

# SECURE TENANCIES

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A note on secure tenancies under the Housing Act 1985. This note covers the rights of secure tenants, particular features of secure tenancies and how they can be created, varied and ended.

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## SCOPE OF THIS NOTE

This note covers secure tenancies under the Housing Act 1985 (HA 1985). It looks at succession, assignment and termination of secure tenancies.

This note does not cover:

- Flexible tenancies (see *Practice note, Flexible tenancies* ([www.practicallaw.com/9-556-9006](http://www.practicallaw.com/9-556-9006))).
- Demoted tenancies (see *Practice note, Demoted tenancies* ([www.practicallaw.com/6-502-4535](http://www.practicallaw.com/6-502-4535))).
- Introductory tenancies (see *Practice note, Introductory tenancies* ([www.practicallaw.com/4-501-0105](http://www.practicallaw.com/4-501-0105))).

- Assured tenancies (see *Practice note, Types of residential tenancies: overview: Assured tenancies* ([www.practicallaw.com/8-504-1548](http://www.practicallaw.com/8-504-1548))).

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### WHAT ARE SECURE TENANCIES?

Secure tenancies were initially introduced under Part I of the Housing Act 1980, which incorporated the rights of tenants in the public sector that had been emerging from the case law developing from the Rent Acts. The provisions relating to secure tenancies went on to be dealt with by the Housing Act 1985 (HA 1985). Generally, tenancies granted before 15 January 1989 (that is, the date the Housing Act 1988 (HA 1988) came into force), have been secure tenancies, even though they may have been granted by former housing associations, that is, private registered providers of social housing (PRPs) or registered social landlords. However, with very limited exceptions, tenancies granted by PRPs or housing associations on or after this date have been assured tenancies (*section 35, HA 1988*).

Secure tenancies and the rights of secure tenants are mainly dealt with under Parts IV and V of the HA 1985. A dwelling let as a separate dwelling (a house or a flat, although *section 112* of the HA 1985 defines a dwelling house as only being “a house or a part of a house”) is a secure tenancy at any time when the conditions described in *sections 80 to 81* of the HA 1985 (the landlord condition and the tenant condition respectively) are satisfied and the tenant occupies the dwelling as his only or principal home (*section 79*) (see *Tenant condition* below).

The tenants of local authorities in England enjoy security of tenure and other rights under Part IV of the HA 1985.

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### WHEN A TENANCY WILL BE CONSIDERED SECURE: LANDLORD AND TENANT CONDITIONS

A tenancy is a secure tenancy “at any time” when both the “landlord condition” and the “tenant condition” are fulfilled (*sections 79-81, HA 1985*).

The phrase “at any time when” in *section 79* of the HA 1985 means if the landlord’s interest changes and a new landlord does not fulfil the condition, the tenancy will cease to be secure. Conversely, if the landlord ceases to be exempt from these provisions, the tenancy will be brought within the security of the HA 1985. Protection for tenants against abuse or avoidance by means of a landlord disposal is prevented by social landlords being unable to transfer property without consent (see *sections 32 and 43* of the HA 1985 for local authorities and *sections 8 and 9* of the HA 1988 for PRPs (see *Kay v Lambeth LBC [2004] EWCA Civ 926* on local authority disposals).

There must be a direct landlord and tenant relationship between the parties who fulfil the landlord and tenant conditions (*Kay*). Where there is an intermediate tenancy, a sub-tenant may still be secure if the intermediate landlord fulfils the landlord condition. However, there is no security merely because the sub-tenant and the head landlord discretely fulfil the relevant conditions. The position of the head landlord and the intermediate landlord cannot be equated with that of joint landlords either (*Kay, at paragraph 68*, see also *Islington LBC v Green [2005] EWCA Civ 56*).

#### Landlord condition

The “landlord condition” specifies that the interests of the landlord must belong to one of a number of defined public authorities (*section 80, HA 1985*). These include:

- A local authority (generally acting as a local housing authority (LHA)).
- A development corporation (*Schedule 1, Housing and Regeneration Act 2008 (Consequential Provisions) Order 2008 (SI 2008/3002)*).
- An urban development corporation.

