

## **ANNEX B: Further interpretation on Paragraph 3: Exempt tenancies and licences**

### **Prohibition of occupation by law**

1. A tenancy or licence of a house or a dwelling within a house where the house or the dwelling is subject to a prohibition order made under section 20 of the Act the operation of which has not been suspended under section 23.

### **Certain tenancies, which cannot be assured tenancies**

2. A tenancy which cannot be an assured tenancy by virtue of section 1 (2) of the Housing Act 1988 comprised in Part of Schedule 1 of the Act, which is:

**Paragraph 1:** A tenancy which is entered into before, or pursuant to a contract made before, the commencement of this Act.

**Paragraph 2:** A tenancy which is entered into on or after 1st April 1990 (otherwise than, where the dwelling-house had a rateable value on 31st March 1990, in pursuance of a contract made before 1st April 1990), and under which the rent payable for the time being is payable at a rate exceeding [£100,000] a year.

**Paragraph 2A:** A tenancy which was entered into before the 1st April 1990, or on or after that date in pursuance of a contract made before that date, and under which the dwelling-house had a rateable value on the 31st March 1990 which, if it is in Greater London, exceeded £1,500 and, if it is elsewhere, exceeded £750.

**Paragraph 3:** A tenancy under which for the time being no rent is payable.

**Paragraph 3A:** A tenancy which is entered into on or after 1st April 1990 (otherwise than, where the dwelling-house had a rateable value on 31st March 1990, in pursuance of a contract made before 1st April 1990), and under which the rent payable for the time being is payable at a rate of, if the dwelling-house is in Greater London, £1,000 or less a year and, if it is elsewhere, £250 or less a year.

**Paragraph 3B:** (f) A tenancy which was entered into before 1st April 1990 or, where the dwelling-house had a rateable value on the 31st March 1990, on or after 1st April 1990 in pursuance of a contract made before that date and under which the rent for the time being payable is less than two-thirds of the rateable value of the dwelling-house on 31st March 1990.

*(“rent” does not include any sum payable by the tenant as is expressed (in whatever terms) to be payable in respect of rates, [council tax,] 3 services, management, repairs, maintenance or insurance, unless it could not have been regarded by the parties to the tenancy as a sum so payable. This definition of rent does not apply to (b) above).*

**Paragraph 4:** A business tenancy under Part II of the Landlord and Tenant Act 1954.

**Paragraph 5:** A tenancy under which the dwelling-house consists of or comprises [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)]<sup>1</sup> for consumption on the premises.

**Paragraph 6:** A tenancy under which agricultural land, exceeding two acres, is let together with the house. In this paragraph “*agricultural land*” has the meaning set out in section 26(3)(a) of the General Rate Act 1967 (exclusion of agricultural land and premises from liability for rating).

**Paragraph 7:** A tenancy under which the 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. A tenancy under which the dwelling-house is comprised in the holding held under a farm business tenancy, and is occupied by the person responsible for the control (whether as tenant or as servant or agent of the tenant) of the management of the holding.

**Paragraph 8:** A tenancy which is granted to a person who is pursuing, or intends to pursue, a course of study provided by a specified educational institution and is so granted either by that institution or by another specified institution or body of persons.

In sub-paragraph above “*specified*” means specified, or of a class specified, for the purposes of this paragraph by regulations made by the Secretary of State by statutory instrument.

A statutory instrument made in the exercise of the power conferred by sub-paragraph (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Paragraph 9:** A tenancy the purpose of which is to confer on the tenant the right to occupy the dwelling-house for a holiday.

