
STATUTORY INSTRUMENTS

1996 No. 725 (N.I. 5)

The Business Tenancies (Northern Ireland) Order 1996

- - - - - 13th March 1996

Introductory

Title and commencement

1.—(1) This Order may be cited as the Business Tenancies (Northern Ireland) Order 1996.

(2) This Order shall come into operation on such day as the Head of the Department of Finance and Personnel may by order appoint^{F1}.

F1 fully exercised by SR 1997/74

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“business” includes—

- (a) a trade, profession or employment; and
- (b) any activity carried on by a body of persons whether corporate or unincorporate, whether or not carried on for gain or reward;

“current tenancy” means the tenancy under which the tenant holds for the time being;

“date of termination” has the meaning assigned to it by Article 6(1);

“the holding”, in relation to a tenancy to which this Order applies, means (subject to Article 16(2)) the property comprised in the tenancy, there being excluded any part thereof which is occupied neither by the tenant nor by a person employed by the tenant and so employed for the purposes of a business by reason of which the tenancy is one to which this Order applies;

“the landlord”, in relation to a tenancy (“the relevant tenancy”), means the person (whether or not he is the immediate landlord) who is the owner of that estate in the property comprised in the relevant tenancy which for the time being fulfils the following conditions, that is to say—

- (a) that it is an estate in reversion expectant (whether immediately or not) on the termination of the relevant tenancy; and

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- (b) that it is either the fee simple or a tenancy which will not come to an end within 14 months or less—
- (i) by effluxion of time, or
 - (ii) by virtue of a notice already served being a notice served in relation to that tenancy by the immediate landlord or tenant thereof in accordance with the terms of that tenancy, or
 - (iii) by virtue of a notice to determine, or
 - (iv) by virtue of a notice under Article 7 requesting a new tenancy,
- and is not itself in reversion expectant (whether immediately or not) on an estate which fulfils these conditions;

“Lands Tribunal rules” means rules made under section 9 of the Lands Tribunal and Compensation Act (Northern Ireland) 1964;

“mortgage” includes a charge or lien;

“notice to determine” means a notice served by a landlord in accordance with Article 6;

“notice to quit” means a notice to end a tenancy served by the immediate landlord in accordance with the provisions (whether express or implied) of that tenancy;

“predecessor in title” in relation to a landlord or a tenant means any person through whom the landlord or the tenant, as the case may be, has derived title;

“premises” includes land and buildings;

“public authority” includes any department of the Government of the United Kingdom or of Northern Ireland, any district council, any public body or authority constituted by or under any statutory provision and (without prejudice to Article 4(1)(k)) any holder of a licence under Part II of the Electricity (Northern Ireland) Order 1992;

“statutory provision” has the meaning assigned to it by section 1 (f) of the Interpretation Act (Northern Ireland) 1954;

“tenancy” (subject to any provision of this Order to the contrary) includes a tenancy created before or after the commencement of this Order and also includes a tenancy created or renewed in pursuance of any statutory provision (including this Order), but does not include a tenancy at will, howsoever arising, or a tenancy at sufferance, or any mortgage term or any estate arising in favour of a mortgagor solely by reason of his attorning tenant to his mortgagee;

“tenancy application” has the meaning assigned to it by Article 10(1);

“term certain” in relation to a tenancy means any definite period of certain duration whether or not the tenancy is renewable for further such periods.

(3) For the purposes of this Order a person shall be deemed to have a controlling interest in a company if he has the power to secure, by means of the holding of shares or the possession of voting power in or in relation to the company, or by virtue of any powers conferred by the articles of association or other document regulating the company, that the affairs of the company are conducted in accordance with his wishes.

(4) References in this Order to an agreement between the landlord and the tenant (except in Article 24) shall be construed as references to an agreement in writing between them.

[^{F2}(5) References in this Order to a tenancy dependent on the fall of a life or other uncertain event are to the tenancy into which such a tenancy is converted by Article 37(4) of , and Schedule 3 to, the Property (Northern Ireland) Order 1997.]

Application of the Order

Tenancies to which this Order applies

3.—(1) Subject to the provisions of this Order, this Order applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by the tenant, or for those and other purposes.

(2) Occupation or the carrying on of a business—

(a) by a company in which the tenant has a controlling interest; or

(b) where the tenant is a company, by a person with a controlling interest in the company,

shall be treated for the purposes of this Article as equivalent to occupation or, as the case may be, the carrying on of a business by the tenant; and in relation to a tenancy to which this Order applies by virtue of this paragraph references (however expressed) in this Order to the business of or to use, occupation or enjoyment by the tenant shall be construed as including references to the business of or to use, occupation or enjoyment by a company falling within sub-paragraph (a) or a person falling within sub-paragraph (b).

(3) For the purposes of this Order, premises shall not be deemed to be occupied for the purposes of a business by reason that the occupier thereof carries on the business of subletting the premises or parts of the premises, whether or not the provision of any services is undertaken in connection with such subletting.

