



Office of the  
Deputy Prime Minister  
Creating sustainable communities

# Business tenancies: new procedures under the Landlord and Tenant Act 1954, Part 2

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# CONTENTS

Guidance for users and their advisers on the new procedures for ending and renewing business tenancies	5
Introduction	5
Part 2 of the Landlord and Tenant Act 1954: a brief overview	5
Summary of main changes	7
The new procedures in detail	10
Agreements excluding security of tenure	10
Who can use the statutory procedures under the 1954 Act?	12
Obtaining preliminary information from the other party	12
Renewal and termination procedures	14
Applications to court (see also Appendix I)	16
Interim rent	17
Surrenders and agreements to surrender	20
Changes to compensation rules	21
Terms of the new tenancy	22

## APPENDICES

A Agreement to exclude security of tenure: warning notice to tenant	24
B Agreement to exclude security of tenure: simple declaration by tenant	26
C Agreement to exclude security of tenure: statutory declaration by tenant	28
D New section 40 notice for landlord to serve on tenant	30
E New section 40 notice for tenant to serve on landlord or other reversioner	33
F New section 26 request	37
G New section 25 notice: landlord <i>not</i> opposing renewal	41
H New section 25 notice: landlord opposing renewal	44
I Summary of procedures for applications to court following service of section 25 notice or section 26 request for a new tenancy	48
J Interim rent – amount payable	49
K Agreement to surrender a business tenancy: warning notice to tenant	50
L Agreement to surrender a business tenancy: simple declaration by tenant	52
M Agreement to surrender a business tenancy: statutory declaration by tenant	54



# Guidance for users and their advisers on the new procedures for ending and renewing business tenancies

## Introduction

1. Part 2 of the Landlord and Tenant Act 1954 (the 1954 Act) provides a framework for the renewal and termination of business tenancies in England and Wales. While the main features of the 1954 Act remain unchanged, the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003<sup>1</sup> has modernised the workings of the Act, removing certain anomalies and making the renewal and termination of business tenancies quicker, easier, fairer and cheaper. The detailed changes to the working of the 1954 Act take effect from 1 June 2004, as do accompanying changes to the statutory notices<sup>2</sup> and changes to the Civil Procedure Rules.
2. This booklet describes the new procedures in detail. **It cannot however be an authoritative statement of the law, as the provisions of the 1954 Act and the Order are subject to interpretation by the courts.** It is intended primarily for those who are already familiar with the 1954 Act. The booklet is accessible on the website of the Office of the Deputy Prime Minister ([www.odpm.gov.uk/businessstenancies](http://www.odpm.gov.uk/businessstenancies)), or copies may be obtained from ODPM Free Literature<sup>3</sup>. Once the Order has come into effect, the Office will also be publishing a simple summary for landlords and tenants on the renewal and termination of business tenancies, and a flowchart explaining the procedures. These publications will also be available on the ODPM website or obtainable from ODPM Free Literature.

## Part 2 of the Landlord and Tenant Act 1954: a brief overview

3. The 1954 Act broadly gives business tenants security of tenure – a statutory right to remain in their business premises when their lease ends and to seek a new tenancy. However, the landlord may oppose renewal on limited specific grounds. If the landlord and tenant cannot agree on a new lease, the tenant can apply to the court, which will fix the terms of the new tenancy. These will reflect the terms of the existing tenancy, but the new rent will reflect the current open market rent for similar premises. There is also provision for interim rent, which the court can order to be payable pending determination of the new rent.

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<sup>1</sup> Referred to throughout this booklet as “the Order”.

<sup>2</sup> The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004.

<sup>3</sup> ODPM Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (tel 0870 1226 236).

4. The landlord may oppose renewal on limited, specific grounds set out in the 1954 Act. Among these are grounds where the tenant has failed to pay the rent or meet other lease obligations, but the landlord may also seek possession on certain specific grounds where the tenant is not “at fault”. These include the provision of alternative suitable accommodation; the need to reorganise the holding where sub-letting has taken place; the redevelopment of the premises; and, subject to certain safeguards, the landlord’s intention to carry on a business at the premises or live there. A landlord successfully opposing the grant of a new tenancy under certain of the “no fault” provisions must pay compensation to the tenant. The amount payable depends on the rateable value of the premises and how long the tenant has occupied them.
5. The 1954 Act however, permits parties to agree to a lease excluding security of tenure. For such an agreement to be valid, the parties must follow the required procedures laid down in the Act. Before the Order came into effect, the parties had to apply jointly to the court for such approval. Court approval, however, was a formality, rarely involving the exercise of judicial discretion. The Order has abolished the need for court approval, substituting a new procedure, described in detail below, involving the serving of notices and the making of declarations. Where the parties have followed the required procedures, the tenant has no statutory right to renew the tenancy, and no entitlement to compensation at the end of the tenancy. The procedures for agreements to surrender a tenancy are essentially similar.
6. The renewal or termination process begins with either the landlord serving a notice of termination on the tenant (section 25 notice) or the tenant submitting a request for a new tenancy (section 26 request). Before the Order came into effect, a tenant wishing to renew the tenancy had to serve a counternotice to the landlord’s section 25 notice within strict time limits, but the Order has abolished this requirement. However, there is a continuing obligation on a landlord wishing to oppose renewal to serve a counternotice to the tenant’s section 26 request. The parties may then agree terms for a new tenancy without going to court. But if there is no agreement, the tenant must apply to the court within certain time limits (which the Order has relaxed) or he or she loses the right to renew. There are now also provisions enabling a landlord to apply to the court for the renewal or termination of the tenancy.

## Summary of main changes

1. The main changes to Part 2 of the 1954 Act are summarised below. For a more detailed guide to the new procedures, see pages 10-23.

### **Agreements to exclude security of tenure**

2. Landlords and tenants no longer have to obtain court approval for agreements to exclude security of tenure. Instead, the landlord has to serve the tenant a warning notice at least 14 days before the tenant is committed to the lease. Before signing the lease or tenancy agreement, the tenant must sign a *simple declaration* that he or she has received the warning notice at least 14 days before entering into the lease or tenancy agreement. Alternatively, to cater for emergencies, the parties may agree within the 14-day period, but (as an additional safeguard) the tenant must sign a *statutory declaration* before a solicitor that he or she has received and read the warning notice and has accepted its consequences. The new procedures are intended to ensure that the tenant becomes aware of the consequences of excluding security of tenure, while removing the need for court approval.

