Draft Order laid before Parliament under section 320(3) of the Housing and Regeneration Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

HOUSING, ENGLAND

The Housing (Replacement of Terminated Tenancies) (Successor Landlords) (England) Order 2009

*Made - - - - *** 2009*

Coming into force in accordance with article 1(1)

In accordance with section 320(3) of the Housing and Regeneration Act 2008(**1**), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State makes the following Order in exercise of the powers conferred by paragraph 24 of Schedule 11 to that Act:

Citation, commencement and application

1.—(1) This Order may be cited as the Housing (Replacement of Terminated Tenancies) (Successor Landlords) (England) Order 2009 and shall come into force on the day after it is made.

(2) This Order applies in relation to dwelling-houses in England only.

Replacement of terminated tenancies: successor landlord cases

2. Part 2 of Schedule 11 to the Housing and Regeneration Act 2008 (replacement of certain terminated tenancies) shall apply, subject to the modifications specified in articles 3 to 7, to successor landlord cases(**2**).

Circumstances in which replacement tenancies arise

3. Paragraph 16 (circumstances in which replacement tenancies arise) applies as if in sub-paragraph (1)—

(a) for "ex-landlord", in the first and second places where that word occurs, "successor landlord" were substituted; and

(b) for paragraph (b) there were substituted—

(**1**) 2008 c. 17.
(**2**) *See* paragraph 24(2) of Schedule 11.

"(b) the ex-tenant has not entered into another tenancy with—

(i) the successor landlord, or

(ii) any initial transferee or subsequent transferee who is not the successor landlord,

after the date on which the original tenancy ended but before the commencement date.".

Nature of replacement tenancies

4. Paragraph 17 applies as if there were substituted for it—

"**17.** The new tenancy is to be—

(a) a secure tenancy if—

(i) the original tenancy was—

(aa) a secure tenancy,

(bb) an assured tenancy (whether or not an assured shorthold tenancy),

(cc) an introductory tenancy, or

(dd) a demoted tenancy,

(ii) the new tenancy satisfies the conditions for a secure tenancy in accordance with Part IV of the Housing Act 1985(**3**),

(iii) the new tenancy is one which, by virtue of subsection (2) of section 1 of the Housing Act 1988(**4**), cannot be an assured tenancy,

(iv) where the original tenancy was an assured shorthold tenancy or an introductory tenancy, no election by the successor landlord under section 124 of the Housing Act 1996(**5**) is in force on the day on which the new tenancy arises, and

(v) where the original tenancy was a demoted tenancy, the successor landlord is not a person entitled to apply for an order of the court under section 82A of the Housing Act 1985 (a demotion order)(**6**),

(b) an assured shorthold tenancy if—

(i) the original tenancy was—

(aa) an assured shorthold tenancy,

(bb) an introductory tenancy, or

(cc) a demoted tenancy(**7**),

(ii) the new tenancy is not one which, by virtue of subsection (2) of section 1 of the Housing Act 1988, cannot be an assured tenancy,

(iii) the new tenancy is not one which falls within any paragraph of Schedule 2A to the Housing Act 1988(**8**),

(**3**) 1985 c. 68; *see* in particular sections 79(1) and (2), 80 and 81. Section 80 was amended by section 24(2) of, and paragraph 26 of Part II of Schedule 5 to, the Housing and Planning Act 1986 (c. 63), sections 83(2) and 140 of, and Schedule 18 to, the Housing Act 1988 (c. 50) (for savings, *see* section 35 of the Housing Act 1988), section 140 of, and paragraph 5 of Schedule 16 to, the Government of Wales Act 1998 (c. 38) and S.I. 1996/2325.

(**4**) 1988 c. 50.

(**5**) 1996 c. 52.

(**6**) Section 82A was inserted by section 14(2) of the Anti-social Behaviour Act 2003 (c. 38) and amended by paragraph 12 of Schedule 14 to the Police and Justice Act 2006 (c. 48).

(**7**) *See* definition of "demoted tenancy" in paragraph 26(1) of Schedule 11 to the Housing and Regeneration Act 2008.

(**8**) Schedule 2A was inserted by section 96(2) of, and Schedule 7 to, the Housing Act 1996.

(iv) the new tenancy does not satisfy the conditions for a secure tenancy in accordance with Part IV of the Housing Act 1985, and

(v) where the original tenancy was a demoted tenancy, the successor landlord is not a registered social landlord,

(c) an assured tenancy which is not an assured shorthold tenancy if—

(i) the original tenancy was—

(aa) an assured tenancy which was not an assured shorthold tenancy, or

(bb) a secure tenancy,

(ii) the new tenancy is not one which, by virtue of subsection (2) of section 1 of the Housing Act 1988, cannot be an assured tenancy, and

(iii) the new tenancy does not satisfy the conditions for a secure tenancy in accordance with Part IV of the Housing Act 1985,

(d) an introductory tenancy if—

(i) the original tenancy was—

(aa) an introductory tenancy, or

(bb) an assured shorthold tenancy,

(ii) the new tenancy is one which, by virtue of subsection (2) of section 1 of the Housing Act 1988, cannot be an assured tenancy,

(iii) an election by the successor landlord under section 124 of the Housing Act 1996 is in force on the day on which the new tenancy arises, and

(iv) but for that election, the new tenancy would be a secure tenancy because it satisfies the conditions for a secure tenancy in accordance with Part IV of the Housing Act 1985,

(e) a demoted tenancy to which section 20B of the Housing Act 1988(**9**) applies if—

(i) the original tenancy was a demoted tenancy, and

(ii) the successor landlord is a registered social landlord, or

(f) a demoted tenancy to which section 143A of the Housing Act 1996(**10**) applies if—

(i) the original tenancy was a demoted tenancy, and

(ii) the new tenancy satisfies the first and second conditions in section 143A of the Housing Act 1996.".

Nature of replacement tenancies – further provisions

5. Paragraph 18 applies as if—

(a) in sub-paragraph (3) for "ex-landlord" there were substituted "successor landlord"; and

(b) for sub-paragraph (6) there were substituted—

"(6) The terms and conditions of a new secure tenancy which arises by virtue of paragraph 17(a), where the original tenancy was—

(a) an assured tenancy,

(b) an introductory tenancy, or

(**9**) Section 20B was inserted by section 15(1) of the Anti-social Behaviour Act 2003.
(**10**) Section 143A was inserted by section 14(5) of, and paragraph 1 of Schedule 1 to, the Anti-social Behaviour Act 2003.