- A housing association that is a PRP or a registered social landlord, but is not a co-operative housing association (*paragraphs 15, 19(1), (3)(a) and (5), Schedule 2, Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (SI 2010/866)*).
- A co-operative housing association that is neither a PRP or a registered social landlord (*paragraphs 15, 19(1), (3)(b) and (5), Schedule 2, Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010*).
- A housing co-operative (see the definition in section 27B of the HA 1985), where the dwelling house is subject to a housing co-operative agreement between the co-operative and either a local housing authority or a new town corporation.
- A housing action trust.
- Where the interest of the landlord is transferred to the Homes and Communities Agency or the Welsh Ministers (*section 80(2A)-(2E), HA 1985*).

### Tenant condition

The “tenant condition” requires a tenant to be an individual occupying the dwelling house as their only or principal home. The “only or principal home” concept has been determined by case law as the HA 1985 does not contain a definition (see *Ujima Housing Association v Ansah (1998) 30 HLR 831*). Where a person has two homes, it is for the court to decide which of those is their principal home (*Council of the City of Manchester v Ofodile [2011] EWCA Civ 1086* and *Islington LBC v Boyle and another [2011] EWCA Civ 1450* (see [Legal update, Council wins appeal against county court decision refusing its claim for possession \(Court of Appeal\) \(www.practicallaw.com/6-515-6248\)](#))).

Where the tenancy is a joint tenancy, each of the joint tenants must be an individual and at least one of them must occupy the dwelling house as their only or principal home. A tenancy would cease to be secure if the tenant or both the joint tenants stopped occupying the dwelling house (*London Borough of Haringey Council v Hines [2010] EWCA Civ 1111*).

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### EXCLUSIONS: TYPES OF TENANCY THAT CANNOT BE SECURE

The HA 1985 sets out a list of tenancies that cannot be secure tenancies. These include the following:

- A long tenancy. This is defined as a tenancy granted:
  - for a fixed term of more than 21 years, regardless of any right to terminate the tenancy prematurely;
  - for a term fixed by law with a covenant or obligation for perpetual renewal, other than a subtenancy derived from a tenancy that is not a long tenancy; or
  - under the right to buy or the right to acquire.

Certain tenancies terminable by notice after death are not included.

(*Section 115.*)

- Introductory tenancies or tenancies that cease to be introductory tenancies either under section 133(3) of the Housing Act 1996 (HA 1996) (disposal on death to non-qualifying person) or because the tenant, or all tenants in a joint tenancy, cease to occupy the house as their only or principal home (see [Practice note, Introductory tenancies \(www.practicallaw.com/4-501-0105\)](#)).
- A demoted tenancy as defined in section 143A of the HA 1996 (see [Practice note, Demoted tenancies \(www.practicallaw.com/6-502-4535\)](#)).

- Certain premises occupied in connection with employment (a “contract of employment” means a contract of service or apprenticeship) where the tenant is an employee of the landlord or a local authority, new town corporation, housing action trust, urban development corporation, mayoral development corporation, the governors of an aided school, a police force or a fire and rescue authority).
- A tenancy where the dwelling house is on land acquired for development and the landlord uses the house in the meantime as temporary housing accommodation (“development” has the meaning given by section 55 of the Town and Country Planning Act 1990).
- A family intervention tenancy, that is, a tenancy granted by a PRP or a registered social landlord to a tenant in need of behaviour support services (*paragraph 4ZA, Schedule 1, HA 1985*).
- Accommodation for homeless persons provided by a LHA under its statutory duty, unless the landlord has notified the tenant that it is a secure tenancy (see *Practice note, Homelessness: duties and powers of local authorities under Part VII of the Housing Act 1996* ([www.practicallaw.com/1-520-3228](http://www.practicallaw.com/1-520-3228))).
- Accommodation provided for asylum seekers under section 4 or Part VI of the Immigration and Asylum Act 1999 (as amended) unless the landlord has notified the tenant that it is a secure tenancy.
- Accommodation provided under the Displaced Persons (Temporary Protection) Regulations 2005 (*SI 2005/1379*).
- Certain temporary accommodation provided to persons taking up employment (see *Practice note, Service occupancies* ([www.practicallaw.com/2-618-2069](http://www.practicallaw.com/2-618-2069))).
- If a dwelling house has been leased to the landlord with vacant possession for use as temporary housing accommodation and:
  - the terms on which it has been leased include provision for the lessor to obtain vacant possession from the landlord on the expiry of a specified period or when required by the lessor;
  - the lessor is not a body that is capable of granting secure tenancies; and
  - the landlord has no interest in the dwelling house other than under the lease in question or as a mortgagee.
- If a dwelling house has been made available for occupation by the tenant (or a predecessor in title of his) while works are carried out on the dwelling house that he previously occupied as his home, and the tenant or predecessor was not a secure tenant of that other dwelling house at the time when he ceased to occupy it as his home.
- If a dwelling house is comprised in an agricultural holding and is occupied by the person responsible for the control (whether as tenant or as servant or agent of the tenant) of the farming of the holding.
- If a dwelling house consists of or includes premises which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of section 14 of that Act) for consumption on the premises.
- Certain student lettings granted to enable the tenant to attend a designated course at an educational establishment.
- A tenancy to which Part II of the Landlord and Tenant Act 1954 applies (tenancies of premises occupied for business purposes).