### **Ownership and control of businesses**

3. The 1954 Act makes it clear which business entities enjoy rights under the Act or are subject to its obligations. The reforms rationalise these arrangements, placing tenants on the same footing as landlords. While in principle the provisions apply only to the legal entities named on the lease, they extend to other entities under the same effective control: for example, a company in the ownership of the landlord or tenant.

### **Notices requiring information**

4. Landlords and tenants need to be able to get information from each other so that they can pursue renewal or termination procedures. The 1954 Act has always facilitated this process, but revised, more effective provisions require the parties to update any information already provided for six months; cater for parties transferring their interests; and lay down more effective enforcement procedures.

### **Renewal and termination procedures**

5. The new provisions remove some notorious legal traps for tenants, which sometimes resulted in the tenant unwittingly losing the right to renew. For example, a tenant wishing to renew the tenancy no longer has to serve a counternotice in response to a landlord's section 25 termination notice. The Order has simplified the rules on the timing of applications to the court. The tenant no longer has to apply to court for a new tenancy within the tightly defined timescales of not earlier than two but not later than four months after the landlord's section 25 termination notice or the tenant's section 26 request for a new tenancy. Although the new provisions retain a final deadline for applications to the court, they enable the parties to agree in writing, before the deadline expires, to an extension, so giving them more time to negotiate an agreement without having to go to court. Such agreements remove the need for tenants to make applications to the court solely to retain the legal right to renew, thus reducing unnecessary court business and legal costs.

### **Applications to court by landlord**

6. Previously, only the tenant could apply to the court. The landlord could only prompt proceedings indirectly by serving a notice triggering renewal or termination. The new provisions allow the landlord to apply either:
  - for renewal, thus being able to counter any delay by the tenant; or
  - for termination without renewal. If the court agrees that the landlord has valid grounds of opposition to a new tenancy, it will refuse to order the grant of a new tenancy. But if the landlord fails to establish any such grounds, the court will order the grant of a new tenancy and fix its terms; there will be no need for the tenant to make a fresh application.

### **Landlord's termination notice**

7. There is a new requirement for landlords not opposing renewal to set out their proposals for the new tenancy in the termination notice. This should help to speed up the renewal process. The notice warns the tenant that the proposals are purely for negotiation.

### **Termination by tenant**

8. As long as the tenant continues to carry on business in the premises, the 1954 Act automatically extends a business tenancy beyond the agreed end of the lease until one of the parties takes action to renew or end it. Once the lease has been extended in this way, the tenant must give the landlord three months' notice of termination. New provisions clarify what the tenant must do to avoid continuing obligations beyond the agreed end of the lease. They make it clear that a tenant who has either given three months' notice before the end of the lease, or who has quit the premises by the end of the lease, will not face any continuing lease obligations.

### **Interim rent**

9. There are several changes to the rules on interim rent (rent payable pending renewal of the tenancy):
  - tenants as well as landlords may apply for interim rent;
  - changes to the rules on the timing of interim rent remove any incentive for the landlord or tenant to delay renewal proceedings;
  - the amount of interim rent will be fairer to both parties. Usually, it will be the rent for the new tenancy (ie open market rent), backdated, but subject to adjustment if market conditions change significantly over the period interim rent is payable. Similarly, there may be an adjustment if the new occupational terms are significantly different from the old ones. In some cases, the old method of determining interim rent will continue to apply.

## **Surrenders**

10. Changes to the law on the surrender of tenancies make it clear that the parties may agree to an immediate surrender of the tenancy (where for example the tenant can no longer afford the rent) without the need for any special arrangements. However, safeguards are still required for *agreements* to surrender (ie an agreement to surrender the tenancy at some definite time or event in the future), as the tenant may not immediately realise that such an agreement involves the abandonment of renewal rights. The parties no longer need court approval, but have to follow new procedures very similar to those for agreement to exclude security of tenure (see above).

## **Compensation**

11. The 1954 Act has enabled tenants to claim compensation from a landlord whose misrepresentation has led the court to refuse the grant of a new tenancy. The new provisions extend this to cases where the tenant is induced not to apply to court, or withdraws an application, because of misrepresentation. The new provisions also rationalise the rules for compensation payable in certain cases where the landlord successfully opposes renewal of the tenancy.

## **Other changes**

12. The new provisions include a number of other changes, for example:
  - abolishing the requirement that a tenant's three months' notice to end a continuation tenancy (a tenancy that the 1954 Act has automatically extended following the end of the agreed fixed term) must end on a quarter day. So the tenant will now be able to give exactly three months' notice;
  - enabling the courts to order the grant of new leases up to a maximum period of 15 years, rather than 14 as previously. This is more compatible with modern leasing patterns, where leases tend to have three or five yearly rent reviews;
  - clarifying the procedures to be used where there is a single lease but more than one landlord.

## The new procedures in detail

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

13. The following guidance is not intended to be a comprehensive explanation of the workings of Part 2 of the Landlord and Tenant Act 1954, but merely a guide to changes introduced by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. However, in some cases the guidance alludes to unchanged requirements so as to place the changes in context. The relevant provisions of the 1954 Act and the 2003 Order are identified in the margins.

## Agreements excluding security of tenure

14. Parties wishing to exclude security of tenure no longer have to apply to court for approval of an agreement to exclude renewal rights (to “contract out” of security of tenure). However, if an agreement is to be valid, the parties must comply fully with either of two new procedures: the advance notice procedure or the statutory declaration procedure. **Details of these procedures and the relevant forms are set out in Schedules 1 and 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 rather than in the Act itself or the Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004.**

### THE ADVANCE NOTICE PROCEDURE

S38A(3)

Art 22  
Schs 1 & 2

15. The landlord must serve on the tenant a prescribed warning notice (see Appendix A) at least 14 days before the tenant signs the lease, or becomes contractually committed to a lease. The warning notice explains the implications of contracting out, recommending the tenant to obtain professional advice.

16. Once the 14-day notice period is up, the parties are free to sign a lease (or an agreement for a lease) containing an agreement to exclude security of tenure. However, for the agreement excluding security of tenure to be valid, the following steps are necessary:

Sch 2, para 7

- the tenant (or someone authorised on his or her behalf) must make a simple declaration in the form set out in paragraph 7 of Schedule 2 to the Order (see Appendix B). Here the tenant declares that he or she is proposing to enter into an agreement with the landlord to exclude the tenancy from security of tenure; that he or she has received and read the Schedule 1 warning notice and has accepted the consequences of entering into the agreement. The declaration does not need to be independently witnessed;

Sch 2, para 5

- the lease (or other instrument creating the tenancy) must contain, or have endorsed on it:

<sup>4</sup> Part 2 of the Landlord and Tenant Act 1954, as amended.

