Communities and Local Government

Regulated Tenancies

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Summary

Most residential lettings by non-resident private landlords which began before 15 January 1989 will be regulated tenancies under the Rent Act 1977. It does not matter whether the letting is furnished or unfurnished.

Since 15 January 1989 most new lettings have been assured or assured shorthold tenancies and it will only be possible to have regulated tenancies in very limited circumstances; this booklet describes how and when this can happen.

A regulated tenant has certain important rights concerning the amount of rent he or she can be charged and security of tenure. With a regulated tenancy:

- the landlord cannot evict the tenant unless he or she gets a possession order from the courts, and the courts can grant an order only in certain circumstances
- if the tenant dies his or her spouse will normally take over the regulated tenancy (a family member who has been living in the home can take over an assured tenancy)
- either the landlord or the tenant can apply to the rent officer for a fair rent to be registered
- once a rent is registered it is the maximum the landlord can charge until it is reviewed or cancelled

- even if a rent is not registered, the landlord can only increase the rent in certain circumstances
- the tenant may get housing benefit
- the landlord is usually responsible for major repairs
- the landlord, or in some cases the tenant, can ask the local authority for a grant towards certain repairs and improvements.

This booklet explains the main points of the law as it affects regulated tenancies, especially on rent and security of tenure, for both landlords and tenants. It does not give an authoritative interpretation of the law; only the courts can do that. Nor does it cover every case.

1. Regulated tenancies – definitions

1.1 What is and what is not a regulated tenancy

A letting of all or part of a house, flat, maisonette, or bungalow made before 15 January 1989 is normally a regulated tenancy unless it is covered by one of the exceptions listed below. A regulated tenancy can be furnished or unfurnished.

A tenancy will also be a regulated tenancy if it is a new tenancy granted on or after that date to an existing regulated tenant, other than a shorthold tenant, by the same landlord; or if it is granted as a tenancy of suitable alternative accommodation as the result of a court order and the court directed that it should be a regulated tenancy. Where the landlord is a new town development corporation or the Commission for the New Towns, certain tenancies can be regulated tenancies after this date.

What lettings are not regulated tenancies?

A letting is not normally a regulated tenancy if any of the following apply:

- the tenancy began on or after 15 January 1989 (in which case it is likely to be an assured tenancy – see housing booklets *Assured and assured shorthold tenancies: a guide for landlords* and *Assured and assured shorthold tenancies: a guide for tenants*. If it began after that date, as a result of a contract agreed before that date, it may be a regulated tenancy

- the landlord and tenant live in the same house or flat and have done so since the start of the letting – in other words the landlord is a resident landlord. However, there are some special cases where a letting by a resident landlord can be a regulated tenancy. One example is an unfurnished letting which began before 14 August 1974 – see housing booklet Renting Rooms in Someone's Home: a guide for people renting from resident landlords
- the landlord is a local authority, a new town development corporation, a registered provider of social housing, a housing trust which is a registered charity, the regulator of social housing, Housing for Wales or the Development Board for Rural Wales (for the rights of council tenants see housing booklet *Your rights as a council tenant*)
- the landlord is a government department
- the letting is by a university or college or polytechnic to one of its students or by an institution specified in regulations
- the landlord provides board; or provides attendance, for example cleaning rooms and washing linen, the payment for which forms a large part of the rent
- the letting is for holiday or business purposes
- the landlord, though not resident, shares living accommodation (eg a kitchen or a sitting-room) with the tenant
- the rateable value of the property let is above the Rent Act rateable value limits (see below)
- no rent is payable or the rent is a low rent (see below)

- the letting is not a tenancy but a licence to occupy, for example because all the accommodation is shared with someone occupying it under a separate agreement, or because the occupier has to live there because of his or her job. (The distinction between a licence and a tenancy is not always straightforward and the courts will not necessarily consider that an agreement is not a tenancy simply because it is called a licence. You should get advice on what the position is in a particular case from a solicitor or Citizens Advice Bureau).

Lettings by the Crown Estate Commissioners, the Duchy of Lancaster or the Duchy of Cornwall are regulated tenancies, unless they are one of the exceptions.

What are assured tenancies?

Most tenancies granted on or after 15 January 1989 are likely to be assured tenancies (or assured shorthold tenancies).

Full assured tenants have a right to security of tenure. Shorthold tenants have security throughout the fixed term. Assured tenants are not able to apply to the rent officer for a fair rent but pay rents agreed with their landlord. For further details see housing booklets *Assured and assured shorthold tenancies: a guide for landlords* and *Assured and assured shorthold tenancies: a guide for tenants*.

What are the Rent Act rateable value limits?

A property will almost always be within the Rent Act rateable value limits if its rateable value today is £1,500 or less in Greater London, or £750 or less elsewhere. A property with a higher rateable value will usually still be within the rateable value limits if the rateable value, according to the valuation list which expired on 31 March 1973, was £600 or less in Greater London, or £300 or less elsewhere.

Can a lease at a low rent be a regulated tenancy?