(*Schedule 1, HA 1985*.)

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## LOSS OF SECURITY OF TENURE

Security of tenure can be lost under the HA 1985:

- Where there is a change of landlord and the landlord condition under section 80 is no longer satisfied (see [Landlord condition](#) above).
- On the grounds that the tenant (or one of the joint tenants) is not occupying the property as their only or principal home under section 81 (see [Tenant condition](#) above).
- Where a landlord has sought to regain possession under sections 84, 84A and Schedule 2 to the HA 1985.
- On a second succession under sections 87 to 90 (see [Succeeding to a secure tenancy](#) below).
- On assignment under section 91 of the HA 1985.
- Where a tenant sub-lets the whole of the dwelling under section 93 of the HA 1985.
- On a demotion under section 82A of the HA 1985 (see [Practice note, Demoted tenancies \(www.practicallaw.com/6-502-4535\)](#)).
- The tenant has voluntarily surrendered their tenancy.
- The tenant has died and has no successor (see [Succeeding to a secure tenancy](#) below).

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## DURATION

As long as the landlord and tenant conditions are satisfied and the tenant has not lost their security of tenure by a failure to occupy, then a secure tenancy will continue to exist. Secure tenancies granted before the Localism Act 2011 (LA 2011) came into force were periodic tenancies and therefore granted for life (as long as the conditions were met). However, section 154 of the LA 2011 inserted sections 107A to 107E into the HA 1985 enabling local authority landlords to grant shorter [flexible tenancies \(www.practicallaw.com/5-547-8428\)](#) as opposed to granting lifetime secure tenancies. For more information, see [Practice note, Flexible tenancies \(www.practicallaw.com/9-556-9006\)](#).

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## VARYING THE TERMS OF A SECURE TENANCY

The terms of a secure tenancy may only be varied in the following ways:

- By agreement between the landlord and the tenant.
- To the extent that the variation relates to rent or to payments in respect of rates, council tax or services, by the landlord or the tenant in accordance with a provision in the lease or agreement creating the tenancy, or in an agreement varying it (see [Varying rent terms](#) below).
- By the landlord giving notice of variation of the terms of a periodic tenancy (see [Notice of variation \(tenancy terms other than rent\)](#) below)).

(Section 102(1), HA 1985.)

A variation includes addition and deletion of terms. The conversion of a monthly tenancy into a weekly tenancy, or a weekly tenancy into a monthly tenancy, is a variation of a term of the tenancy, but a variation of the premises let under a tenancy is not (section 102(2), HA 1985).

## Varying rent terms

In the case of a fixed-term secure tenancy, rent can only be increased if there is a rent review clause in the tenancy agreement (*section 102(1)(b), HA 1985*). However, where the tenancy involved is a weekly or other periodic tenancy that is not secure or introductory, then section 25 of the HA 1985 outlines the requirements for increasing rent. Rent can be increased with effect from the beginning of a rental period by a written notice of increase given by the authority to the tenant, this must:

- Be given at least four weeks before the beginning of the rental period, or any earlier day on which the payment of rent in respect of that period should be made.
- Inform the tenant of their right to terminate the tenancy and how to do so.
- State the dates by which, a notice to quit must be received by the authority and the tenancy terminated (see *Standard document, Notice to quit: residential dwelling (www.practicallaw.com/9-571-3607)*).