<sup>5</sup> The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

- a reference to the Schedule 1 warning notice;
- a reference to the Schedule 2, paragraph 7 declaration; and
- the agreement to exclude security of tenure.

17. If these steps are not followed, the tenant may retain the right to renew.

## THE STATUTORY DECLARATION PROCEDURE

38A(3) Schs 1 & 2

18. It is normally preferable to use the advance notice procedure, to allow tenants sufficient time to consider whether or not the exclusion of security of tenure would be in their best interests. However, where both parties want to enter into an agreement to exclude security of tenure without waiting for the expiry of the 14 days mentioned above, it is possible to do so, subject to additional safeguards for the tenant. These involve the making of a statutory declaration<sup>6</sup> before an independent solicitor (or other person qualified to administer oaths). The statutory declaration procedure is suitable for cases where the tenant needs to occupy the premises quickly and there is no time to use the 14-day notice procedure: for example, where there has been a fire or some other emergency at the tenant's existing premises.

19. The following steps are necessary:

Sch 1

- the landlord must serve on the tenant a warning notice (see Appendix A) before the tenant signs the lease or enters into a contractual commitment to a lease;

Sch 2, paras  
4 & 8

- the tenant must then sign a statutory declaration (see Appendix C) before an independent solicitor (or some other person qualified to administer oaths) who has not been responsible for advising either party. In the statutory declaration, the tenant declares that he or she is proposing to enter into an agreement with the landlord to exclude the tenancy from security of tenure; that he or she has received and read the Schedule 1 warning notice, and has accepted the consequences of entering into the agreement;

Sch 2, para 5

- the lease (or other instrument creating the tenancy) must contain, or have endorsed on it:
  - a reference to the Schedule 1 warning notice;
  - a reference to the Schedule 2, paragraph 8 statutory declaration; and
  - the agreement to exclude security of tenure.

<sup>6</sup> Within the meaning of the Statutory Declarations Act 1835.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

## Who can use the statutory procedures under the 1954 Act?

20. Normally, only the landlord and tenant named on the lease may use the renewal and termination procedures under the 1954 Act. However, the Act has always allowed some exceptions to this rule, and the new provisions extend these in the interests of equity between landlords and tenants. In the case of both landlords and tenants, the Act now treats an individual and any company he or she controls as equivalent.

S23(1A)-(1B) Arts 13-17  
S30(1A)-(1B)  
S30(2A)  
S34(2A)  
S42(1)  
S46(2)

21. The new provisions make it clear that for the purpose of establishing occupation or business use, a corporate body will enjoy the same rights as the party named on the lease, provided that where the latter is an individual, he or she controls the corporate body occupying the premises. Where the party named on the lease is a corporate body, the same individual must be in control both of that company and of the one occupying the premises. Existing tenants may base their claim on occupation of the premises even though they are not strictly speaking the same legal entity as the one named on the lease. The same rules apply to a landlord opposing renewal on the ground that he or she wishes to carry on a business at the premises or live there.

S44(1A) Art 27  
S35(1)

22. The Order also makes it clear that where there are divided reversions (where different landlords own different parts of the property but the tenant occupies the property under a single lease), the landlord will comprise all the owners collectively. Landlords in such a position will need to take concerted action, but with separate notices for the individual parts of the premises. Similarly, a tenant will need to serve separate notices on all the landlords, taking proceedings against all of them separately (if proceedings are necessary), or naming them all as parties in a single set of proceedings.

## Obtaining preliminary information from the other party

23. Section 40 of the 1954 Act enables landlords and tenants to obtain specific information from each other for the purposes of renewing or terminating business tenancies. The Order has made a number of changes to these provisions. It has increased the information parties may ask for; imposes a duty to tell the enquirer about subsequent changes to the information provided; caters for cases where the parties transfer their interests to others; and makes enforcement more straightforward.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

24. To enable a landlord to obtain the information required to serve an effective section 25 notice, the new provisions require a tenant receiving a section 40 notice during the last two years of the lease term to disclose within one month:

S40 Art 23

- whether he or she is occupying all or part of the property for his or her own business purposes;
- details of any subletting (including any subletting giving statutory rights of occupation under residential or agricultural tenancies legislation); and
- the identity of any known reversioner (the person with the right to repossess at the end of the tenancy).

The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 have prescribed a new form of notice for the landlord to use to obtain this information (see Appendix D).

25. Similar provisions enable a tenant to obtain the information required to serve an effective section 26 request for a new tenancy. A landlord (or other reversioner), or any mortgage lender in possession of the premises, receiving a section 40 notice from the tenant during the last two years of the lease term must disclose, within one month:

S40 Art 23

- the identity (and where appropriate, the address) of the freeholder, mortgage lender in possession, or anyone else with an interest in reversion in any part of the premises; and, where appropriate,
- the name and address of any superior landlord; the term of his or her tenancy; the earliest date on which the tenancy could be ended by a notice to quit; and details of any section 25 notice or section 26 request that has been submitted.

The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 have prescribed a new form of notice for the tenant to use to obtain this information – see Appendix E (notice to landlord or other reversioner).

S40(5) Art 23

26. After responding to a section 40 request, landlords and tenants must update any of the information they have given if it subsequently changes. They must provide correct information within one month of becoming aware of any changes. This obligation continues for six months from service of the original request.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

S40A Art 24

27. New provisions cover the transfer of the landlord's or tenant's interest in the property after service of a section 40 notice. Landlords and tenants transferring their interest to another party can free themselves of having to update the information provided, by notifying the party which served the section 40 notice that they have transferred their interest, and giving the name and address of their successor. The party requiring the information would then need to serve notice on the successor if he or she wished to receive up-to-date information.

28. Where a transfer takes place, the party with a duty to provide information can fulfil his or her obligation by providing it either to the party that served the original notice or to the successor. However, a new provision enables a party transferring his or her interest after serving notice to issue another notice giving the recipient details of the transfer and the name and address of the successor. Where such a notice is served, the party providing updated information must give it to the successor.

S40B Art 24

29. Finally, there is now an explicit way of enforcing compliance with section 40 duties. Parties may sue for breach of statutory duty where the other party has failed to comply. The courts can order compliance with the duty, the payment of damages, or both.

## Renewal and termination procedures

30. There are new procedures for renewing and terminating tenancies. These allow greater flexibility and enable both landlords and tenants to counter any delay by the other party. The revised provisions open up several different possible scenarios for the initiation of renewal or termination proceedings, and these are set out below.