A lease or tenancy is not normally a regulated tenancy if the annual rent is a 'low rent'. This means that it must be less than two thirds of the rateable value of the property on the 'appropriate day'. The 'appropriate day' is either 23 March 1965, if the property had a rateable value then, or, if it did not, the date on which it was given one. Some tenancies at very low rents, which used to be called 'controlled tenancies', do not come within these rules. Payments for rates, services, repairs, maintenance or insurance are not counted as part of the rent for deciding whether a long lease is at a low rent. (A 'long lease' is a lease for more than 21 years.) If a tenant occupies a house or flat under a long lease at a low rent, he or she normally has the right to stay on when his or her lease expires. The housing booklet *Residential Long Leaseholders: a guide to your rights and responsibilities*, explains the rights of an occupying long leaseholder of houses, and flats to buy the freehold if he or she meets the qualifying conditions, which are set out in the booklets.

1.2 Protected and statutory tenancies

What are protected and statutory tenancies?

A regulated tenancy is a protected tenancy so long as the tenancy agreement (which need not be in writing) is still in force. Even if the agreement ends on or after 15 January 1989, the regulated tenancy becomes a statutory tenancy and stays one as long as the tenant lives in the property.

1.3 Formerly controlled tenancies

Are formerly controlled tenancies now regulated tenancies?

Yes, almost all controlled tenancies were converted into regulated tenancies by the Housing Act 1980. The landlord may only put up the rent for such tenancies either when a higher fair rent has been registered by the rent officer or when the rates go up. The rules on security of tenure for regulated tenancies also apply to formerly controlled tenancies which are now regulated tenancies. These rules are explained in Chapter 2.

There is an exception. This is where formerly controlled tenancies include business premises. The rules about business premises laid down in Part II of the Landlord and Tenant Act 1954 apply to them; the booklet *Business Leases and Security of Tenure under the Landlord and Tenant Act 1954, Part 2*, which can be obtained from Communities and Local Government, explains the system. If you do not know your rights as a business tenant, get in touch with a Citizens Advice Bureau or a solicitor.

1.4 Disputes

What happens if there is a disagreement about whether a letting is a regulated tenancy or not?

This is a matter for the courts. Either the landlord or the tenant can ask the county court to decide. Help with the costs of a court action may be available under the Legal Aid Scheme. If an application to register a rent has already been made to a rent officer, he or she will take no part in the court proceedings, but he or she will be bound by the final decision.

2. Security of tenure

2.1 The need for a court order

How can a regulated tenant be made to leave?

The landlord must get a possession order from the courts before the tenant can be made to leave (see below). This applies even if the tenancy agreement between the landlord and tenant has come to an end.

It is a criminal offence for anyone to turn a tenant out of his or her home without a court order or to try to make him or her leave by intimidation, violence, withholding services such as gas or electricity, or any other sort of interference. Local authorities can prosecute and any complaints should be made to them. The Housing Act 1988 strengthened the provisions of the Protection From Eviction Act 1977 – see housing booklet *My Landlord Wants Me Out*.

How can the landlord get a possession order?

He or she must prove that one of the grounds for possession set out in the Rent Act applies in his or her case.

2.2 Grounds on which an order can be made

What are the grounds for getting possession?

Most of the grounds for possession are called 'cases'. There are 19 in all, of two basic kinds. Cases 1 to 10 are 'discretionary cases' (see below). This means that if the case applies the court does not have to grant an order but it may do so if it thinks it reasonable.

cases 11 to 20 are called 'mandatory cases' (see below). With these, the court must grant an order if it is satisfied that the case applies.

There are two other grounds for possession which are not 'cases' as such. First, the court can grant possession if it thinks that it is reasonable and suitable alternative accommodation is or will be available for the tenant. Alternative accommodation can be suitable if:

- it is determined in a certificate from the local council, if they are providing the alternative accommodation; or
- if it gives the tenant equal or equivalent security of tenure and meets certain conditions about size, rent and other features. Second, the other ground for possession is that there is statutory overcrowding in the property, as defined in the Housing Act 1985

What are the discretionary cases under which possession can be obtained?

These are the grounds listed as cases in Part I of Schedule 15 to the Rent Act 1977. The court must think it reasonable to grant a possession order on any of these grounds. They are as follows:

- case 1: the tenant has not paid the rent, or has broken some other term of the tenancy
- case 2: the tenant has caused a nuisance or annoyance to neighbours, or has been convicted of immoral or illegal use of the premises

- case 3: the tenant has damaged the property or allowed it to become damaged
- case 4: the tenant has damaged the furniture
- case 5: the landlord has arranged to sell or let the property because the tenant gave notice that he or she was giving up the tenancy
- case 6: the tenant has assigned or sublet the whole of the property without the landlord's consent
- case 7: no longer exists
- case 8: the tenant was an employee of the landlord and the landlord requires the property for a new employee
- case 9: the landlord needs the property for himself or herself or certain members of his or her family to live in and that greater hardship would not be caused by granting the order than by refusing to grant it – but this does not normally apply if the tenant was a sitting tenant when the landlord bought the property
- case 10: the tenant has charged a subtenant more than the Rent Act permits.

What are the mandatory cases under which possession can be obtained?

These are the grounds listed as cases in Part II of Schedule 15 to the Rent Act 1977. If one of these cases is established the court must grant the landlord a possession order. The order cannot be postponed for more than 14 days, except where it would cause exceptional hardship, when the maximum is six weeks.