Tenancies to which this Order does not apply

4.—(1) This Order does not apply to—

(a) a tenancy where the property comprised therein is let on a protected tenancy or subject to a statutory tenancy within the meaning of the Rent (Northern Ireland) Order 1978; but where, except for the preceding provision, this Order would apply to a tenancy and that tenancy ceases at any time to be a protected or, as the case may be, a statutory tenancy, then as from that time the provisions of this Order shall apply to that tenancy as if it were a tenancy continued by Article 5 after the expiry of a term certain exceeding 9 months;

Sub#para. (b) rep. by 1997 NI 8

(c) a tenancy granted for a term certain not exceeding 9 months, except where the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the business carried on by the tenant was in occupation, exceeds 18 months;

(d) a tenancy of agricultural land, including farm houses and farm buildings;

(e) a tenancy created by a mining lease;

(f) a tenancy granted for or made dependent on the continuance of the tenant in any office, employment or appointment;

(g) a tenancy granted by the personal representatives of a deceased owner of land in pursuance of the power conferred by section 40(1)(a) of the Administration of Estates Act (Northern Ireland) 1955;

(h) a tenancy where the tenant thereunder has been convicted after 1st January 1965 of using the premises comprised in the tenancy, or permitting such premises to be used, for an illegal purpose;

(i) a tenancy granted by any person in breach of any prohibition against granting such a tenancy contained in his contract of tenancy or any other agreement;

(j) a tenancy where the tenant thereunder is—

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- (i) a lessee to whom section 1 of the Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971 applies; or
 - (ii) a lessee to whom an extended lease has been granted under the said Act of 1971;
 - (k) a tenancy granted by a landlord who is the holder of a licence under Part II of the Electricity (Northern Ireland) Order 1992 on the date of the commencement of the tenancy, or who becomes the holder of such a licence after that date, to a tenant who is the holder of such a licence on that date, or who becomes the holder of such a licence after that date.
 - [^{F3}(l) a tenancy the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code), where the tenancy is granted after that Schedule comes into force.]
- (2) In this Article—
- “agricultural land” has the meaning assigned to it by section 43(1) of the Agriculture Act (Northern Ireland) 1949;
- “mining lease” includes any lease in connection with the opening or working of a mine or quarry or the treatment, preparation for sale, storage, removal or disposal of the produce or refuse of a mine or quarry.

F3 Art. 4(1)(l) inserted (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 40](#); [S.I. 2017/1286](#), reg. 2(d)

Continuation, and termination or renewal, of tenancies

Continuation of tenancies to which this Order applies until terminated in accordance with this Order

5.—(1) A tenancy to which this Order applies shall not come to an end unless terminated in accordance with the provisions of this Order; and subject to the following provisions of this Order such a tenancy may be terminated by—

- (a) a notice to determine served by the landlord in accordance with the provisions of Article 6; or
 - (b) a request for a new tenancy made by the tenant in accordance with the provisions of Article 7.
- (2) Notwithstanding anything in paragraph (1)—
- (a) where a tenancy has been continued by paragraph (1) and at any time thereafter ceases to be a tenancy to which this Order applies, it shall not come to an end by reason only of the cesser, but (without prejudice to its termination in accordance with any terms of the tenancy) it may be terminated by not less than 3 nor more than 6 months' notice in the prescribed form served by the landlord on the tenant;
 - (b) where at a time when a tenancy is not one to which this Order applies by reason only that premises comprised in the tenancy are not occupied by the tenant for the purposes of a business, and the immediate landlord serves notice to quit, the operation of the notice shall not be affected by reason that after the service of the notice such premises are occupied by the tenant for the purposes of a business by reason of which the tenancy becomes one to which this Order applies;
 - (c) if at any time within 12 months before the date of expiry of a tenancy dependent on the effluxion of time—

- (i) the immediate landlord serves a notice in the prescribed form on the tenant stating that such landlord requires possession of the premises comprised in such tenancy at the said date of expiry; and
- (ii) at the date of the service of such notice the tenancy is not one to which this Order applies by reason that premises comprised in the tenancy are not occupied by the tenant for the purposes of a business,

this Order shall not apply to such tenancy, notwithstanding that after the date of service of such notice and before the date of expiry of the tenancy premises comprised in the tenancy are occupied by the tenant for the purposes of a business.

Termination of tenancy by the landlord

6.—(1) Subject to Article 11, the landlord may terminate a tenancy to which this Order applies by a notice to determine served on the tenant in the prescribed form specifying the date at which the tenancy is to come to an end (in this Order referred to as “the date of termination”).

(2) A notice to determine shall not have effect unless it complies with the provisions of this Article and, subject to paragraph (3), is served not more than 12 nor less than 6 months before the date of termination specified therein.

(3) In the case of a tenancy which but for this Order could have P been brought to an end by notice to quit—

- (a) paragraph (2) shall, where but for this Order more than 6 months' notice to quit would have been required to bring the tenancy to an end, have effect with the substitution for 12 months of a period 6 months longer than the length of notice to quit which would have been required as aforesaid; and
- (b) the date of termination specified in a notice to determine shall not be earlier than the earliest date on which the immediate landlord could, but for this Order, have brought the tenancy to an end by notice to quit served on the same date as the notice to determine.

(4) In the case of a tenancy dependent on the fall of a life or other uncertain event the landlord may, after the fall of that life or the happening of that uncertain event, terminate the tenancy by a notice to determine served not more than 12 nor less than 6 months before the date of termination specified therein^{F4} and paragraph 2 of Schedule 3 to the Property (Northern Ireland) Order 1997 (termination by a least one month's notice after the fall of the life or the happening of the event) does not apply].

(5) In the case of any tenancy, other than a tenancy referred to in paragraph (3) or (4), a notice to determine shall not specify a date of termination earlier than the date on which, but for this Order, the tenancy would have come to an end by effluxion of time.

(6) A notice to determine shall state whether or not the landlord is willing that the tenant should have a new tenancy and—

- (a) if he is so willing, shall state the general terms of the landlord's proposals as to—
 - (i) the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy);
 - (ii) the rent to be payable under the new tenancy;
 - (iii) the duration of the new tenancy; and
 - (iv) the other terms of the new tenancy; or
- (b) if he is not so willing, shall state whether the landlord would oppose a tenancy application by the tenant and, if so, on which of the grounds mentioned in Article 12 he would do so.