### **(1) TENANT INITIATES RENEWAL**

S26 Art 12

31. A tenant wanting to renew a 1954 Act tenancy may make a request to the landlord for a new tenancy, under section 26 of the Act. The request must be in the form of a prescribed notice (Appendix F), and must say on what date the new tenancy is to begin. This date must be not more than twelve months or less than six months after making the request, and must not be before the end of the lease. In the request, the tenant must set out proposals for the property to be included in the new tenancy, which must be all or part of the premises in the current lease, and for the new rent and the other terms of the new tenancy.

S29A(3) Art 10

32. A landlord wishing to oppose renewal must serve a counternotice within two months of the tenant's request. The counternotice must set out the grounds of opposition. The tenant may apply to court for a new tenancy as soon as the landlord has served the counternotice, or once the deadline for serving the counternotice has passed. However, it would be wise for the tenant to see whether there was any scope for negotiation before applying to court.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

## (2) LANDLORD INITIATES RENEWAL

S24(1) Art 3(1)  
S25(8) Art 4(2)

33. Under new provisions, a landlord who is not opposing renewal of the tenancy may initiate renewal proceedings. In order to do so, the landlord must serve the tenant an alternative version of the section 25 termination notice (Appendix G), making it clear that he or she does not oppose renewal, and setting out proposals for the terms of the new tenancy. This must specify the property to be included in the new tenancy (either the whole or part of the property comprised in the current tenancy) the rent to be payable and the other terms of the new tenancy. However, landlords are not required to sign a draft lease offered by way of a proposal. The proposals are not a legal offer capable of acceptance, unless otherwise stated.

S29(1) Art 4(1)  
Art 5

34. The landlord must serve the notice not more than twelve months or less than six months before the termination date specified in the notice. The termination date in the notice must not be before the end of the lease. Now that the tenant no longer has to serve a counternotice, the landlord may apply to the court for a new tenancy at any time after serving the section 25 notice. The application must be made before the termination date specified in the section 25 notice, unless the parties agree to an extension.

35. This new provision to apply for renewal enables a landlord to find out whether or not the tenant wants to renew the lease, where this is in doubt. Tenants not wanting to renew the lease would want to avoid the legal expense of renewal proceedings and would therefore be likely to respond to a “letter before action” confirming that they did not wish to renew. The landlord could then market the premises with the aim of having a new tenant in occupation as soon as the existing tenancy has ended.

## (3) LANDLORD INITIATES TERMINATION

S25(7) Art 4(2)

36. A landlord who considers that there are conclusive grounds of opposition to a new tenancy can now take advantage of a new provision enabling him or her to seek termination of the tenancy without renewal. First, the landlord must serve the appropriate version of the section 25 notice setting out grounds of opposition to a new tenancy (see Appendix H), unless the tenant has made a section 26 request. The landlord must serve the notice not more than twelve months or less than six months before the termination date specified in the notice. The termination date in the notice must not be before the end of the lease.

S29(2)(a) Art 5  
S29(4) Art 5

37. With the abolition of the requirement for the tenant to serve a counternotice in response to a section 25 notice, the landlord may apply to the court for termination without renewal at any time after serving the notice. (Where the tenant has issued a section 26 request, the landlord may apply to the court at any time after issuing a counternotice to the tenant’s request; the requirement for a landlord’s counternotice remains in force.) When the case goes to court, the court will first consider the landlord’s case for opposing the

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

grant of a new tenancy. If it upholds the landlord's case, the court would refuse to order the grant of a new tenancy. But if the court concludes that the landlord does not have valid grounds of opposition, it would proceed automatically to order the grant of a new tenancy, without any need for a fresh application by the tenant. The court would then settle the terms of the new tenancy. However, if the landlord and tenant are able to reach agreement on the terms of the new tenancy, without court intervention, the tenant might want to agree to the withdrawal of the court application, to save further legal expense.

S31(2) Art 7

38. In cases where the landlord opposes renewal on certain specific grounds, the court will sometimes consider that while these grounds do not yet exist, they will do so within 12 months of the date specified in the section 25 notice or section 26 request. Existing provisions allow the court to order that termination should be deferred until a date within that period. The new provisions allow the court to do the same where the landlord has applied for termination without renewal. Various other detailed amendments to the 1954 Act also cater for the new provision for the landlord to apply for termination without renewal.

#### **(4) TENANT TAKES ACTION TO TERMINATE**

S27(1)-(1A) Art 25

39. A tenant wishing to end a fixed term tenancy can do so by either leaving the premises by the end of the lease, or by giving at least three months' notice before that date. The tenant would then no longer have to pay rent or fulfil other obligations beyond the end of the lease.

S27(2) Art 25

40. However, if the tenant fails to take either of these steps, a continuation tenancy would arise: the tenant would have a continuing liability to pay rent and fulfil other obligations beyond the end of the lease. The tenant would then have to give three months' notice, and only when this period ended would liability for rent and other obligations cease. This three months' notice no longer has to end on a quarter day; so the tenant will now need to give a minimum of exactly three months' notice. Where the tenant has paid rent for a period extending beyond the end of this notice period, the rent will be apportioned appropriately and the tenant will be able to recover any excess amount from the landlord.

## Applications to court (see also Appendix I)

S24(1) Art 3(1)

S29(2) Art 5

S29A(3) Art 10

41. Under the new provisions, either party may apply to court for renewal of the tenancy following the service of a section 25 notice or section 26 request. Similarly, the landlord may apply for termination without consideration of renewal. Either party may apply as soon as the landlord has served a section 25 notice. But where the tenant has served a section 26 request, he or she may not apply to court until either the landlord has issued a counternotice or has had two months within which to do so. The landlord may not apply for termination without renewal unless he or she has issued a counternotice to a section 26 request.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

S242A  
S29(3)

Art 3(2)  
Art 5

42. The Order inhibits duplicate applications. Neither party may apply to the court – either for renewal of the tenancy or termination if the other party has applied *and served* the application. The landlord may not withdraw an application for renewal or termination unless the tenant consents to withdrawal; this ensures that the tenant can, if he or she wishes, continue to pursue renewal proceedings through the courts without having to make a separate application.

S24(2C)  
S29(6)

Art 3(2)  
Art 5

43. One of the parties must apply to court by the date specified for termination in the section 25 notice or, where appropriate, before the date specified for the start of the new tenancy in the section 26 request; otherwise the tenant loses the right to renew the tenancy. However, the parties may agree in writing to extend this deadline, provided they do so before the expiry of the deadline. Subsequently, they may agree in writing to extend any previously agreed deadline, before it expires.

