
 - (b) had ceased to be such a tenancy because of section 133 of the Housing Act 1996 (c. 52) (succession).
 - (4) A converted contract which before the appointed day
 - (a) had been a demoted tenancy, but
 - (b) had ceased to be such a tenancy because of section 143I of the Housing Act 1996 (succession).
- A converted secure contract which immediately before the appointed day was a secure tenancy becomes a standard contract if
 - (a) the tenant died before the appointed day, and
 - (b) after that day an event occurs which, but for this Act, would under section 89 of the Housing Act 1985 (succession) have caused the contract to cease to be a secure tenancy.

Written statement of converted contract

- 12 (1) The landlord must give the contract-holder under a converted contract a written statement of the contract before the end of the initial notice period.
 - (2) Any references in this Act to the landlord's obligation under section 24(1) are to be read, in relation to converted contracts, as references to the landlord's obligation under sub-paragraph (1).
 - (3) Section 30 (failure to provide statement: compensation) applies in relation to that obligation as if the reference in subsection (6)(a) to the effective date were to the first day of the period of 14 days ending with the last day of the initial notice period.
- Sections 31 and 32 (applications to court) apply in relation to a written statement provided because of paragraph 12(1) as if—
 - (a) in subsection (3) of each section, for "the period of two weeks starting with the relevant date" there were substituted "the initial notice period", and
 - (b) sections 31(11) and 32(9) were omitted.

Rights and obligations under the contract

- 14 (1) Sub-paragraph (2) has effect in relation to a converted contract to which this paragraph applies as if it were a supplementary provision prescribed by the appropriate authority under section 21.
 - (2) The contract-holder (or if more than one, at least one of them) must occupy the premises subject to the contract as his only or principal home.
 - (3) This paragraph applies to a converted contract which immediately before the appointed day was—
 - (a) a protected or statutory tenancy,
 - (b) a secure tenancy,
 - (c) an assured tenancy,
 - (d) an introductory tenancy, or
 - (e) a demoted tenancy.
- 15 (1) Section 68(1) (information about parties) applies in relation to a converted contract as if for "the period of two weeks starting with the effective date of the contract" there were substituted "the initial notice period".
 - (2) Section 69(2) (compensation) applies in relation to section 68(1), as modified by sub-paragraph (1), as if the relevant date were the first day of the period of 14 days ending with the last day of the initial notice period.

Variation

- 16 (1) A converted contract may not be varied before the landlord has given the contract-holder a written statement of the contract.
 - (2) Sub-paragraph (1) does not apply to a variation under section 80 or 85 (variation of rent).
- 17 (1) Sections 80 and 85 (variation of rent) apply to a converted contract as if any variations in the rent payable under the contract before the appointed day were variations under that section.
 - (2) The appropriate authority must by regulations make provision
 - (a) enabling the contract-holder under a relevant converted contract, following receipt of a notice under section 80 or 85, to apply to a prescribed person or persons for a determination of the rent for the premises, and
 - (b) for the rent determined by the prescribed person or persons, in accordance with such assumptions as may be prescribed, to be the rent for the premises under the contract (unless the landlord and contract-holder otherwise agree).
 - (3) A converted contract is relevant if immediately before the appointed day it was a tenancy to which section 13 of the Housing Act 1988 (c. 50) (increases of rent under assured periodic tenancies) applied.

Probationary standard contracts

- 18 (1) This paragraph applies to a converted contract which has effect as a probationary standard contract because of paragraph 6.
 - (2) The probation period of the contract ends if —

- (a) the tenant died before the appointed day, and
- (b) after that day an event occurs which, but for this Act, would under section 133 of the Housing Act 1996 (c. 52) (succession) have caused the contract to cease to be an introductory tenancy,

but section 98(1) (conversion to secure contract) does not apply where the probation period ends because of this sub-paragraph.

- (3) This Act applies as if the reference in section 99(7) to the probation date of the contract were to the day which was the beginning of the trial period under section 125(2)(a) and (b) of the Housing Act 1996.
- (4) Section 100 (modification of probation period) applies as if references to probationary standard contracts were to—
 - (a) assured shorthold tenancies under which the landlord was a registered social landlord, or
 - (b) introductory tenancies.
- (5) For the purposes of section 100 the probation date of an introductory contract is the day which was the beginning of the trial period under section 125(2)(a) and (b) of the Housing Act 1996.
- (6) For the purposes of section 100 the probation date of an assured shorthold tenancy under which the landlord was a registered social landlord is
 - (a) the day on which the tenant was entitled to begin occupying the premises, or
 - (b) if the tenancy was not made with a registered social landlord, the day a registered social landlord became the landlord.
- (7) Section 100(5) and (6) does not apply, but any notice of extension given in relation to the converted contract under section 125A of the Housing Act 1996 has effect as if given under section 101.