There are two basic rules for using the mandatory cases:

i) the landlord must give a written notice saying that he or she may in future apply for possession under the appropriate case. He or she must give it to the tenant normally when or before the tenancy begins (*before* the tenancy is granted in the case of shorthold)

ii) when he or she actually needs possession, the conditions of the appropriate case must be met

The mandatory cases are as follows:

- case 11: the landlord let his or her home with the intention of returning to live there again
- case 12: the landlord let accommodation to which he or she intends to retire
- case 13: the accommodation was let for a fixed term of eight months or less, having been let for a holiday at some time during the previous 12 months
- case 14: the accommodation was let for a fixed term of a year or less, having been let to students by a specified educational institution or body at some time during the previous 12 months
- case 15: the accommodation was intended for a member of the clergy and has been let temporarily to an ordinary tenant
- case 16: the accommodation was occupied by a farmworker and has been let temporarily to an ordinary tenant

- case 17: when some agricultural holdings were amalgamated, accommodation previously occupied by a farm manager has been let temporarily to an ordinary tenant
- case 18: the accommodation was previously occupied by a farm manager, widow or widower and has been let temporarily to an ordinary tenant
- case 19: the property was let on a protected shorthold tenancy and the shorthold term has ended (see also section 8.3)
- case 20: the landlord was a member of the regular armed forces at the time the letting was made and intended to live in the house at some future date.

In cases 11,12,19 and 20 the court may grant the landlord possession even if he or she has not fulfilled some of the conditions, if it thinks it just and fair to do so. In the other mandatory cases the courts cannot grant possession unless all the rules have been met.

2.3 When to apply

When can the landlord apply to the court for a possession order?

If the tenancy is still a protected tenancy ie, if the contract is still in force, the landlord will need to bring the tenancy to an end. If the contractual tenancy is a periodic one (for example, weekly or monthly) the landlord will need to give at least four weeks' written notice to quit to bring the tenancy to an end. The notice must follow certain rules – see housing booklet *Notice That You Must Leave*. If the contractual

tenancy is a fixed-term one (ie it was agreed in advance that it would end on a certain date), it comes to an end automatically on that date, so no notice to quit is needed. No notice to quit is necessary in the case of statutory tenancies.

2.4 Succession

If the tenant dies, does his or her family have to leave?

Not necessarily. Under the Rent Act 1977, as amended by the Housing Act 1988, the tenancy will pass to the tenant's spouse, or someone living with the tenant as husband or wife, who will become a Rent Act statutory tenant provided he or she was living with the tenant at the time of his or her death. If there is no such person a member of the tenant's family who has lived with the tenant for at least two years immediately before the death of the tenant* will be able to succeed to an assured tenancy. (These tenancies are explained in housing booklets *Assured and assured shorthold tenancies: a guide for landlords* and *Assured and assured shorthold tenancies: a guide for tenants*.) There can be no more than two successions. If there is a dispute between qualifying family members, the court can decide who shall succeed.

* If a tenant dies within 18 months beginning on 15 January 1989, a member of the family who is a first successor who had been living with the tenant for at least six months before that date and up to the time of the tenant's death, will be treated as though he or she had lived with the tenant for the full two years. For a second succession, ie a family member taking over from a spouse, the same rules apply but the second successor must also have been a member of the original tenant's family.

Can there be a second succession to a regulated tenancy?

Someone who was a member of the original tenant's family immediately before his or her death and was living with the first successor at the time of, and for at least two years before, the death of the first successor has a right of succession to an assured tenancy. Should a person who has an assured tenancy by succession get married, on his or her death the surviving partner will not have an automatic right to take over that assured tenancy.

3. Fair rents

3.1 What is a fair rent?

It is a rent which is worked out by a rent officer or rent assessment committee according to the rules in the Rent Act 1977. All fair rents are recorded in the local rent register. You can ask the rent officer to see a copy.

If you are a housing association or housing co-operative tenant whose initial tenancy started before 15 January 1989, you are a secure tenant, like local authority tenants, but your rent is generally a 'fair rent' registered by the Rent Officer. The housing association or co-operative will usually have had the rent registered. If your initial tenancy started before 15 January 1989 and at any time since then has transferred to the Housing Corporation, this will not affect how your rent is decided.

How does the rent officer decide what the fair rent should be?

The rent officer, in fixing the rent, acts independently of central or local government but must follow the rules laid down in the Rent Act 1977. The rent officer must consider:

- all the circumstances except the personal circumstances of the landlord and the tenant
- the state of repair of the house or flat, its character, locality and age, how much furniture is provided and what it is like
- any premium lawfully paid

The rent officer must ignore:

- any disrepair for which the tenant is responsible
- any improvements that the tenant has made which he or she did not need to under the terms of his or her tenancy.

The rent officer must assume that demand for similar houses or flats available for letting in that particular area does not greatly exceed supply, ie that the rent would not be forced up by shortage.

Are there limits to how much a fair rent can be increased by?

Yes. Since 1999, the amount by which a rent officer can increase a fair rent has been limited by law. This is known as the Maximum Fair Rent and is worked out by the rent officer as part of the calculation of a fair rent.

When does the Maximum Fair Rent apply?

The Maximum Fair Rent applies to all fair rent registrations made to rent officers since 1 February 1999 as long as a fair rent has previously been registered on the property.

What does the Maximum Fair Rent do?