**Paragraph 10:**

(1) A tenancy in respect of which the following conditions are fulfilled—

(a) that the dwelling-house forms part only of a building and, except in a case where the dwelling-house also forms part of a flat, the building is not a purpose-built block of flats; and

(b) that, subject to Part III of this Schedule, the tenancy was granted by an individual who, at the time when the tenancy was granted, occupied as his only or principal home another dwelling-house which,—

(i) in the case mentioned in paragraph (a) above, also forms part of the flat; or

(ii) in any other case, also forms part of the building; and

(c) that, subject to Part III of this Schedule, at all times since the tenancy was granted the interest of the landlord under the tenancy has belonged to an individual who, at the time he owned that interest, occupied as his only or principal home another dwelling-house which,—

(i) in the case mentioned in paragraph (a) above, also formed part of the flat; or

(ii) in any other case, also formed part of the building; and

(d) that the tenancy is not one which is excluded from this sub-paragraph by sub-paragraph (3) below.

(2) If a tenancy was granted by two or more persons jointly, the reference in sub-paragraph (1)(b) above to an individual is a reference to any one of those persons and if the interest of the landlord is for the time being held by two or more persons jointly, the reference in sub-paragraph (1)(c) above to an individual is a reference to any one of those persons.

(3) A tenancy (in this sub-paragraph referred to as “*the new tenancy*”) is excluded from sub-paragraph (1) above if—

(a) it is granted to a person (alone, or jointly with others) who, immediately before it was granted, was a tenant under an assured tenancy (in this sub-paragraph referred to as “*the former tenancy*”) of the same dwelling-house or of another dwelling-house which forms part of the building in question; and

(b) the landlord under the new tenancy and under the former tenancy is the same person or, if either of those tenancies is or was granted by two or more persons jointly, the same person is the landlord or one of the landlords under each tenancy.

**Paragraph 11:**

(1) Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department.

(2) The reference in sub-paragraph (1) above to the case where the interest of the landlord belongs to Her Majesty in right of the Crown does not include the case where that interest is under the management of the Crown Estate Commissioners [ or it is held by the Secretary of State as the result of the exercise by him of functions under Part III of the Housing Associations Act 1985 ] .

**Paragraph 12:**

(1) A tenancy under which the interest of the landlord belongs to—

(a) a local authority, as defined in sub-paragraph (2) below;

(b) the Homes and Communities Agency but only if the tenancy falls within subsections (2A) to (2E) of section 80 of the Housing Act 1985;

(ba) the Welsh Ministers but only if the tenancy falls within subsections (2A) to (2E) of section 80 of the Housing Act 1985;

(d) an urban development corporation established by an order under section 135 of the Local Government, Planning and Land Act 1980;

(da) a Mayoral development corporation

(e) a development corporation, within the meaning of the New Towns Act 1981;

(ee) the London Fire Commissioner;

(f) an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities);

(g) a residuary body, within the meaning of the Local Government Act 1985;

(gg) The Residuary Body for Wales (Corff Gweddilliol Cymru);

(h) a fully mutual housing association [, unless the tenancy is one which is excluded from this sub-paragraph by sub-paragraph (3) below] ; or

(i) a housing action trust established under Part III of this Act.

(2) The following are local authorities for the purposes of sub-paragraph (1)(a) above—

(a) the council of a county, [ county borough,]8 district or London borough;

(b) the Common Council of the City of London;

(c) the Council of the Isles of Scilly;

(d) the Broads Authority;[

(da) a National Park authority;

(e) the Inner London Education Authority; and

(ea) a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004;]10

(f) a joint authority, within the meaning of the Local Government Act 1985 [ and]

(fa) an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009;

(fb) a combined authority established under section 103 of that Act;]

(g) a police and crime commissioner.]

(3) A tenancy is excluded from sub-paragraph (1) if all of the following requirements are met—

(a) the interest of the landlord belongs to a fully mutual housing association;

(b) the dwelling-house is in Wales;

(c) the tenancy is granted on or after the date on which this sub-paragraph comes into force;

(d) the tenancy is in writing;

(e) before the tenancy is granted, the landlord has served on the person who is to be the tenant a notice stating that the tenancy is to be excluded from sub-paragraph (1);

(f) the tenancy states that it is excluded from sub-paragraph (1).

