

REGULATORY APPRAISAL

HOUSING, WALES

THE SECURE TENANCIES (NOTICES) (AMENDMENT) (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). 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 (the '1988 Act') to set out the legal basis for the form of demoted tenancy that can be used by registered social landlords.
2. Section 14 (5) and Schedule 1 of the 2003 Act insert sections 143A to 143P into the Housing Act 1996. These sections contain various provisions in relation to demoted tenancies where the landlord is a local housing authority. Section 143E of the 1996 Act provides that proceedings for possession must not be brought unless the landlord has served on the tenant a notice under that section.
3. Section 83 of the Housing Act 1985 (as amended by the 2003 Act) requires landlords to serve notice before seeking to demote a secure tenancy. The form of the notice is to be prescribed by the National Assembly for Wales. The prescribed form of notice will ensure that tenants are aware that service of the notice is the first step towards the termination of their tenancy and its replacement with a demoted tenancy. They will be aware of what this means in practical terms (i.e. less security and fewer rights) and of the reasons why it has been issued. They will also know the date after which Court proceedings will begin and where to find further advice about the notice.

Risk Assessment

4. The Court may not entertain proceedings for a demotion order unless a notice in the prescribed form and containing the information set out in this Instrument has been served on the tenant, or the court considers it just and equality to dispense with such notice. This ensures tenants are made aware at an early stage of the full implications of tenancy demotion and that it is being sought as a result of anti-social behaviour.

Options

Option 1 - Do Nothing

5. The existing prescribed form of notice does not refer to demoted tenancies. Failure to prescribe an amendment to the notice could result in confusion to both landlords and tenants. Thereby, diminishing the rights of tenants due to a lack of full, clear and timely information about the implications of their landlord seeking a demotion order, where they can get further advice about it, and what they should do to rectify the situation.

Option 2 – Make the Legislation

6. The 1985 Act (as amended) requires the National Assembly for Wales to make provision for demotion of tenancies in the prescribed form of notice of seeking possession. This will also give tenants at risk of losing their home protection against misinformation on outdated forms of notice.

Benefits

7. These Regulations are required by primary legislation and will ensure consistent practice by social landlords who have decided to seek a demotion order in response to anti-social behaviour. It will ensure tenants receive full, clear and timely information about the implications of demotion, where they can get further advice about it, and what they should do to rectify the situation.

Costs

8. There are no financial implications for the Assembly arising from the implementation of these Regulations.
9. The power to use demoted tenancies is discretionary and an alternative to for example, seeking possession. Use of demoted tenancies therefore is unlikely to generate additional costs for social landlords.
10. There are no financial implications for the taxpayer or the general public arising from commencement of these provisions.

Competition Assessment

11. There are no issues in relation to competition.

Consultation

With Stakeholders

12. 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

13. 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 that 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, including those to be commenced under this Order. Since then, the Committee has been kept informed of the current Order's progress through the rolling programme of forthcoming legislation.

14. 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.
15. Members of the Social Justice and Regeneration Committee were 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 Demoted Tenancies (Review of Decisions) (Wales) Regulations 2005) on 2 March 2005 for consideration and comment. No comments have been received.

Review

16. Once these Regulations are in place 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

17. 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. Before seeking a demotion order the landlord must serve the tenant with a notice in a prescribed form. A prescribed notice will ensure tenants receive full, clear and timely information about the implications of demotion, where they can get further advice about it, and what they should do to rectify the situation.