Prohibited conduct standard contract

- 19 (1) This Act applies to a converted contract which has effect as a prohibited conduct standard contract because of paragraph 7 as if—
 - (a) the demotion order were an order under section 59 (order imposing standard contract),
 - (b) references to the effective date of the contract were to the day on which the demotion order took effect, and
 - (c) sections 104 and 105 (changing the trial period) were omitted.
 - (2) "The demotion order" is
 - (a) the order under section 82A of the Housing Act 1985 (c. 68) or section 6A of the Housing Act 1988 (c. 50) because of which section 20B of the Housing Act 1988 applied, or
 - (b) the order under section 82A of the Housing Act 1985 because of which section 143A of the Housing Act 1996 applied.

Dealing

- It is a fundamental provision of a converted standard contract which immediately before the appointed day was a secure tenancy that the contract-holder may allow persons to live in the premises as lodgers.
- 21 (1) This paragraph applies in relation to a converted contract —

- (a) which is a secure contract or periodic standard contract, and
- (b) under which there are joint contract-holders who were tenants in common in equity immediately before the appointed day.
- (2) The provisions mentioned in subsection (1) of each of sections 134, 135 and 136 (transfers) are terms of the contract, and subsections (2) and (3) of each of those sections apply accordingly.
- 22 (1) This paragraph applies in relation to a converted contract which is a fixed term standard contract.
 - (2) The provisions mentioned in subsection (1) of each of sections 133, 134, 135 and 136 (transfers) are terms of the contract, and subsections (2) and (3) of each of those sections apply accordingly.
 - (3) Sub-paragraph (2) does not apply to the extent that any of those provisions is inconsistent with an existing term of the contract.

Succession

- 23 (1) The contract-holder under a converted contract is to be treated as a priority successor in relation to the contract if
 - (a) immediately before the appointed day the converted contract was of a description in column 1 of Table 1,
 - (b) before the appointed day it had vested in the contract-holder under the provision in column 2 of that Table, and
 - (c) the contract-holder qualified to succeed because of the provisions in column 3 of that Table.

Table 1

Type of tenancy	Vesting provision	Qualifying provisions
Secure tenancy	Section 89 of the Housing Act 1985 (c. 68)	Sections 87 and 113(1)(a) of that Act
Introductory tenancy	Section 133 of the Housing Act 1996 (c. 52)	Sections 131 and 140(1)(a) of that Act
Demoted tenancy	Section 143H of the Housing Act 1996	Section 143P(1)(a) or (b) of that Act

- (2) The contract-holder under a converted contract is also to be treated as a priority successor in relation to the contract if
 - (a) immediately before the appointed day the contract was an assured tenancy,
 - (b) before the appointed day it had vested in the contract-holder under section 17 of the Housing Act 1988 (c. 50) (succession to assured tenancy), and
 - (c) on the appointed day the landlord under the contract was a community landlord.

- 24 (1) The contract-holder under a converted contract is to be treated as a reserve successor in relation to the contract if
 - (a) immediately before the appointed day the converted contract was of a description in column 1 of Table 2,
 - (b) before the appointed day it had vested in the contract-holder under the provision in column 2 of that Table, and
 - (c) the contract-holder qualified to succeed because of the provisions in column 3 of that Table.

Table 2

Type of tenancy	Vesting provision	Qualifying provisions
Secure tenancy	Section 89 of the Housing Act 1985 (c. 68)	Sections 87(b) and 113(1)(b) of that Act
Introductory tenancy	Section 133 of the Housing Act 1996 (c. 52)	Sections 131(b) and 140(1)(b) of that Act
Demoted tenancy	Section 143H of the Housing Act 1996	Section 143P(1)(c) of that Act

- (2) The contract-holder under a converted contract is to be treated as a reserve successor in relation to the contract if
 - (a) immediately before the appointed day the contract was an assured tenancy, and
 - (b) before the appointed day the contract-holder had become entitled to the assured tenancy under paragraph 3 of Schedule 1 to the Rent Act 1977 (c. 42) (succession).
- (3) The contract-holder under a converted contract is to be treated as a reserve successor in relation to the contract if
 - (a) immediately before the appointed day the contract was an assured tenancy,
 - (b) before the appointed day it had vested in the contract-holder under section 17 of the Housing Act 1988 (c. 50) (succession to assured tenancy), and
 - (c) on the appointed day the landlord under the contract was a private landlord.