S29A

Art 10

S29B(1)

Art 10

S29B(2)

Art 10

44. It will be expected that parties still in negotiation will use the new facility to agree to extend deadlines for applications to the court. The presumption will be that if applications are made to court, the parties have either failed to reach agreement, or one party wishes to expedite matters and that there will be no need to delay a court hearing. For this reason, amended Civil Procedure Rules will no longer automatically provide for a three months stay of proceedings at the request of the landlord. However, the courts retain a degree of flexibility in the handling of cases, which they could use to allow parties more time if they considered that this would be in the interests of both parties.

45. Appendix I summarises the requirements for applications to court following service of a section 25 notice or a section 26 request for a new tenancy.

## Interim rent

46. The Order has introduced a number of changes to the arrangements for interim rent: applications, timing and the amount payable. Broadly speaking, these reforms are fairer to both parties. They remove incentives for either party to delay settling the terms of the new tenancy and this, alongside other new procedures speeding up the renewal process, is likely to result in interim rent being payable over shorter periods. In most cases, a new method of determining interim rent will apply, but the old method with its “cushioning” effect will sometimes continue to apply.

### APPLICATIONS FOR INTERIM RENT

S24A(1)

Art 18

47. Either party may now apply for interim rent: tenants as well as landlords. To avoid duplicate proceedings, a party may not apply for interim rent if the other party has already applied and has not withdrawn the application. The courts will be able to consider an application for interim rent even if the party which applied for renewal or termination has withdrawn the application.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

S24B Art 18

48. The tenant's liability for interim rent begins on the earliest date for termination of the tenancy or start of the new tenancy which *could have been specified* in the landlord's section 25 notice or the tenant's section 26 request, irrespective of which party applies for interim rent. This is designed to prevent the service of a long section 25 notice or section 26 request as a device for prolonging the payment of an existing rent no longer reflecting open market levels. Because interim rent is usually not determined until the new rent and other terms of the new lease have been settled, interim rent will usually be backdated.

S24D(3) Art 18

49. If the court revokes an order for the new tenancy (on the application of the tenant) or if the parties agree not to act on the order, the court will, on the application of either party, fix an interim rent based on the old method (see below). There would be no need for a separate application to the court under section 24A(1) of the Act.

### **ESTABLISHING THE METHOD OF DETERMINING INTERIM RENT**

S24C Art 18

50. The method of determining interim rent will depend on various circumstances, as summarised in Appendix J. Where there is little doubt that the tenant will be able to renew the tenancy, as reflected in three conditions, the new method of determining interim rent will apply. The conditions, which inhibit landlords from pursuing groundless opposition to renewal, are as follows:

- a) the landlord's notice or the tenant's request must apply to the whole of the property let under the current lease;
- b) the tenant must occupy the whole of the property; and
- c) the landlord must not oppose the grant of a new tenancy.

If these conditions do not apply, and the court orders the payment of interim rent, the amount payable will be determined under the old method that applied generally before the Order came into effect.

### **THE NEW METHOD OF DETERMINING INTERIM RENT**

51. Under the new method of determining interim rent, interim rent will usually be the same as the rent for the new tenancy. Where the rental market is fairly stable and there are no significant changes in the terms of the new tenancy, this should produce a rent broadly in line with the open market rent over the period during which interim rent is payable. However, there could be a distorting effect if there are significant changes in the rental market over the period during which interim rent is payable. For example, if the market rose significantly during the interim rent period, an interim rent reflecting the eventual new rent for the new tenancy would be higher than the market rent prevailing over most of that period. Similarly, there could be distortions if the terms of the new tenancy differ significantly from those of the old one. For example, if the tenant undertakes more, or fewer, obligations than under the old tenancy, this would have significance for the underlying rental value.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

S24C(3)	Art 18	<p>52. The courts may therefore vary the amount of interim rent if either party can establish that:</p> <ul style="list-style-type: none"> <li>• rental market conditions have changed significantly since the date when interim rent became payable; and/or</li> <li>• the terms of the tenancy have changed significantly from those in the old lease.</li> </ul>
S24C(4)-(5)	Art 18	Where rental market conditions alone have changed, the rent will be settled according to open market conditions applying on the date from which interim rent became payable. Where the terms alone have changed, or both rental market conditions and terms of the tenancy have changed, the court will use its discretion to fix an interim rent that it considers reasonable for both parties.
S24C(6)-(7)	Art 18	

### THE OLD METHOD OF DETERMINING INTERIM RENT

S24D(1)-(2)	Art 18	<p>53. In cases where the tenant’s prospects of renewal are less certain, but a new tenancy is nevertheless granted, the old method of determining interim rent will continue to apply. The old method will apply in one or more of the following circumstances in which a new tenancy is granted:</p> <ul style="list-style-type: none"> <li>• where the landlord has stated that he or she will oppose renewal in either a section 25 notice or in a counternotice to the tenant’s section 25 request (irrespective of whether the landlord persists in opposing renewal);</li> <li>• where the tenant is not occupying the whole of the property; or</li> <li>• where the landlord’s notice or the tenant’s request for a new tenancy did not apply to the whole of the property occupied under the current lease.</li> </ul>
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The old method will also apply where the tenant applies to the court for revocation of the grant of a new tenancy.

S24D(2)	Art 18	<p>54. In cases where the old method of determining interim rent continues to apply, the court must:</p> <ul style="list-style-type: none"> <li>• take into account the rent payable under the old tenancy; but otherwise</li> <li>• apply the rules for fixing the rent for a new tenancy (section 34 of the 1954 Act); but             <ul style="list-style-type: none"> <li>• on the basis of the terms of an existing tenancy; and</li> <li>• on the assumption that the new lease will be granted from year to year rather than for a period of years.</li> </ul> </li> </ul>
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In practice, this method has a “cushioning” effect, tending to produce a rent below current open market levels.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

## Surrenders and agreements to surrender

### SURRENDERS

Art 28  
Sch 6

55. Parties may now effect a simple surrender, an immediate surrender of the tenancy without any prior agreement, at any time during the tenancy. There is no longer any prohibition on surrenders taking place before the tenant has occupied the premises for a full month. Express surrenders must take the form of a deed; surrenders that are merely in writing may be treated in law as no more than agreements to surrender.