(*Section 25, HA 1985.*)

A notice under section 25 will not have effect if the tenancy is terminated by the tenant using a notice to quit during the relevant rental period and it is given two weeks before the date on which the notice of increase is given and the date on which the tenancy terminates is not later than the earliest day on which the tenancy could be terminated by a notice to quit given by the tenant on the last day of that period.

## Notice of variation (tenancy terms other than rent)

The terms of a periodic secure tenancy may be unilaterally varied by a landlord serving a notice of variation on the tenant (*section 103(1), HA 1985*). Before serving a notice of variation on the tenant, the landlord must serve a preliminary notice:

- Informing the tenant of its intention to serve a notice of variation.
- Specifying the proposed variation and its effect.
- Inviting the tenant to comment on the proposed variation within such time, specified in the notice, as the landlord considers reasonable. The landlord must consider any comments made by the tenant within the specified time.

(*Section 103(2), HA 1985.*)

A notice of intention to vary need not be served in the case of a variation of the rent or of payments in respect of services or facilities provided by the landlord or payments in respect of rates (*section 103(3), HA 1985*) (see *Varying rent terms* above).

A notice of variation must specify:

- The variation effected by it. The requirement that the notice must specify the variation is not satisfied merely by sending the tenant a new form of tenancy agreement without drawing attention to the differences between the old and the new.
- The date on which it takes effect and the period between this and the date on which it is served. The date on which it takes effect must be at least four weeks or the rental period, whichever is the longer (*section 103(4), HA 1985*). A variation notice must be accompanied by any information that the landlord considers necessary to inform the tenant of the nature and effect of the variation (*section 103(5), HA 1985*). The requirement that the notice of variation must specify a date on which it is to take effect is mandatory and cannot be waived by the tenant (*Palmer v Sandwell MBC (1987) 20 HLR 74*).

If the tenant, after the service of a notice of variation, but before the date on which the variation is to take effect, gives a valid notice to quit, the notice of variation does not take effect unless the tenant (with the written agreement of the landlord) withdraws his notice to quit before that date (*section 103(6), HA 1985*) (see [Standard document, Notice to quit: residential dwelling \(www.practicallaw.com/9-571-3607\)](#)).

A contractual fetter in the method by which the terms of a secure tenancy can be varied will be considered void, for example, by requiring the consent of a majority of tenants' representatives (*R (Kilby) v Basildon District Council [2007] EWCA Civ 479*). An example of such a variation was in *Rochdale Borough Council v Dixon [2011] EWCA Civ 1173* (which was also recently considered in *Jones v London Borough of Southwark [2016] EWHC 457 (Ch)*) (see [Legal update, High Court rules that council collecting charges for water and sewerage services from tenants on behalf of utility company was re-selling \(www.practicallaw.com/1-624-4765\)](#)), where it was held that the landlord was entitled to vary the terms of the tenancy so that a failure to pay water and sewerage charges had the same consequence, in terms of the landlord's entitlement to claim possession, as a failure to pay rent.

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### UNFAIR TERMS IN SECURE TENANCY AGREEMENTS

Terms in secure tenancy agreements that are deemed to be unfair may fall foul of the Unfair Terms in Consumer Contracts Regulations 1999 (*SI 1999/2083*) (as amended).

The application of the regulations to tenancies was affirmed in *London Borough of Newham v Khatun and others [2004] EWCA Civ 55* (see [Legal update, Unfair Terms in Consumer Contracts Regulations 1999 do apply to land contracts \(www.practicallaw.com/4-107-2225\)](#)).

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### RENT

A LHA may make such reasonable charges as it determines for the tenancy or occupation of its houses (*section 24, HA 1985*). This applies to all secure, flexible and introductory tenancies granted by a local authority. However, there is an annual limit for rent increases in social housing for any single year. That limit is the Consumer Price Index (CPI) plus 1%. This is applicable for increases in social rent and affordable rent (see [Homes and Communities Agency: Rent standard guidance \(April 2015\) \(https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419271/Rent\\_Standard\\_Guidance\\_2015.pdf\)](#)).