Termination of contract by landlord: modifications of Part 6

- Sections 173 to 179 (termination by landlord's notice) are not incorporated in a periodic standard contract which immediately before the appointed day was an assured tenancy (but not an assured shorthold tenancy).
- 26 (1) Section 182 (landlord's break clause) does not apply to the following fixed term standard contracts.
 - (2) A fixed term standard contract which immediately before the appointed day was a secure tenancy for a fixed term.
 - (3) A fixed term standard contract which—

- (a) immediately before the appointed day was an assured tenancy for a fixed term, and
- (b) is not an excluded contract.
- (4) A contract is an excluded contract if, immediately before the appointed day, the landlord could have made a claim for possession relying on Ground 3 or 4 of Schedule 2 to the Housing Act 1988 (c. 50).
- 27 Ground C of the estate management grounds applies to a converted contract as if the occupation contract was made on the appointed day.

Termination of contract by landlord: additional grounds for possession

- 28 (1) This paragraph applies in relation to a converted contract which immediately before the appointed day was an assured tenancy.
 - (2) The landlord may claim possession of the premises subject to the contract relying on Ground 1, 2 or 5 of Schedule 2 to the Housing Act 1988.
 - (3) But he may not do so before the end of the period of two months starting with the day on which he gives the contract-holder a possession notice specifying that Ground.
 - (4) Subject to section 190 (powers of court) (which applies as if subsection (1)(a) referred to sub-paragraph (3)), if the court is satisfied that the Ground is made out it must make an order for possession.
- 29 (1) This paragraph applies in relation to a converted contract which immediately before the appointed day was an assured tenancy.
 - (2) The landlord may claim possession of the premises subject to the contract relying on Ground 7 of Schedule 2 to the Housing Act 1988 if—
 - (a) the tenant under the assured tenancy died before the appointed day, and
 - (b) before the appointed day the assured tenancy devolved, or after the appointed day the converted contract devolves, under his will or intestacy.
 - (3) But he may not do so before the end of the period of two months starting with the day on which he gives the contract-holder a possession notice specifying that Ground.
 - (4) Subject to section 190 (powers of court) (which applies as if subsection (1)(a) referred to sub-paragraph (3)), if the court is satisfied that the Ground is made out it must make an order for possession.

Implied tenancies and licences

- 30 (1) This paragraph applies if, immediately before the appointed day, premises are occupied as a home by a person who is a trespasser in relation to those premises (and paragraph 2 does not apply).
 - (2) Section 202 (implied tenancies and licences)
 - (a) applies to payments made by the person before the appointed day as to payments made by him after the appointed day, and
 - (b) applies as if the end of the relevant period were the end of the period mentioned in section 202(3) or, if later, the appointed day.

The effective date

The effective date, in relation to a converted contract, is the day on which the contract-holder became entitled to occupy the premises under the tenancy or licence which became an occupation contract on the appointed day.

Substitute occupation contracts

- 32 (1) If after a converted contract ends there are one or more substitute contracts, for the purposes of this Part (except paragraph 28), the substitute contract is (or the substitute contracts are) to be treated as if they were the same tenancy or licence as the converted contract.
 - (2) The following are substitute contracts.
 - (3) An occupation contract made between
 - (a) a contract-holder who immediately before the effective date of the contract was a contract-holder under a converted contract or a substitute contract, and
 - (b) a landlord who immediately before that date was the landlord under the converted contract or substitute contract.
 - (4) But where a converted or substitute contract is a fixed term standard contract, an occupation contract which arises under section 165(2), or is within section 165(6) (further contracts at end of fixed term), is not a substitute contract.
 - (5) If a converted contract or a substitute contract is ended under section 160 (abandonment), and under section 162(3)(b) the court orders the landlord to provide suitable alternative accommodation, an occupation contract made in accordance with the order.
 - (6) If under section 200 (estate management grounds) the court makes an order for possession of premises subject to a converted contract or a substitute contract, an occupation contract made to provide the contract-holder with suitable alternative accommodation.



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