*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(**a**), 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(**b**).

**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—

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

(i) the successor landlord, or

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

(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(**a**),

(iii) the new tenancy is one which, by virtue of subsection (2) of section 1 of the Housing Act 1988(**b**), 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(**c**) 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)(**d**),

(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(**e**),

(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(**f**),

(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—

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(**a**) 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.

(**b**) 1988 c. 50.

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

(**d**) 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).

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

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

(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(**a**) 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(**b**) 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

(c) a demoted tenancy

are to be treated as modified so far as necessary to reflect the fact that the new tenancy is a secure tenancy and not an assured tenancy, an introductory tenancy or a demoted tenancy (as the case may be).

(7) The terms and conditions of a new assured shorthold tenancy which arises by virtue of paragraph 17(b), where the original tenancy was—

(a) an introductory tenancy, or

(b) a demoted tenancy,

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

are to be treated as modified so far as necessary to reflect the fact that the new tenancy is an assured shorthold tenancy and not an introductory tenancy or a demoted tenancy (as the case may be).

(8) The terms and conditions of a new assured tenancy which arises by virtue of paragraph 17(c), where the original tenancy was a secure tenancy, are to be treated as modified so far as necessary to reflect the fact that the new tenancy is an assured tenancy and not a secure tenancy.

(9) The terms and conditions of a new introductory tenancy which arises by virtue of paragraph 17(d), where the original tenancy was an assured shorthold tenancy, are to be treated as modified so far as necessary to reflect the fact that the new tenancy is an introductory tenancy and not an assured shorthold tenancy.

(10) The terms and conditions of a new demoted tenancy which arises by virtue of paragraph 17(e), where the original tenancy was a demoted tenancy to which section 143A of the Housing Act 1996 applied, are to be treated as modified so far as necessary to reflect the fact that the new tenancy is a demoted tenancy to which section 20B of the Housing Act 1988 applies and not a demoted tenancy to which section 143A of the Housing Act 1996 applies.

(11) The terms and conditions of a new demoted tenancy which arises by virtue of paragraph 17(f), where the original tenancy was a demoted tenancy to which section 20B of the Housing Act 1988 applied, are to be treated as modified so far as necessary to reflect the fact that the new tenancy is a demoted tenancy to which section 143A of the Housing Act 1996 applies and not a demoted tenancy to which section 20B of the Housing Act 1988 applies.".

**Continuity of tenancies**

**6.** Paragraph 21 (continuity of tenancies) applies as if—

(a) paragraph (a) of sub-paragraph (2) were omitted;

(b) after sub-paragraph (2) there were inserted—

"(2A) Where the ex-tenant was a successor in relation to the original tenancy, the ex-tenant shall be treated as a successor in relation to the new tenancy."; and

(c) for sub-paragraphs (3) to (5) there were substituted—

"(3) In proceedings on a claim of a description specified in sub-paragraph (7), the court concerned may order that, for the purposes of the claim, the original tenancy is to be treated as having continued during the termination period until the relevant interest was transferred to the initial transferee.

(4) In proceedings on a claim of a description specified in sub-paragraph (8), the court concerned may order that, for the purposes of the claim, the original tenancy is to be treated as having continued during the termination period until the relevant interest was transferred to the successor landlord.

(5) In proceedings on a claim of a description specified in sub-paragraph (9), the court concerned may order that, for the purposes of the claim, the new tenancy is to be treated as having commenced when the relevant interest was transferred to the successor landlord.

(6) In proceedings on a claim of a description specified in sub-paragraph (8) together with a claim of a description specified in sub-paragraph (9), where those claims relate to the same alleged breach, the court concerned may order that, for the purposes of the claims, the original tenancy and the new tenancy are to be treated as—

(a) the same tenancy, and

(b) a tenancy which continued uninterrupted throughout the termination period.

(7) The following are claims specified for the purposes of sub-paragraph (3)—

(a) a claim by the ex-tenant or the ex-landlord against the other for breach of a term or condition of the original tenancy—

(i) in respect of which proceedings are brought on or after the commencement date, or

(ii) in respect of which proceedings were brought, but were not finally determined, before that date, and

(b) a claim by the ex-tenant against the ex-landlord for breach of statutory duty—

(i) where the alleged breach occurred before the relevant interest was transferred to the initial transferee, and

(ii) in respect of which proceedings are or were brought as mentioned in paragraph (a)(i) or (ii).