In relation to secure tenancy rents, a LHA must:

- Periodically review rents and if necessary make changes to them, either to rents generally or to particular types of rents. This review will generally be on an annual basis.
- Have regard to any relevant standards set under section 193 of the Housing and Regeneration Act 2008.

(*Section 24, HA 1985*.)

### Challenging a LHA's rent policies

The lawfulness or otherwise of a LHA's policies on rents may be challenged by judicial review (see [Toolkit, Judicial review \(www.practicallaw.com/6-519-5688\)](#)). It has been held that a LHA must, so far as it is possible, maintain a reasonable balance between the interests of council tax payers as a whole and those of the authority's council tenants and that it may operate a differential rent scheme whereby different rents are fixed according to the means of a tenant (*Belcher v Reading Corporation [1950] Ch 380; Leeds Corporation v Jenkinson [1935] 1 KB 168; Smith v Cardiff Corporation [1955] Ch 159; Luby v Newcastle under Lyme Corporation [1965] 1 QB 214; R v Secretary of State ex p City of Sheffield (1985) 18 HLR 6 and Hemsted v Lees (1986) 18 HLR 424*).

It should be noted that under the Welfare Reform and Work Act 2016 (*sections 23-33 and Schedule 2*), registered providers must secure that the rent payable by their tenants in England is at least 1% less than was payable in the

previous year (see *Legal update, Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 come into force* ([www.practicallaw.com/9-625-9913](http://www.practicallaw.com/9-625-9913))). However, the Homes and Communities Agency (HCA) is able to grant an exemption in the case of a registered provider where to introduce the new rent reduction requirement would jeopardise the financial viability of the provider (see *HCA: Explanatory note for making a formal application for an exemption to the rent reductions in the Welfare Reform and Work Act 2016 (18 March 2016)* ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/519329/20160422\\_Explanatory\\_Note\\_Exemptions\\_updated.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519329/20160422_Explanatory_Note_Exemptions_updated.pdf))).

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## ENDING A SECURE TENANCY

### Termination by tenant

A secure tenancy can be terminated by the tenant giving notice to quit or by voluntarily surrendering the tenancy (see *Standard document, Notice to quit: residential dwelling* ([www.practicallaw.com/9-571-3607](http://www.practicallaw.com/9-571-3607))).

A joint secure tenant is able to unilaterally end a tenancy without interfering with the rights of the other joint tenants under the *European Convention on Human Rights* ([www.practicallaw.com/1-107-6550](http://www.practicallaw.com/1-107-6550)) (*Hammersmith and Fulham London Borough Council v Monk* [1992] 1 All ER 1, see *Legal update, Confirmation that a joint tenant can unilaterally terminate a secure tenancy and no breach of ECHR rights (Court of Appeal)* ([www.practicallaw.com/8-523-8291](http://www.practicallaw.com/8-523-8291))).

### Possession by landlord

A landlord may only recover possession of a property let under a secure tenancy by bringing court proceedings as set out in section 82 of the HA 1985 relying on a particular ground set out in Schedule 2 to the HA 1985 (see *Grounds for possession* below). Even where the parties consent to the recovery of possession by the landlord, the court has no jurisdiction to make a possession order unless the tenant admits a ground of possession, either expressly or by necessary implication. A court can only deal with possession proceedings relating to a secure tenancy where either:

- The landlord has served a notice of seeking possession (NoSP) on the tenant complying with the Secure Tenancies (Notices) Regulations 1987 (*SI 1987/755*) (as amended). The relevant form that should be used is set out in the regulations and sets out the ground on which the court is asked to make the order for possession, giving particulars (see *Grounds for possession*).
- The court considers it just and equitable to dispense with the requirement of such a notice.

(*Section 83, HA 1985*).

A NoSP ceases to be effective 12 months after the specified date. Therefore, if proceedings are not brought within that period, a new notice will have to be served. A possession order cannot be made on any grounds not specified in the landlord's notice. However, with the leave of the court, those grounds may be added to or altered (*section 84(3)*).