The Maximum Fair Rent sets a limit on how much a rent officer can register as a fair rent after he or she has taken into account all other relevant factors. The Maximum Fair Rent is based on the change in the Retail Prices Index since the last fair rent registration was made, plus an additional percentage uplift.

The Maximum Fair Rent is calculated as:

- the existing registered rent
- *plus* the percentage change in the Retail Prices Index (all items) since the rent was last registered
- *plus* an additional 7.5 per cent for the first time the rent is re-registered after January 1999 or an additional five per cent for all subsequent registrations.

What happens if the fair rent determined by the rent officer is lower than the maximum fair rent?

If the fair rent determined by the rent officer is lower than the Maximum Fair Rent, the rent officer will register the lower amount. The landlord cannot charge the tenant more than the amount that is registered by the rent officer.

Are there any circumstances where the Maximum Fair Rent does not apply?

Yes. The Maximum Fair Rent does not apply:

- if it is the first time an application has been made for a fair rent to be registered on the property
- where the rent officer considers that there has been a change in the condition of the property or the common parts as a result of repairs or improvements carried out by the landlord and that the new rent to be registered would therefore be *at least* 15 per cent more than the existing rent. In this case, the rent officer will register a fair rent *without* calculating the Maximum Fair Rent.

How do I work out the Maximum Fair Rent?

You do not have to request a Maximum Fair Rent when applying for a new fair rent registration. The rent officer will work this out automatically. It is possible to get an indication of the Maximum Fair Rent although to do so accurately you will need to know the last published monthly Retail Price Index both at the time the rent is to be registered by the rent officer and at the time when the rent was last registered. The monthly UK Index of Retail Prices (RPI all items) is available from the Office for National Statistics. Their website is www.statistics.gov.uk

Does the registered rent include anything else?

It will not include council tax, but if the landlord pays the council tax this will be noted on the rent register. It will include any sum payable for furniture and services provided by the landlord (see Section 3.4).

3.2 Getting a fair rent registered

Who can apply for a fair rent to be registered?

The landlord or tenant of any regulated tenancy can apply at any time. The landlord and tenant can apply jointly if they wish. This right is not affected by the Housing Act 1988.

Can a local authority apply to the rent officer?

No. The Housing Act 1988 took away a local authority's power to apply to the rent officer for the consideration of a fair rent on a home in its area.

How do you apply?

The rent officer will give you an application form (he or she is listed in the phone book under 'Rent Officer'). The person applying must say on the form what he or she thinks the rent should be, but this is not necessarily what the rent officer will register. It might be higher or lower. If the landlord applies, the rent officer will send a copy of his or her application to the tenant and vice versa.

Will the rent officer discuss the application with landlord and tenant?

The landlord and tenant will each be asked if they want to meet the rent officer for a consultation (but see below). If either asks for a consultation, or the rent officer himself or herself thinks there should be one, he or she will arrange for both the landlord and the tenant to see him or her. The rent officer will usually inspect the house or flat, unless he or she has done so within the last five years and no great change in condition has been brought to his or her attention.

Does the rent officer also hold a consultation if the landlord and tenant apply for the fair rent jointly?

Yes, unless the rent officer agrees with the rent which they have jointly decided on. In that case he or she registers it without inviting them to a consultation.

Can you find out informally in advance what the rent might be?

Not by asking the rent officer. But you can get an idea of what the rent might be by looking at rents recently registered for similar properties in the rent register, which may be inspected free of charge.

Can you stop an application once made?

Yes, if you made the application you may normally stop it if the other person involved does not object.

Does the rent officer tell the landlord and tenant what rent has been registered?

Yes. When the rent officer registers a rent he or she will send the landlord and tenant a copy of the rent register sheet and other papers which explain in detail the effect of the registration. A short description of the main points is given in chapter 4.

Will any record be made of the amount of the registered rent accounted for by services?

Yes. Provided the rent is not registered as variable (see section 3.4) and provided that the amount for services is five per cent or more of the registered rent, the rent officer will note that amount on the register.

3.3 Objections

If the landlord or tenant is not happy with the rent registered, can he or she object?

There is normally a right to object to the rent officer's rent. If this is done, a rent assessment committee will

fix the rent. But there is no such right of objection where:

- the landlord has got a Certificate of Fair Rent and the rent registered is the same as in the certificate; or
- there is a joint application from landlord and tenant and the rent officer accepts and registers the rent for which they applied.

What is a rent assessment committee?

It is a body of independent people, some of whom have legal, surveying or other property or relevant expertise, and some of whom are ordinary people (laymen) who have been appointed by the Secretary of State or the Lord Chancellor. These committees have existed for some time. The committee which makes a decision on a particular case will be chosen from a panel of appointed people. There are six panels which between them cover the whole of England and Wales. Their addresses can be found in the telephone directory or by consulting the local authority or a Citizens Advice Bureau. The committee may decide an individual case by meeting and considering relevant papers. But either the landlord or the tenant may ask for a hearing which both may attend. If there is a hearing, it will be informal and neither the landlord nor the tenant will have to pay a fee.

Will the rent assessment committee consider the whole matter again?

Yes, but they will not necessarily decide in favour of the person who objects. They may agree with the rent decided by the rent officer or fix another figure which may be lower or higher.

