Protected Tenancies in the Wake of the Housing Act 1988 — A Review

The changes wrought by the Housing Act 1988 should be of interest to academics, practitioners and students, being the most profound since the last measure designed to de-control rents within the private sector in 1957.1

The main thrust of the legislation was to ensure that tenancies created on or after 15th January 1989, the commencement date of the Act, which hitherto would have been subject to the Rent Acts and consequently rent control can be let at rents freely negotiated on an "open market" basis. The Act also contains certain mandatory and discretionary grounds for possession similar to those found in the Rent Act 1977.2

The Act does not effect the position of existing Rent Act protected and statutory tenants in being at 15th January 1989, which continue to be such.3 However, in certain circumstances tenancies created after that date are capable of being protected tenancies if,

(i) it is granted in pursuance of a contract entered into before 15th January 1989;
(ii) it is granted to a person (alone or jointly with others) who, immediately before the tenancy was granted, was the protected or statutory tenant and is granted by the person who at that time was the landlord (or one of the joint landlords) under the protected or statutory tenancy;
(iii) it is granted as suitable alternative accommodation pursuant to possession proceedings under the Rent Act 1977 (such a grant will only be made if the court considers the grant of a new assured tenancy would not afford the tenant the required security).4

In keeping with the Rent Acts generally these transitional arrangements have resulted in a certain amount of confusion for both landlords and tenants and their advisers. For instance, what pro-

1 Housing Act 1957.
2 Housing Act 1988, Sch. 2.
3 Housing Act 1988, s.34.
4 Housing Act 1988, s.34(1).
tection, if any, is afforded to tenants who have, or who have had, protected shorthold tenancies?

Protected shorthold tenancies were created by Section 52 of the Housing Act 1980. The Section contained some important provisions, namely, that protected shortholds had to conform to certain criteria,\(^5\) that existing protected or statutory tenancies could not be converted to shorthold tenancies\(^6\) and that where a protected tenancy was granted for a term certain after the commencement of the Section followed thereafter from year to year or some other period then, providing that tenancy complied with the provisions of Section 52(1), the term certain would be a protected shorthold.\(^7\)

After a protected shorthold lapsed the tenant would remain as a protected or statutory tenant. However, Section 55 of the Act introduced a new mandatory ground for possession into the Rent Acts, Case 19, which applies where a protected shorthold has been granted (or a tenancy which is to be treated as a protected shorthold) and after the end of the shorthold there has either been no grant of a further tenancy, or if there has been such a grant it was to a person who immediately before the grant was a protected or statutory tenant.\(^8\)

This latter provision is very important since as Megarry points out the “further tenancy” need not comply with the requirements for a protected shorthold.\(^9\) Thus, if after the protected shorthold had ended and before the coming into force of the Housing Act 1988 the landlord had agreed a “further” tenancy to the same tenant, not being a protected shorthold tenancy, it appears the landlord can still seek possession under Case 19.\(^10\) The foregoing now needs to be considered in the light of the transitional arrangements contained within Section 34 of the Housing Act 1988. Section 34 was clearly designed, as the headnote to the Section indicates, to protect the rights of sitting tenants as Rent Act protection was withdrawn from all new lettings created after the commencement of the Act. However, Section 34(2) expressly excludes from the scope of the terms

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5 Housing Act 1980, s.52(1).
6 Housing Act 1980, s.52(2).
7 Housing Act 1980, s.52(5).
10 Supra note 8.