Recovery of possession of a property let under a secure tenancy should be conducted in compliance with the Pre-action protocol for possession claims by social landlords (see *Practice note, Pre-action protocol for possession claims by social landlords* ([www.practicallaw.com/2-517-1967](http://www.practicallaw.com/2-517-1967))).

### Grounds for possession

The grounds for possession of properties let under secure tenancies are set out in sections 84 and 84A of and Schedule 2 to the HA 1985 and fall into three categories:

- Grounds 1 to 8: grounds where the landlord must also satisfy the court that it is **reasonable** to make an order, for example, in the case of outstanding rent arrears.



- Grounds 9 to 11: grounds where the landlord must satisfy the court that suitable **alternative accommodation** is available, for example, where the property is overcrowded.
- Grounds 12 to 16: grounds where the landlord must satisfy the court that it is **reasonable** to make an order **and** that **suitable alternative accommodation** is available, for example, if the property is under-occupied following a statutory succession.

For more information on these grounds, see *Practice note, Grounds for possession: secure tenancies* ([www.practicallaw.com/2-523-9769](http://www.practicallaw.com/2-523-9769)).

### Possession orders

A possession order does not necessarily have to be outright, where after a certain period and after obtaining a warrant of possession, an enforcement agent will take enforcement action in order to recover possession. Where the ground for possession is one where only the availability of suitable alternative accommodation is relevant (grounds 9-16), then an order can take effect within two weeks (unless this would cause exceptional hardship, in which case the time limit can be extended to six weeks (*section 89, Housing Act 1980*)).

Possession orders can also be postponed or suspended providing that the execution of the possession order will be stayed or suspended until a certain date and that possession is sought in reliance on grounds 1-8 and 12-16 (that is, the grounds where a court must be satisfied that it is reasonable to make a possession order). Conditions can be imposed on possession orders, for example, requiring the tenant not to engage in anti-social behaviour.

Where a possession order based on one ground is postponed or suspended and another ground subsequently becomes relevant then there is no requirement for new proceedings to be started, a court can choose to add these grounds to the existing order (*Manchester City Council v Finn [2002] EWCA Civ 1998*).

Where a landlord obtains an order for possession in relation to a dwelling held on a secure tenancy, the tenancy will terminate when the order is executed and not before (*section 82(2), HA 1985*). Therefore, a secure tenant will remain secure until they are evicted by order of the court (previously it was the case that such tenants would become "tolerated trespassers" meaning neither party could rely on the terms of the previous tenancy, housing legislation or any rights normally enjoyed by secure tenants).

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## SUCCEEDING TO A SECURE TENANCY

Sections 87 to 90 of the HA 1985 govern succession to a secure tenancy (periodic or fixed-term) on the death of a secure tenant. For more information, see *Practice note, Succession: social housing* ([www.practicallaw.com/0-595-7529](http://www.practicallaw.com/0-595-7529)).

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## RIGHTS OF SECURE TENANTS

### Right to buy

Most secure tenants will have the right to buy their social housing properties at a discounted rate, subject to meeting other qualifying criteria under the HA 1985. For more information on the right to buy, see:

- *Practice note, Right to buy: the process* ([www.practicallaw.com/1-540-4750](http://www.practicallaw.com/1-540-4750)).
- *Practice note, Right to buy: practical problems* ([www.practicallaw.com/7-545-6005](http://www.practicallaw.com/7-545-6005)).
- *Flowchart, Right to buy: flowchart* ([www.practicallaw.com/1-525-0446](http://www.practicallaw.com/1-525-0446)).
- *Practice note, Exceptions to the right to buy and the right to acquire under the Housing Act 1985 and the Housing (Right to Acquire) Regulations 1997* ([www.practicallaw.com/4-540-2066](http://www.practicallaw.com/4-540-2066)).

### Right to have lodgers

A secure tenant may allow any persons to reside as lodgers, but cannot, without the written consent of their landlord, sublet or part with possession of part of the dwelling (*section 93(1), HA 1985*). This consent cannot be unreasonably withheld.

If the tenant sublets part of the dwelling then the remainder of the dwelling security is lost and the landlord is able to regain possession using a notice to quit instead of launching possession proceedings (*section 93(2), HA 1985*) (see *Loss of security of tenure* above).