Is there any appeal against a rent assessment committee's decision on the rent?

No, but there is a right of appeal to the High Court on a point of law.

3.4 Service and service charges

Will the registered rent include amounts for services provided by the landlord, such as heating and hot water supply?

Yes. The person applying is asked to tell the rent officer about the services provided and to say how much of the rent is for them. If it is the landlord applying he or she must give details of what he or she has spent in providing the services. When the rent officer asks the tenant if he or she wants a consultation (see section 3.2) he or she will enclose a copy of the information about services provided by the landlord. If a consultation is to be held the rent officer must give at least 14 days' notice so as to give the tenant a chance to study the evidence and ask any questions about it.

If the tenancy agreement allows the landlord to vary the service charge, will the registered rent take account of this?

Yes, but only if the rent officer is satisfied that the terms of the tenancy agreement for varying any charge for services, maintenance or repairs are reasonable. In such a case, the rent officer will work out a fair rent in the usual way, but when he or she enters it in the register he or she will note that the amount can be varied according to the terms of the tenancy agreement. In all other cases the rent officer will register a fixed rent and if the terms in the tenancy are varied the landlord will not be able to charge more.

If a rent is registered as variable, is there any limit on the amount the landlord can charge for services?

Yes. The tenant has the right to challenge a variable service charge on the grounds that the standard or cost of an item is unreasonable. To help him or her decide whether the charge is reasonable the tenant has the right to get from the landlord a summary of what he or she has spent on the services in the previous year and also the right to inspect the accounts and receipts on which the summary is based.

In addition, if your landlord enters into a long term agreement (an agreement for a period of more than 12 months) where the cost to any individual tenant, under the agreement, will be more than £100 in any accounting year, the landlord must consult all those tenants who have to pay towards the cost. Also, where works are proposed that will cost more than £250 for any individual tenant, the landlord must also consult.

Further details can be found in the leaflets *S.20 Consultation* and *S.20 Consultation for council and other public sector landlords*. These are available from the Leasehold Advisory Service (LEASE), at, Maple House, 149 Tottenham Court Road, London W1T 7BN. Telephone 020 7383 9800. E-mail info@ lease-advice.org. www.lease-advice.org.

It does not apply if a fixed or non-variable rent is registered.

3.5 Applying again and cancellation

How long does a registered rent remain in force?

A registered rent remains until a new registration is made or the registration is cancelled. It does not however apply to a letting of that same property to an assured tenant.

When can a new registration be made?

A new registration cannot be made less than two years after the effective date of the existing registration unless:

- the landlord and tenant apply jointly
- there has been a change of circumstances (for example, major repairs, improvements or a change in the terms of the tenancy) or
- the landlord applies one year and nine months after the effective date of the existing registration. But in this case the new registration will still not take effect

until the two years from the effective date of the existing registration.

The term 'effective date' is explained in section 4.1.

There are specific procedures where a Certificate of Fair Rent has been applied for before 15 January 1989.

Can a registered rent be cancelled?

Yes, the landlord and tenant can apply jointly (see below). The landlord can apply alone if there is no current regulated tenancy, and if two years have passed since the effective date of the registration.

You should apply to the rent officer on specific forms which he or she will supply.

Does the landlord need to cancel the rent if he or she lets the property to a new assured tenant?

No.

What happens when a landlord and tenant apply jointly for cancellation?

The landlord and the tenant must agree a new rent and provide with their application a copy of the rent agreement containing it. The agreement cannot start less than two years after the effective date of the existing registration.

The tenancy under the agreement must be one which cannot end or be brought to an end by the landlord (except where the tenant has not paid the rent or has broken the terms of the tenancy) for at least 12 months from the date of application for cancellation.

The rent officer will only cancel the registration if he or she is satisfied that the rent payable under the rent agreement is not higher than the fair rent which he or she would have registered. The cancellation will not take effect until the date when the rent agreement starts. His or her decision is final and you cannot object to the rent assessment committee against it. If the rent officer does not approve the cancellation, the registered rent will stay the same as before.

If the registered rent is cancelled the landlord and tenant are free to make further rent agreements subject to special rules (see section 5.3). Either or both can also, at any time after the cancellation, apply to the rent officer for a rent to be registered again.

4. After the rent is registered

4.1 Effect of registration

The landlord cannot charge more than a fair rent as from the effective date, except in the limited circumstances explained below, for as long as the rent remains on the register.

What is the 'effective date'?

The effective date is shown on the rent register sheet. For rents that are decided by the rent officer it is normally the date when the rent is registered – except that, where it is registered in the three months before the end of the two-year period (see section 3.5), it is the day after that period ends. For rents fixed by the rent assessment committee it is the date of their decision (see section 4.3).

4.2 Reductions

If the registered rent is lower than the rent previously payable, must the landlord reduce the rent?

Yes. The landlord must reduce the rent to the registered rent as from the effective date. The tenant can get back any money paid over and above the registered rent after the effective date (see section 6.1).

4.3 Increases

What happens if the registered rent is higher than the rent previously payable?

The landlord can increase the rent from the effective date if:

- the tenancy is statutory; or
- the tenancy is protected (ie still subject to an agreement) and the agreement allows for increases

In the case of statutory tenancies the landlord must serve a notice of increase on a specific form (obtainable from law stationers). The notice cannot be backdated by more than four weeks.