### AGREEMENTS TO SURRENDER

S38A(4)

Art 22  
Schs 3 & 4

56. Safeguards are still required for *agreements to surrender* as the tenant may not appreciate that he or she is abandoning renewal rights. The Order introduces changes to the procedures for agreements to surrender very similar to the new ones for agreements to exclude security of tenure (see paragraphs 14-19 above). Parties to a tenancy wishing to enter into an agreement to surrender no longer have to apply to court for prior approval. But if the agreement is to be valid, they must comply fully with either of two procedures: the advance notice procedure or the statutory declaration procedure. **Details of these procedures and the relevant forms are set out in Schedules 3 and 4 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 rather than in the Act itself or the Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004.**

### THE ADVANCE NOTICE PROCEDURE

57. The landlord must serve on the tenant a prescribed warning notice (see Appendix K) at least 14 days before the tenant signs the agreement to surrender. The warning notice tells the tenant about the implications of the agreement, recommending the tenant to obtain professional advice.

58. Once the 14 days' notice period has elapsed, the parties are free to enter into the agreement. However, for the agreement to be valid, the following steps are necessary:

Sch 4, para 6

- the tenant must make a simple declaration (see Appendix L). Here the tenant declares that he or she is proposing to enter into an agreement with the landlord to surrender the tenancy on a specified date or in circumstances specified in the agreement; that he or she has received and read the warning notice, and has accepted the consequences of entering into the agreement;

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

Sch 4, para 5

- the instrument containing the agreement must contain, or have endorsed on it references to:
  - the warning notice; and
  - the simple declaration.

59. If these steps are not followed, the agreement to surrender will not be valid.

## THE STATUTORY DECLARATION PROCEDURE

S38A(4)

Art 22  
Schs 3 & 4

60. Where both parties want to enter into the agreement for surrender without waiting for the expiry of the 14 days mentioned above, it is possible to do so, subject to additional safeguards for the tenant. The following steps are necessary:

Sch 3

- the landlord must serve on the tenant a warning notice (Appendix K);

Sch 4, para 4

- the tenant must then sign a statutory declaration (see Appendix M) before a solicitor (or some other person qualified to administer oaths) who has not been responsible for advising either party. In the statutory declaration, the tenant declares that he or she is proposing to enter into an agreement with the landlord to surrender the tenancy; that he or she has received and read the warning notice, and has accepted the consequences of entering into the agreement; and

Sch 4, para 5

- the tenant may then sign the instrument containing the agreement, but this must contain, or have endorsed on it:
  - a reference to the warning notice; and
  - a reference to the statutory declaration.

## Changes to compensation rules

### COMPENSATION FOR REFUSAL OF NEW TENANCY

61. The 1954 Act enables the tenant to claim compensation, based on a multiple of the rateable value of the property, where the landlord successfully opposes renewal on certain of the grounds laid down in the Act. A higher rate of compensation is payable where the tenant (together with any previous occupier) has occupied the premises continuously for business purposes for the previous 14 years. Previously, the higher rate applied to the whole of the premises and did not take account of any parts being occupied for less than 14 years.

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

S37(3A) Art 19 62. The Order has made some detailed amendments to these provisions. Where parts of the premises have been occupied for different lengths of time, compensation will be calculated for each part separately. Higher rate compensation will apply only to those parts which have been continuously occupied for 14 years. Where a property is split between different landlords, compensation should be determined separately for each part, and the tenant may only claim from the relevant landlord(s).

S37(3B) Art 19

S37(3B) Art 19 63. Other detailed changes flow from revised provisions in the Order. The Order now enables a person with a controlling interest in the company letting the property to oppose renewal on the grounds that he or she wishes to live or do business at the premises. There has been a corresponding amendment to the compensation provisions enabling a tenant to claim compensation if he or she is denied renewal in these circumstances. The Order also provides that compensation should be payable where the landlord successfully applies, on relevant grounds, for termination without renewal of the tenancy.

S37(1B) Art 19

### COMPENSATION FOR MISREPRESENTATION

S37A(1) Art 20 64. The 1954 Act has enabled tenants to claim compensation from a landlord whose misrepresentation has led the court to refuse to order the grant of a new tenancy. The new provisions extend this to cases where the tenant is induced not to apply to court, or withdraws an application, because of misrepresentation or the concealment of material facts, and then quits the premises. The court has powers to order the landlord to compensate the tenant for any damage or loss sustained as the result of quitting the premises.

S37A(2) Art 20

## Terms of the new tenancy

S33 Art 26 65. The court may order the grant of a new tenancy up to a maximum of 15 years, rather than 14 years as previously. While the Government is encouraging greater flexibility and would not wish lease renewals to be any longer than 15 years, the previous maximum of 14 years was anomalous and not compatible with modern rent review patterns. A 15-year maximum period fits better with current patterns of three and five yearly rent reviews, as it divides into either three- or five-year periods.

### TRANSITIONAL PROVISIONS

66. Most of the new provisions take effect from 1 June 2004, but transitional provisions cater for the following circumstances:

- Art 29(1)
- **section 25 notices served or section 26 requests made before 1 June 2004** and all procedures flowing from them will be dealt with under the provisions previously in force;

LTA  
1954<sup>4</sup>  
provision

RRO<sup>5</sup>  
provision

- Art 29(2)(a) • **agreements for surrenders** validly made before 1 June 2004 will not be affected by the new provisions;
- Art 29(2)(b) • **section 27(2) termination notices** given by the tenant to the immediate landlord before 1 June 2004 will not be affected by the new provisions;
- Art 29(3) • **contractual conditions for subletting:** where a tenancy provision required the tenant, as a condition of being able to sublet, to require the tenant and subtenant to obtain a court order authorising an agreement to exclude security of tenure, the tenant would be able to satisfy this condition by following the new procedures for agreements to exclude security of tenure (see paragraphs 14-19 above);
- Art 29(4) • **agreements for lease envisaging a court order under section 38(4):** in the case of any such agreements made before 1 June 2004, the old provisions will remain in force. So a landlord and tenant wanting to agree to exclude security of tenure in pursuance of an agreement made before the Order came into effect would need to apply to the court for approval, and the other provisions of section 38(4) before it was amended would continue to apply.

# APPENDIX A

## Agreement to exclude security of tenure

Warning notice to be served on tenant before the parties enter into a valid agreement to exclude security of tenure

*See paragraphs 14-19 of the guidance and Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003*

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**FORM OF NOTICE THAT SECTIONS 24 TO 28 OF THE LANDLORD AND TENANT ACT 1954 ARE NOT TO APPLY TO A BUSINESS TENANCY**

**To:** *[Name and address of tenant]*

**From:** *[Name and address of landlord]*

## IMPORTANT NOTICE

**You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.**

Business tenants normally have security of tenure – the right to stay in their business premises when the lease ends.