### Right to repair

Almost all secure tenancies will contain repairing obligations implied by section 11 of the Landlord and Tenant Act 1985. However, in addition, secure tenants of landlords owning more than 100 dwelling-houses have a right to:

- Have qualifying repairs carried out, at their landlords' expense, to their dwelling-house.
- Receive compensation from their landlords if these qualifying repairs are not carried out within certain prescribed periods.

(*Section 96, HA 1985 and Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 (SI 1994/133)* (as amended) (Right to repair regulations)).

### Qualifying repairs

A "qualifying repair" is any repair of a prescribed description which the landlord is obliged by a repairing covenant to carry out (*section 96, HA 1985*). A repair of a "prescribed description" is one which:

- Remedies a defect specified in column 1 of the Schedule to the Right to repair regulations (this includes a leaking roof, loss of water or electrical supply or a blocked sink).
- Will not, in the opinion of the landlord, cost more than £250 to carry out.

(*Regulation 4, Right to repair regulations.*)

### Repair process

Where a secure tenant applies for a repair to be carried out, the following process should be followed:

- If it considers it necessary, the landlord should inspect the dwelling-house in order to satisfy itself whether the repair is a qualifying repair.
- If the landlord does not consider the repair to be a qualifying repair, then it must notify the tenant of this and give an explanation as to why this is the case by reference to the Right to repair regulations.
- If the landlord considers that the repair is a qualifying repair then it must issue a repair notice to a contractor (which can include a LHA landlord), give the tenant a copy of the notice and an explanation of the Right to repair regulations. A repair notice must contain:
  - the name of the secure tenant;
  - the address of the dwelling-house;
  - the nature of the repair;

- the name, address and telephone number of the contractor who is to carry out the repair;
  - the arrangements made for the contractor to obtain access to the dwelling-house; and
  - the last day of the first prescribed period (that is, the period specified in the Schedule to the Right to repair regulations which depends on the type of repair being undertaken and the circumstances in which the repair notice was issued).
- If a qualifying repair has not been carried out within the first prescribed period, and the tenant notifies their landlord that another contractor is required then a further repair notice should be issued to another contractor (where practicable) and a copy given to the tenant. The further repair notice should contain the same information as the original repair notice but should refer to the second prescribed period (as defined in regulation 2).

(Regulations 5 and 6, Right to repair regulations.)

### Compensation

Where a contractor does not complete qualifying repairs within the second prescribed period, then the tenant has a right to a certain amount of compensation from their landlord depending on how many days have passed since the second prescribed period ended (*regulation 7, Right to repair regulations*). The formula for calculating this is set out in regulation 7 to the Right to repair regulations.

### Right to improve

Secure tenants are able, with the written consent of their landlord, to improve their properties by adding to or altering them and to be compensated for these improvements in certain circumstances (sections 97-100, HA 1985). The written consent of the landlord is required, but that consent cannot be unreasonably withheld and any unreasonable refusal can be challenged in the County Court (*section 110, HA 1985*). The right to improve is expressly excluded in relation to flexible tenants (see *Practice note, Flexible tenancies* ([www.practicallaw.com/9-556-9006](http://www.practicallaw.com/9-556-9006))).

### Right to be provided with information and be consulted

Secure tenants have the right to be provided with information about their tenancies and to be consulted on issues affecting them (*sections 104-106A, HA 1985*).

#### Provision of information

Landlords of secure tenants are required to publish up-to-date information about their secure tenancies, which, in simple terms, explain the:

- Effects of the express terms of their secure tenancies.
- Provisions of Part IV of the HA 1985.
- Terms of sections 11-16 of the Landlord and Tenant Act 1985 (principal implied repairing obligations imposed on landlords in relation to tenancies for less than seven years, including periodic tenancies).

(*Section 104, HA 1985*.)

In the case of a local authority landlord, this duty requires them to supply this information to their secure tenants at least once a year (*section 104(3), HA 1985*).

A landlord must provide all its secure tenants with:

- A copy of the information they are required to publish about their secure tenancies (as outlined above).
- A written statement governing any other terms of the tenancy that are not contained in the tenancy agreement or implied by law. This should be provided when the secure tenancy arises or as soon as practicable afterwards.

(Section 104(2), HA 1985.)