If the tenancy is protected and the agreement does not allow the landlord to raise the rent, he or she cannot do so until the tenancy comes to an end. The landlord can end a periodic tenancy by serving a notice to quit (see section 2.3). This must give the tenant the proper length of time in which to leave. A notice of increase of at least the same length can act as a notice to quit, ending the tenancy and increasing the rent at the same time. Again a specific form must be used, but there can be no backdating.

Can the landlord increase the rent straight away to the full registered rent?

Yes in the majority of cases, subject to the notice of increase rules explained above.

If there is an objection, what effect does the rent assessment committee's decision have on the rent?

The committee's rent is effective from the date of their decision, but the rules about notices of increase still apply (see above).

The papers sent to the landlord and tenant by the rent officer will explain how this works in practice. The important points are:

- if the committee change the rent officer's rent, the new rent will be chargeable from the date of the committee's decision
- the rent that was chargeable between the registration of the rent officer's rent and the date of the committee's decision is not affected.

Apart from increases up to the registered rent, can the landlord put up the rent to take account of council tax and variable service charges?

Council tax is not part of the registered rent. The tenant will normally be responsible for paying council tax. However, if the property is a house in multiple occupation, the landlord will be responsible for paying it although you can include the cost in the rent. A house in multiple occupation, for council tax purposes, is a property which is constructed or adapted for occupation by individuals who do not form a single household or who have separate tenancies or who pay rent for only part of the property. If you are in any doubt as to who will be liable to pay council tax,

contact your local authority. To avoid confusion, the tenancy agreement should set out who is responsible for paying council tax. If the rent is registered as variable (see section 3.4), the landlord can vary the rent within the terms accepted by the rent officer.

5. Unregistered rents

5.1 Not all rents need to be registered

Does a regulated tenancy have to have a rent registered by the rent officer?

No. Provided there is no registered rent for the property, a landlord and tenant may decide a rent between them at the start of the tenancy.

5.2 Increases where there is no registration

If the rent is not registered and has been decided between the landlord and tenant, can the landlord put it up?

Only if the tenancy agreement or contract allows for rent increases or increases in other payments such as rates.

If the agreement does not allow for increases the landlord can only increase the rent if:

- the landlord and tenant make a formal rent agreement, which must follow special rules (see section 5.3); or
- the rent officer registers a rent, in which case the landlord can recover any increases granted as set out in Chapter 4; or
- the landlord serves a notice of increase on a specific form in order to recover increases in rates which he or she is responsible for paying.

These rules also apply where the tenancy agreement or contract under which the tenant was paying a rent has come to an end. The tenancy will then become a statutory one and the rent will remain the same as was payable under the contract, unless the action described above is taken.

Specific rules apply if the agreement allows variable service or maintenance charges. More information about these is in housing booklet *Residential long leaseholders: your rights and responsibilities*.

5.3 Rent agreements

What are the rules about rent agreements?

A rent agreement must be in writing and be signed by both parties. It must also contain a statement at the head of the rent agreement that:

- the tenant's security of tenure under the Rent Act will not be affected if he or she refuses to enter into the agreement
- entering into the agreement does not take away from the tenant or landlord the right to apply at any time to the rent officer for a rent to be registered.

This statement must not be in smaller print than the rest of the rent agreement. Any agreement which does not contain this statement has no legal force, which means that the tenant can recover any increase he or she has paid for up to a year afterwards.

Can more than one rent agreement be made?

Yes, the landlord and tenant may normally agree further rent increases from time to time, provided that each agreement follows the rules set out above.

6. Rents – some general points

6.1 Paying Rent

Can tenants get help in paying their rent and rates?

In many cases tenants will qualify for housing benefit depending on their income, size of family and level of rent or rates.

For further information you should contact your local authority, any Citizens Advice Bureau or the Department for Work and Pensions.

If a tenant pays too much rent, can he or she reclaim it?

If a tenant finds that he or she has paid more rent than the landlord is legally entitled to charge, he or she can get back the rent he or she has overpaid by taking away however much is necessary from current rent payments, or by going to the county court.

Where the overpayment is because the rules about rent agreements (see section 5.3) have not been followed, the tenant can get his or her money back at any time within one year of having paid it. In all other cases the time limit is two years.

What happens if tenant and landlord cannot agree what rent is legally payable under the Rent Act?

Either landlord or tenant can ask the county court to decide. Help with the costs may be available under the Legal Aid Scheme.

Where an assured tenant succeeds to a Rent Act Tenant, what happens if the landlord and tenant do not agree on the rent?

The landlord may at any time serve a notice of increase on a specific form, obtainable from law stationers, under the assured tenancy rent system. The rent assessment committee will then fix a market rent for the property. (See housing booklets *Assured and assured shorthold tenancies: a guide for landlords* and *Assured and assured shorthold tenancies: a guide for tenants*.)

Can the tenant be asked to pay rent in advance.

The landlord is not entitled to ask the tenant to pay rent in advance of the relevant rental period (for example, if the rental period is a calendar month, the landlord cannot ask for the rent for August in July, but he or she can ask for all August's rent on 1 August).

6.2 Deposits, premiums and other charges

Can the landlord charge the tenant a deposit in addition to the rent, in case he or she leaves without paying the bills or damages the furniture (if provided)?