**If you commit yourself to the lease you will be giving up these important legal rights.**

- You will have **no right** to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises, unless the lease specifically gives you this right.
- If the landlord offers you another lease, you will have no right to ask the court to fix the rent.

It is therefore important to get professional advice – from a qualified surveyor, lawyer or accountant – before agreeing to give up these rights.

If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

**But if you do not receive at least 14 day’ notice, you will need to sign a “statutory” declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).**

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

## APPENDIX B

### Agreement to exclude security of tenure

*Simple declaration to be made by tenant (who has received at least 14 days' notice of a proposal for a lease excluding security of tenure)*

*See paragraphs 14-19 of the guidance and Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003*

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I .....(name of declarant) of .....

.....(address) declare that –

1. I /.....(name of tenant) propose(s) to enter into a tenancy of premises at.....(address of premises) for a term commencing on .....
2. I/The tenant propose(s) to enter into an agreement with ..... (name of landlord) that the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 (security of tenure) shall be excluded in relation to the tenancy.
3. The landlord has, not less than 14 days before I/the tenant enter(s) into the tenancy, or (if earlier) become(s) contractually bound to do so served on me/the tenant a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.
4. I have/The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.
5. (as appropriate) I am duly authorised by the tenant to make this declaration.

DECLARED this ..... day of.....

**To:** [Name and address of tenant]

**From:** [Name and address of landlord]

## IMPORTANT NOTICE

**You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.**

Business tenants normally have security of tenure – the right to stay in their business premises when the lease ends.

**If you commit yourself to the lease you will be giving up these important legal rights.**

- You will have **no right** to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises, unless the lease specifically gives you this right.
- If the landlord offers you another lease, you will have no right to ask the court to fix the rent.

It is therefore important to get professional advice – from a qualified surveyor, lawyer or accountant – before agreeing to give up these rights.

If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

**But if you do not receive at least 14 days' notice, you will need to sign a "statutory" declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).**

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

## APPENDIX C

### Agreement to exclude security of tenure

*Statutory declaration to be made by tenant (who has received less than 14 days' notice of a proposal for a lease excluding security of tenure)*

*See paragraphs 14-19 of the guidance and Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003*

I .....(*name of declarant*) of .....(*address*) do solemnly and sincerely declare that –

1. I /.....(*name of tenant*) propose(s) to enter into a tenancy of premises at..... (*address of premises*) for a term commencing on .....
2. I /The tenant propose(s) to enter into an agreement with ..... (*name of landlord*) that the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 (security of tenure) shall be excluded in relation to the tenancy.
3. The landlord has served on me/the tenant a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.
4. I have/The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.
5. (*as appropriate*) I am duly authorised by the tenant to make this declaration.

**To:** [*Name and address of tenant*]

**From:** [*Name and address of landlord*]

## IMPORTANT NOTICE

**You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.**

Business tenants normally have security of tenure – the right to stay in their business premises when the lease ends.

**If you commit yourself to the lease you will be giving up these important legal rights.**

- You will have **no right** to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises, unless the lease specifically gives you this right.
- If the landlord offers you another lease, you will have no right to ask the court to fix the rent.

It is therefore important to get professional advice – from a qualified surveyor, lawyer or accountant – before agreeing to give up these rights.

If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

**But if you do not receive at least 14 days’ notice, you will need to sign a “statutory” declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).**

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835

DECLARED at ..... this ..... day of.....

Before me

*(signature of person before whom declaration is made)*

A commissioner for oaths or

A solicitor empowered to administer oaths or *(as appropriate)*

## APPENDIX D

### New section 40 notice for landlord to serve on tenant

*The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004, Schedule 2, form 4*

#### LANDLORD'S REQUEST FOR INFORMATION ABOUT OCCUPATION AND SUB-TENANCIES

##### **Section 40(1) of the Landlord and Tenant Act 1954**

**To:** *(insert name and address of tenant)*

**From:** *(insert name and address of landlord)*

1. This notice relates to the following premises: *(insert address or description of premises)*
2. I give you notice under section 40(1) of the Landlord and Tenant Act 1954 that I require you to provide information—
  - (a) by answering questions (1) to (3) in the Table below;
  - (b) if you answer “yes” to question (2), by giving me the name and address of the person or persons concerned;
  - (c) if you answer “yes” to question (3), by also answering questions (4) to (10) in the Table below;
  - (d) if you answer “no” to question (8), by giving me the name and address of the sub-tenant; and
  - (e) if you answer “yes” to question (10), by giving me details of the notice or request.

**TABLE**

(1) Do you occupy the premises or any part of them wholly or partly for the purposes of a business that is carried on by you?
(2) To the best of your knowledge and belief, does any other person own an interest in reversion in any part of the premises?
(3) Does your tenancy have effect subject to any sub-tenancy on which your tenancy is immediately expectant?
(4) What premises are comprised in the sub-tenancy?
(5) For what term does it have effect or, if it is terminable by notice, by what notice can it be terminated?
(6) What is the rent payable under it?
(7) Who is the sub-tenant?
(8) To the best of your knowledge and belief, is the sub-tenant in occupation of the premises or of part of the premises comprised in the sub-tenancy?
(9) Is an agreement in force excluding, in relation to the sub-tenancy, the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954?
(10) Has a notice been given under section 25 or 26(6) of that Act, or has a request been made under section 26 of that Act, in relation to the sub-tenancy?

3. You must give the information concerned in writing and within the period of one month beginning with the date of service of this notice.
4. Please send all correspondence about this notice to:

Name:

Address:

Signed:

Date:

\*[Landlord] \*[on behalf of the landlord] *\*delete whichever is inapplicable*

**IMPORTANT NOTE FOR THE TENANT**

This notice contains some words and phrases that you may not understand. The Notes below should help you, but it would be wise to seek professional advice, for example, from a solicitor or surveyor, before responding to this notice.

Once you have provided the information required by this notice, you must correct it if you realise that it is not, or is no longer, correct. This obligation lasts for six months from the date of service of this notice, but an exception is explained in the next paragraph. If you need to correct information already given, you must do so within one month of becoming aware that the information is incorrect.

The obligation will cease if, after transferring your tenancy, you notify the landlord of the transfer and of the name and address of the person to whom your tenancy has been transferred.