### Consultation

Landlords of secure tenants are required to make and maintain arrangements to enable consultation to take place with their secure tenants on matters of housing management (section 105, HA 1985) (see *Matters of "housing management"* below). Local authority landlords must publish details of their consultation arrangements and make them available to members of the public at their principal office (section 105(5)).

These arrangements must enable the secure tenants likely to be affected to be informed of the authority's proposals and to make their views known to the authority within a specified period. There is however no obligation to convey the disadvantages of any proposals, merely to inform those affected of them (*R (Beale and another) v London Borough of Camden* [2004] EWHC 6 (Admin)).

The variation of a secure periodic tenancy procedure set out in section 103 may be also be applicable where a degree of individual consultation is required if the housing management proposals also involve variation of the terms of a secure tenancy (see *Variation* above).

For more information on consulting more generally, see *Practice note, Duty to consult: when does it arise and what does it entail?* ([www.practicallaw.com/0-507-0974](http://www.practicallaw.com/0-507-0974)).

### Matters of "housing management"

Matters of "housing management" include those, which in the opinion of the landlord, relate to the management, maintenance, improvement or demolition of dwelling-houses let under secure tenancies or the provision of services or amenities in connection with those dwelling-houses (section 105(2)) (not including rent or services/facilities charges).

Relevant matters requiring consultation include new programmes of maintenance, improvement or demolition or a change in the landlord's practice or policy that are likely to affect secure tenants as a whole or a particular group.

### Right to exchange

A secure tenancy cannot be assigned but a secure tenant has a right to exchange their tenancy with another public sector tenant under section 92 of the HA 1985. For more information on the right to exchange, see *Practice note, Mutual exchange: social housing* ([www.practicallaw.com/0-594-4645](http://www.practicallaw.com/0-594-4645)).

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## COMPARING SECURE TENANCIES AND OTHER TYPES OF TENANCY

### Flexible tenancies

A flexible tenancy is a hybrid version of a secure tenancy (section 107A, HA 1985) (see *Practice note, Flexible tenancies* ([www.practicallaw.com/9-556-9006](http://www.practicallaw.com/9-556-9006))). A flexible tenancy is a secure tenancy for a fixed term of at least two years, the length of the term being decided in accordance with the LHA's tenancy strategy. A secure tenancy will be a flexible tenancy if it is granted for a fixed term of more than two years and before it was granted a notice was served by the landlord on the tenant stating that the tenancy would be flexible (section 107A(2)).

A flexible tenant has many of the same rights as a secure tenant under the HA 1985, although there is an express provision under section 97(5) excluding flexible tenants from certain rights relating to improvements.

In order to obtain possession against a secure tenant, it is necessary for the landlord to establish one (or more) of the grounds for possession contained in Schedule 2 to the HA 1985 (see *Practice note, Grounds for possession: secure tenancies* ([www.practicallaw.com/2-523-9769](http://www.practicallaw.com/2-523-9769))). This is also the case during the fixed term of a flexible tenancy, however, if possession is sought once the fixed term has expired, a landlord will be able to obtain possession without the need to establish grounds for possession. This is the main difference between secure and flexible tenancies.

### **Introductory tenancies**

A LHA or a housing action trust may choose to operate an introductory tenancy regime (*section 124, Housing Act 1996*) (see *Practice note, Introductory tenancies* ([www.practicallaw.com/4-501-0105](http://www.practicallaw.com/4-501-0105))).

When a LHA or housing action trust elects to do this then this will apply to every periodic tenancy of a dwelling house entered into or adopted, where the tenancy would otherwise be a secure tenancy (except in certain circumstances).

An introductory tenant will have no security of tenure for an initial trial period. If however, the tenant proves to be satisfactory then the introductory tenancy will automatically become secure at the end of the trial period, or in England, the landlord may notify the tenant that they will go on to have a flexible tenancy (*section 137A, Housing Act 1996*) (see *Practice note, Flexible tenancies* ([www.practicallaw.com/9-556-9006](http://www.practicallaw.com/9-556-9006))).

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## JURISDICTION OF COUNTY COURT

A County Court has jurisdiction to determine any question arising under the statutory provisions relating to secure tenancies (*section 110(1), HA 1985*).