Yes, provided the deposit is not more than two calendar months' rent and is reasonable, taking into account the tenant's other responsibilities.

Apart from the deposit, can an incoming tenant be charged a premium or key money by the landlord or anybody else?

No, not for a regulated tenancy. Normally anyone who asks for or gets any extra money in addition to the rent as a condition of granting or renewing a regulated tenancy, or transferring it to a new tenant, commits a criminal offence and a court may order any such payment (called a premium) to be repaid. In some circumstances an accommodation agency may charge a fee for finding acceptable accommodation which is taken up. It may not charge a fee merely for providing tenants with details of properties.

Special rules permitting premiums may apply if the tenancy:

- was granted by the Crown Estate Commissioners, the Duchy of Lancaster or the Duchy of Cornwall or
- is a long tenancy (more than 21 years); or
- was not regulated at the time when it was granted, and a premium was lawfully charged

You should take legal advice about how the rules may apply in a particular case.

May a tenant who is leaving, or a landlord, sell furniture, fixtures, or fittings to an incoming regulated tenant?

Yes, but if the tenant who is going, or the landlord, demands money for the furniture (or fixtures or fittings) as a condition of granting, renewing, or transferring a regulated tenancy, and the price is more than a reasonable price for the furniture, the extra amount counts as a premium.

The person selling must provide a written inventory of the furniture etc, and specify the price asked for each item. If he or she doesn't, he or she can be prosecuted.

If the purchaser thinks the price is unreasonably high (and is really a premium), he or she may go to the local council, which has powers to inspect the furniture or fittings in question.

7. Other rights and obligations of tenants and landlords

How can a tenant find out the name and address of his or her landlord?

A tenant may make a request in writing for this information to an agent of the landlord, for example, the person who collects the rent or the managing agent. The agent must supply the information within 21 days. Where the landlord is a company, the tenant can also ask the company for a list of the names and addresses of the directors and the secretary.

A new landlord must tell the tenants of his or her name and address when he or she take over the property.

Failure to comply with any of these requirements without reasonable excuse is a summary offence.

Further details on information to be provided by a landlord are set out in housing booklet *Residential Long Leaseholders: a guide to your rights and responsibilities*.

Must the landlord provide a rent book?

Yes, but only if the rent is payable weekly.

If a rent book is required, it must contain certain information laid down by law. Rent books containing the required information can be bought from law stationers and through most major booksellers.

Is there a maximum price for metered gas and electricity?

Yes. The industry regulator, the Office of Gas and Markets, set maximum prices at which electricity and gas can be resold. So a tenant who pays for these by a meter supplied by his or her landlord should not be charged more than the maximum price laid down. Details of the maximum prices are available from, **energywatch** the independent watchdog for gas and electricity consumers who can be contacted by telephone, 08459 06 07 08 or by email: enquiries@energywatch.org.

What if a tenant's gas, water, or electricity is cut off because the landlord hasn't paid the bills?

If a tenant's gas, water or electricity supply is cut off, or likely to be cut off, because the landlord hasn't paid the bills, the tenant should write to his or her local council. The council can arrange for the supply to be restored or continued and get back from the landlord any sum that they have had to pay to the suppliers.

Can a regulated tenant sublet part of his or her accommodation?

Yes, unless his or her tenancy agreement says he or she may not. If he or she sublets on a regulated tenancy he or she must tell the landlord in writing within 14 days and give details of the rent charged. A tenant who does not do so without reasonable excuse or who gives false details is liable to prosecution.

If the tenant sublets the whole of his or her accommodation without the landlord's consent, or if he or she charges a subtenant more than the Rent Act allows, the landlord can apply to the court for a possession order (see section 2.2).

Can the landlord enter the property when he or she wishes to do so?

The landlord is only entitled to enter the property if, and so far as, the tenancy agreement specifically says that he or she may, except that there are special rules about access for repairs which are explained in housing booklet *Repairs*.

What happens if the landlord wants to sell the property?

A landlord who wishes to sell a property containing flats must normally give the qualifying tenants the opportunity to buy it. If the landlord fails to comply with the first refusal procedure and sells to a third party, he or she commits a criminal offence and may be fined up to £5,000. If the landlord sells his or her interest in this way, the purchaser must inform the tenants of his or her name and address, and serve a notice on them saying that the right of first refusal may apply. The tenants have the right to buy the property at the price the purchaser paid. If the purchaser fails to do either of these, he or she commits a criminal offence and may be fined up to £2,500. The time limit for the tenant to exercise his or her right does not start until he or she has been notified by the purchaser.

More information is contained in housing, key facts booklet *Residential Long Leaseholders: a guide to your rights and responsibilities*.

Who is responsible for carrying out repairs?

If the tenancy, when granted, was for less than seven years and was granted on or after 24 October 1961, the landlord is by law normally responsible for the repair of the structure and exterior of the home and for keeping in repair and proper working order any basins, sinks, baths and other sanitary installations and any installations for supplying water, gas and electricity, for heating water and for space heating. Except where a lease is taken by one of a number of public bodies, this obligation can only be varied if the court agrees.

Apart from this the responsibilities of the landlord and the tenant will depend upon the agreement between them.

For more details see housing booklet *Repairs*.

