

REGULATORY APPRAISAL

HOUSING, WALES

THE DEMOTED TENANCIES (REVIEW OF DECISIONS) (WALES) REGULATIONS 2005

Purpose and intended effect of the measure

1. Section 14(2) of the Anti-Social Behaviour Act 2003 amends the Housing Act 1985 to enable social landlords to apply to a county court for a demotion order in respect of a secure tenancy. Secure tenancies are used by local authority housing departments. They are secure, meaning local authorities are required to seek a court order to secure possession of a dwelling occupied by a secure tenant. Secure tenancies also confer on holders a range of statutory rights, such as the right to buy. Registered social landlords-tenants are mainly assured tenants. Assured tenancies are very similar to secure tenancies (though some rights differ e.g. they do not have the right to buy).
2. A demotion order ends a secure tenancy and, if the tenant remains in occupation of the property after the date that the secure tenancy is ended, creates, in the place of the secure tenancy, a less secure demoted tenancy to run for a period of one year. If a tenant behaves anti-socially during the period of demotion the landlord can end the demoted tenancy by following the requisite procedure. Section 15 of the Anti-Social Behaviour Act 2003 introduced a new section to the Housing Act 1988 to set out the legal basis for the form of demoted tenancy that can be used by registered social landlords.
3. Section 14(5) and Schedule 1 of the Anti-Social Behaviour Act 2003 insert sections 143A to 143P into the Housing Act 1996. Section 143F of the Housing Act 1996 enables the tenant to ask the landlord to review its decision to claim possession of a demoted tenancy. Section 143F(3) and (4) enables the National Assembly for Wales, by Regulations, to make provision as to the procedure to be followed in connection with the review. There is no legal requirement placed on registered social landlords to give assured tenants the right of review. This will be required of housing associations through the National Assembly's regulatory powers.
4. These Regulations will facilitate consistency in the procedures to be followed by social landlords where a demoted tenant exercises his or her right to request a review of its decision to end a demoted tenancy. The intended effect is that tenants who are threatened with losing their home will be assured of having a comprehensive review of the decision in line with the minimum standards required by law.

Risk Assessment

5. The Court must grant a possession order for a demoted tenancy where the social landlord demonstrates it has followed the correct procedure. As it is only a matter of procedure to end a demoted tenancy, if this Instrument were not introduced, demoted tenants might be at risk of being evicted without due consideration of their case.

Options

Option 1 - Do Nothing

6. This option could result in inconsistent or poor practice by social landlords resulting in uninformed decisions to end demoted tenancies. Tenants could lose their homes without due consideration of their particular circumstances.

Option 2 – Make the Legislation

7. The review procedure being set out in statute will give tenants at risk of losing their home increased protection against poor practice by social landlords by requiring them to make informed decisions when ending a demoted tenancy.

Benefits

8. Consistent good practice regarding social landlord procedures to review their decision to end a demoted tenancy and increased protection of tenants' rights.

Costs

9. There are no financial implications for the Assembly arising from the implementation of these Regulations.
10. The power to use demoted tenancies is discretionary and an alternative to, for example, seeking possession. If the demotion order works, then this will result in savings to the local authority by avoiding costs associated with eviction. However, if the order doesn't work, an eviction could result. Eviction following breach of a demotion order is automatic if the landlord has followed the right procedure. The alternative would be for a landlord to seek possession and in so doing, have to prove grounds. This is often time consuming, costly and ineffective. Use of demoted tenancies is, therefore, unlikely to generate additional costs for social landlords.
11. There are no financial implications for the taxpayer or the general public arising from commencement of these provisions.

Competition Assessment

12. There are no issues in relation to competition.

Consultation

With Stakeholders

13. There has been no specific consultation with stakeholders on these Regulations, because they are linked to the commencement of newly enacted primary legislation and the proposed measures on tenancy demotion were set out in a consultation paper entitled 'Tackling Anti-social Tenants' issued by the then Department for Transport, Local Government and the Regions during

2002. This was distributed to all social landlords and to landlord and tenant representative bodies in Wales.

With Subject Committee

14. The Social Justice and Regeneration Committee was provided with information on the Anti-social Behaviour Bill during the passage of legislation. The Minister for Social Justice and Regeneration's report to the Committee, on 3 December 2003, confirmed Royal Assent had been received and summarised the Act's main provisions. The Committee also considered the draft Anti-social Behaviour Act 2003 (Commencement No. 2 and Saving) (Wales) Order 2004 at its meeting on 9 June 2004 (SJR 09-04 (p.3) and annex). The report that accompanied the Order contained an overview of all the housing provisions of the Anti-Social Behaviour Act 2003. Since then, the Committee has been kept informed of the current Order's progress through the rolling programme of forthcoming legislation.
15. Although these Regulations have not been formally scrutinised by the SJ&R Committee, they have been notified to the Committee, via the list of forthcoming legislation since 12 May 2004 (paper SJR –08-04 (p.5) Annex), but were not identified by the Committee for detailed scrutiny.
16. Members of the Social Justice and Regeneration Committee were also provided with a copy of the draft Regulations and associated Commencement Order and Regulations (The Anti-Social Behaviour Act 2003 (Commencement No. 4) (Wales) Order 2005 and the Secure Tenancies (Notices) (Amendment) (Wales) Regulations 2005) on 2 March 2005 for consideration and comment. No comments have been received.

Review

17. Once these Regulations are placed the Welsh Assembly Government will review its application by local authorities under the Wales Programme for Improvement and through its regulatory functions in respect of housing associations.

Summary

18. In summary, the Anti-Social Behaviour Act 2003 enables social landlords to apply to a county court for a demotion order for tenants who have been behaving anti-socially. Demoted tenancies run for a period of one year. Demoted tenants who continue to behave anti-socially during this time are at risk of losing their home as social landlords can end a demoted tenancy by simply following the requisite procedure. A social landlord may be required to undertake a review of its decision to end a demoted tenancy. The procedures for review being statutory for secure tenants and a regulatory requirement for assured tenants, will promote consistent good practice regarding review procedures and increased protection of tenants' rights.