**Paragraph 12A:**

(1) A tenancy granted by a private landlord under arrangements for the provision of support for asylum-seekers or dependants of asylum-seekers made [under section 4 or Part VI of the Immigration and Asylum Act 1999]<sup>2</sup>.

(2) “*Private landlord*” means a landlord who is not within section 80(1) of the Housing Act 1985.

**Paragraph 12ZA:**

(1) A family intervention tenancy.

(2) But a family intervention tenancy becomes an assured tenancy if the landlord notifies the tenant that it is to be regarded as an assured tenancy.

*(For further information please see paragraph 12ZA sub sections 3 – 12).*

**Paragraph 13:**

(1) A protected tenancy, within the meaning of the Rent Act 1977.

(2) A housing association tenancy, within the meaning of Part VI of that Act.

(3) A secure tenancy.

(4) Where a person is a protected occupier of a dwelling-house, within the meaning of the Rent (Agriculture) Act 1976, the relevant tenancy, within the meaning of that Act, by virtue of which he occupies the dwelling-house.

**Tenancies, licences etc. regulated by other enactments**

A tenancy, licence or occupation of a house which is regulated under the following enactments:

(a) sections 87 to 87D of the Children Act 1989

(b) section 43 (4) of the Prison Act 1952

(c) *(section 34 of the Nationality, Immigration and Asylum Act 2002 has now been repealed is no longer in force)*

(d) The Secure Training Centre Rules 1998

(e) The Prison Rules 1999

(f) The Young Offender Institute Rules 2000

(g) The Detention Centre Rules 2001

(h) The Criminal Justice and Court Service Act 2000 (Approved Premises) Regulations 2001

(i) The Care Homes Regulations 2001

(j) The Children’s Homes Regulations 2001

(k) The Residential Family Centres Regulations 2002

**Long leaseholders**

A tenancy of a house or a dwelling within a house provided that –

(i) the full term of the tenancy is for more than 21 years and

(ii) the tenancy does not contain a provision enabling the landlord (or his successor his in title) to determine it other than by forfeiture, earlier than at the end of the term and

(iii) the house or dwelling is occupied by a person to whom the tenancy was granted

or his successor in title or by any members of either of those person's family.

### **Certain family arrangements**

A tenancy or licence of a house or a dwelling within a house where –

(i) the person who has granted the tenancy or licence to occupy is a member of the family of the person who has been granted the tenancy or licence and

(ii) the person who has granted the tenancy or licence to occupy is the freeholder or long leaseholder of the house or dwelling and

(iii) the person occupies the house or dwelling as his only or main residence (and if there are two or more persons at least one of them so occupies).

### **Certain lettings etc. by Resident Landlord etc.**

A tenancy or licence of a house or a dwelling within a house under the terms of which the person granted the tenancy or licence shares the use of any amenity with the person granting that tenancy or licence or members of that person's family. An "amenity" includes a toilet, personal washing facilities, a kitchen, or a living room but excludes any area used for storage, a staircase, corridor, or other means of access.

### **Interpretation**

10. In this designation notice:

a) a "person" includes "persons", where the context is appropriate

b) a "tenancy" or "licence" includes "a joint tenancy" or "joint licence", where the context is appropriate

c) "long leaseholder" in paragraph 7 (ii) has the meaning conferred in paragraphs (i) and (ii) and in those paragraphs the reference to "tenancy" means a "long lease"

d) a person is a member of the family of another person if –

(i) they live with that person as a couple

(ii) one of them is the relative of the other; or

(iii) one of them is, or is a relative of, one member of a couple and the other is a relative the other member of the couple

and

(iv) For the purpose of this paragraph –

1) "couple" means two persons who are married to each other or live together as husband and wife or in an equivalent arrangement in the case of persons of the same sex

2) "relative" means a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin

3) a relationship of the half-blood is to be treated as a relationship of the whole blood and

4) a stepchild of a person is to be treated as their child.

*(Please note the above legislation has been cited as at 12<sup>th</sup> December 2022 and may subsequently be amended).*