8. Protected shorthold tenancies

8.1 What is a protected shorthold tenancy?

The protected shorthold tenancy under the Rent Act 1977 for private landlords and tenants was introduced by the Housing Act 1980. It applies to tenancies which were granted on or after 28 November 1980 and before 15 January 1989. These tenancies had to be for a fixed term of between one and five years and, not later than the start of the tenancy, the landlord had to give the tenant a notice in the form laid down by law. The tenant has the protection of the Rent Act after the Rent Act tenancy ends so long as he or she does not break the conditions of the tenancy. At the end of the agreed period the landlord has the right to get his or her property back if he or she wants.

8.2 Rent

How is the rent decided for shortholds?

For shortholds outside Greater London which began on or after 1 December 1981, and for shortholds in Greater London which began on or after 4 May 1987, the landlord and tenant can agree the rent to be charged if there is no registered rent for the property. However, this does not affect the right of either party to apply at any time for a fair rent to be registered.

For shortholds which began before these dates a fair rent must have been registered by the rent officer, or a certificate of fair rent been issued before the tenancy

was granted, and a fair rent applied for 28 days after the tenancy started.

If a fair rent is registered, the rules explained in Chapters 3 and 4 apply.

8.3 During the fixed term

Can the landlord make the tenant leave during the agreed fixed term?

During the fixed term the tenant has full Rent Act protection. The landlord will only be able to get possession before the end of the agreed fixed term if the tenant fails to pay the rent or breaks some other obligation under the tenancy and the terms of the tenancy agreement allow the landlord to bring the tenancy to an end in such circumstances.

What if the tenant wants to leave before the end of the fixed term?

He or she may do so without penalty, provided that he or she gives the landlord the necessary period of notice in writing. The period of notice for shortholds of two years or less is not less than one month; the period of notice for shortholds of more than two years is not less than three months.

8.4 At the end of the fixed term

Must the tenant leave at the end of the fixed term?

The tenant has no right to remain after the fixed term if the landlord takes steps to regain possession (see

below). But there is nothing to stop the landlord and tenant agreeing a new assured shorthold tenancy (see section 8.5).

What must the landlord do if he or she wants the tenant to leave at the end of the term?

During the last three months of the agreed term the landlord must give the tenant at least three months' notice in writing of his or her intention to apply to the court for possession under case 19 (see section 2.2) of the Rent Act 1977. If the tenant does not leave by the date on which the notice said the landlord would be applying to court, the landlord will be able to apply to the court for possession. This notice of intention must always give the tenant a clear three months' warning that the landlord wants repossession. To give an example, if the shorthold term ends on 31 July the notice can be served at any time between 1 May and 31 July. A notice served on 1 May would have to run out on or after 1 August; a notice served on 1 June would have to run out on or after 1 September.

Is there a time limit during which the landlord must apply to the court?

Yes. The landlord must apply to the court no later than three months after the date the notice said he or she would be applying to court. If the landlord does not, he or she will need to serve a new notice. The landlord's first opportunity to do this will be during the three month period beginning nine months after the end of the original term of the shorthold.

Can the courts refuse to grant possession against a shorthold tenant?

No. Provided the landlord has fulfilled all the shorthold conditions, has served a valid notice and has applied within the proper time limit (see above), the courts must grant the landlord an order for possession. The court may still grant the landlord an order for possession even if he or she has not fulfilled certain of the shorthold conditions, but only if they think it just and fair to do so.

8.5 Staying on beyond the end of the fixed term

What must the landlord do if he or she agrees to the tenant staying on as an assured shorthold tenant?

The landlord may offer the tenant a new assured shorthold tenancy. If the tenant accepts a new tenancy and the qualifying conditions are fulfilled, the new tenancy will automatically be an assured shorthold tenancy. The landlord does not need to serve a new prescribed notice. Any rent registered for the home by the rent officer will no longer apply. For further information see housing booklet *Assured and assured shorthold tenancies: a guide for landlords* and *Assured and assured shorthold tenancies: a guide for tenants*.

If the landlord takes no steps to serve notice of possession at the appropriate time or to enter into a new tenancy, the tenant will be able to stay on for at least another year as a regulated tenant under the Rent Act. This will not give the tenant indefinite

security of tenure. The landlord will still be able to serve notice on the tenant later.

8.6 Subletting and assignment

Can a tenant sublet or assign a shorthold tenancy?

Whether or not a tenant can sublet the whole or part of a home let on shorthold will depend on the tenancy agreement. If a shorthold is sublet this will not affect the landlord's right to possession. Assignment, which is what happens when the tenant transfers his or her interest in the tenancy to someone else, is not allowed, except where the court orders the transfer as part of a divorce settlement.

The other housing booklets referred to in this booklet are:

Assured and assured shorthold tenancies: a guide for landlords

Assured and assured shorthold tenancies: a guide for tenants

Letting rooms in your home: a guide for resident landlords

My landlord wants me out

Notice that you must leave

Renting rooms in someone's home: a guide for people renting from resident landlords

Residential long leaseholders: a guide to your rights and responsibilities

Your rights as a council tenant

These leaflets, and further copies of this leaflet can be obtained from via the Communities and Local Government website: www.communities.gov.uk

Alternative formats can be requested from: alternativeformats@communities.gsi.gov.uk

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