(8) Where any rights or liabilities in relation to the original tenancy were transferred to the successor landlord, the following is a claim specified for the purposes of sub-paragraph (4): a claim by the ex-tenant or the successor landlord against the other for breach of a term or condition of the original tenancy in respect of which proceedings are or were brought as mentioned in sub-paragraph (7)(a)(i) or (ii).

(9) The following are claims specified for the purposes of sub-paragraph (5)—

(a) a claim by the ex-tenant or the successor landlord against the other for breach of a term or condition of the new tenancy, and

(b) a claim by the ex-tenant against the successor landlord for breach of statutory duty, where the alleged breach occurred after the relevant interest was transferred to the successor landlord,

in respect of which proceedings are or were brought as mentioned in sub-paragraph (7)(a)(i) or (ii).

(10) For the purposes of sub-paragraphs (7) to (9) proceedings must be treated as finally determined if—

(a) they are withdrawn,

(b) any appeal is abandoned, or

(c) the time for appealing has expired without an appeal being brought.".

**Interpretation**

**7.** Sub-paragraph (1) of paragraph 26 (supplementary) applies as if—

(a) after the definition of "ex-tenant" there were inserted—

""initial transferee" means the person to whom the relevant interest was transferred by the ex-landlord after the end of the original tenancy and before the commencement date,";

(b) after the definition of "possession order" there were inserted—

""registered social landlord" has the same meaning as in Part 1 of the Housing Act 1996,

"relevant interest" means the interest of the ex-landlord in the dwelling-house which was let under an original tenancy,";

(c) after the definition of "secure tenancy" there were inserted—

""subsequent transferee" means any person to whom, before the commencement date, the relevant interest was transferred after the transfer from the ex-landlord to the initial transferee,";

(d) in the definition of "successor"—

(i) after ""successor"" there were inserted ", except in the expression "successor landlord"";

(ii) for "a new tenancy which is", in each place where those words occur, there were substituted "an original tenancy which was, or a new tenancy which is,"; and

(iii) in paragraph (a), for "or which is a demoted tenancy" there were substituted ", or in relation to an original tenancy which was, or a new tenancy which is, a demoted tenancy"; and

(e) after the definition of "successor" there were inserted—

""successor landlord" means the initial transferee, or, as the case may be, a subsequent transferee, to whom the relevant interest belongs on the commencement date,".

Signed by authority of the Secretary of State for Communities and Local Government

Parliamentary Under Secretary of State

Date

Department for Communities and Local Government

## EXPLANATORY NOTE

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

Schedule 11 to the Housing and Regeneration Act 2008, which is introduced by section 299 of that Act, makes provision in relation to a tenant whose tenancy of a dwelling-house ("the original tenancy") ended as a result of a possession order but who continues to live in the dwelling-house. Part 2 of Schedule 11 to that Act ("Part 2") provides that, in the circumstances specified in that Part, a new tenancy is treated as arising between the ex-landlord and the ex-tenant on the commencement date. "The commencement date" is defined in paragraph 26 of Schedule 11 as the date on which section 299 comes into force for purposes other than making orders under Part 2. The provisions in Part 2 apply where, on that date, the ex-landlord is entitled to let the dwelling-house.

This Order, which applies in relation to dwelling-houses in England only, provides for Part 2 to apply, subject to specified modifications, to successor landlord cases. A successor landlord case is one where the ex-landlord's interest in the dwelling-house was transferred to another person after the original tenancy ended but before "the commencement date", and, on that date, belongs to the initial transferee or a subsequent transferee (the "successor landlord"). In the circumstances specified in Part 2, as modified, on the date this Order comes into force, a new tenancy is treated as arising between the successor landlord and the ex-tenant.

A full impact assessment of the effect that this instrument will have on the costs of public, private and voluntary sectors is available from the Department for Communities and Local Government, Housing Strategy and Performance Division, Zone 1/E2 Eland House, Bressenden Place, London SW1E 5DU and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website at www.opsi.gov.uk/stat.htm. The impact assessment is also available at www.ialibrary.berr.gov.uk.

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