

Rent threshold increase for assured shorthold tenancies

Watch out!

May 2010

Background

The recent legislation to raise the assured tenancy maximum annual rental threshold from £25,000 to £100,000 was flagged in the last edition of [Hot Property](#). The move means that existing tenancies which are not assured tenancies because the yearly rent is in excess of £25,000 will become assured tenancies from 1 October 2010 when the Assured Tenancies (Amendment) (England) Order 2010 comes into force.

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What are the consequences?

If an existing non-assured tenancy was granted after 27 February 1997, then it will become a simple assured shorthold tenancy. Landlords will need to ensure that they comply with the recent tenancy deposit legislation and the statutory procedure for obtaining possession.

However, one significant effect of the Order has so far gone largely unnoticed in the property and legal press. Assured shorthold tenancies are a creature of the Housing Act 1988. They were introduced as part of a package to stimulate the private rental sector. Following amendments to the law in 1996, all assured tenancies entered into after 27 February 1997 are assured shorthold

tenancies, except in very limited circumstances.

However, under the original 1988 legislation, the default position was that an assured tenancy would be a fully assured non-shorthold tenancy, unless the landlord had followed a statutory notice procedure to make it an assured shorthold tenancy. If an existing tenancy was entered into before 27 February 1997, the landlord will not have served the statutory notice to make it an assured shorthold tenancy, because there would have been no need to do so at the time.

After 1 October, such a tenancy will therefore become a fully assured non-shorthold tenancy. This is important because assured non-shorthold tenancies provide tenants with a significant degree of security of tenure.

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A landlord can only obtain possession of a fully assured tenancy if he can satisfy one or more of a limited number of statutory grounds. Some of the grounds are discretionary, which means the court will only make an order for possession if it considers it reasonable to do so, even if the factual basis for the ground is proved. Landlords in this position will consequently find it much harder to obtain possession.

The Department of Communities and Local Government has confirmed it is aware of this issue but does not regard it as a matter for concern. Landlords who have been deprived of the right to regain possession of their property as a result of the legislation may take a different view, especially in the context of the Human Rights Act 1998. Whilst some landlords may be able to take steps now to terminate existing non-assured tenancies granted before February 1997 by serving a notice to quit or relying on a break

notice, that may not be an option for all landlords. Landlords will also want to take care about now renewing a tenancy which was granted before February 1997, as these will also be caught.

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