If you fail to comply with the requirements of this notice, or the obligation mentioned above, you may face civil proceedings for breach of the statutory duty that arises under

**section 40 of the Landlord and Tenant Act 1954. In any such proceedings a court may order you to comply with that duty and may make an award of damages.**

### **NOTES**

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003)

#### *Purpose of this notice*

Your landlord (or, if he or she is a tenant, possibly your landlord's landlord) has sent you this notice in order to obtain information about your occupation and that of any sub-tenants. This information may be relevant to the taking of steps to end or renew your business tenancy.

#### *Time limit for replying*

You must provide the relevant information within one month of the date of service of this notice (section 40(1), (2) and (5)).

#### *Information required*

You do not have to give your answers on this form; you may use a separate sheet for this purpose. The notice requires you to provide, in writing, information in the form of answers to questions (1) to (3) in the Table above and, if you answer "yes" to question (3), also to provide information in the form of answers to questions (4) to (10) in that Table. Depending on your answer to question (2) and, if applicable in your case, questions (8) and (10), you must also provide the information referred to in paragraph 2(b), (d) and (e) of this notice. Question (2) refers to a person who owns an interest in reversion. You should answer "yes" to this question if you know or believe that there is a person who receives, or is entitled to receive, rent in respect of any part of the premises (other than the landlord who served this notice).

When you answer questions about sub-tenants, please bear in mind that, for these purposes, a sub-tenant includes a person retaining possession of premises by virtue of the Rent (Agriculture) Act 1976 or the Rent Act 1977 after the coming to an end of a sub-tenancy, and "sub-tenancy" includes a right so to retain possession (section 40(8)).

You should keep a copy of your answers and of any other information provided in response to questions (2), (8) or (10) above.

If, once you have given this information, you realise that it is not, or is no longer, correct, you must give the correct information within one month of becoming aware that the previous information is incorrect. Subject to the next paragraph, your duty to correct any information that you have already given continues for six months after you receive this notice (section 40(5)). You should give the correct information to the landlord who gave you this notice unless you receive notice of the transfer of his or her interest, and of the name and address of the person to whom that interest has been transferred. In that case, the correct information must be given to that person.

If you transfer your tenancy within the period of six months referred to above, your duty to correct information already given will cease if you notify the landlord of the transfer and of the name and address of the person to whom your tenancy has been transferred.

If you do not provide the information requested, or fail to correct information that you have provided earlier, after realising that it is not, or is no longer, correct, proceedings may be taken against you and you may have to pay damages (section 40B).

If you are in any doubt about the information that you should give, get immediate advice from a solicitor or a surveyor.

*Validity of this notice*

The landlord who has given you this notice may not be the landlord to whom you pay your rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

*Further information*

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at [www.odpm.gov.uk](http://www.odpm.gov.uk). Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

## APPENDIX E

### New section 40 notice for tenant to serve on landlord or other reversioner

*The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004, Schedule 2, form 5*

#### TENANT'S REQUEST FOR INFORMATION FROM LANDLORD OR LANDLORD'S MORTGAGEE ABOUT LANDLORD'S INTEREST

##### **Section 40(3) of the Landlord and Tenant Act 1954**

**To:** *(insert name and address of reversioner or reversioner's mortgagee in possession [see the first note below])*

**From:** *(insert name and address of tenant)*

1. This notice relates to the following premises: (insert address or description of premises)
2. In accordance with section 40(3) of the Landlord and Tenant Act 1954 I require you—
  - (a) to state in writing whether you are the owner of the fee simple in respect of the premises or any part of them or the mortgagee in possession of such an owner,
  - (b) if you answer “no” to (a), to state in writing, to the best of your knowledge and belief—
    - (i) the name and address of the person who is your or, as the case may be, your mortgagor's immediate landlord in respect of the premises or of the part in respect of which you are not, or your mortgagor is not, the owner in fee simple;
    - (ii) for what term your or your mortgagor's tenancy has effect and what is the earliest date (if any) at which that tenancy is terminable by notice to quit given by the landlord; and
    - (iii) whether a notice has been given under section 25 or 26(6) of the Landlord and Tenant Act 1954, or a request has been made under section 26 of that Act, in relation to the tenancy and, if so, details of the notice or request;
  - (c) to state in writing, to the best of your knowledge and belief, the name and address of any other person who owns an interest in reversion in any part of the premises;

- (d) if you are a reversioner, to state in writing whether there is a mortgagee in possession of your interest in the premises; and
- (e) if you answer “yes” to (d), to state in writing, to the best of your knowledge and belief, the name and address of the mortgagee in possession.
3. You must give the information concerned within the period of one month beginning with the date of service of this notice.
4. Please send all correspondence about this notice to:

Name:

Address:

Signed:

Date:

\*[Tenant] \*[on behalf of the tenant] (*\*delete whichever is inapplicable*)

### **IMPORTANT NOTE FOR LANDLORD OR LANDLORD’S MORTGAGEE**

This notice contains some words and phrases that you may not understand. The Notes below should help you, but it would be wise to seek professional advice, for example, from a solicitor or surveyor, before responding to this notice.

Once you have provided the information required by this notice, you must correct it if you realise that it is not, or is no longer, correct. This obligation lasts for six months from the date of service of this notice, but an exception is explained in the next paragraph. If you need to correct information already given, you must do so within one month of becoming aware that the information is incorrect.

The obligation will cease if, after transferring your interest, you notify the tenant of the transfer and of the name and address of the person to whom your interest has been transferred.

If you fail to comply with the requirements of this notice, or the obligation mentioned above, you may face civil proceedings for breach of the statutory duty that arises under section 40 of the Landlord and Tenant Act 1954. In any such proceedings a court may order you to comply with that duty and may make an award of damages.

### **NOTES**

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003)

*Terms used in this notice*

The following terms, which are used in paragraph 2 of this notice, are defined in section 40(8):

“mortgagee in possession” includes a receiver appointed by the mortgagee or by the court who is in receipt of the rents and profits;

“reversioner” means any person having an interest in the premises, being an interest in reversion expectant (whether immediately or not) on the tenancy; and

“reversioner’s mortgagee in possession” means any person being a mortgagee in possession in respect of such an interest.

Section 40(8) requires the reference in paragraph 2(b) of this notice to your mortgagor to be read in the light of the definition of “mortgagee in possession”.

A mortgagee (mortgage lender) will be “in possession” if the mortgagor (the person who owes money to the mortgage lender) has failed to comply with the terms of the mortgage. The mortgagee may then be entitled to receive rent that would normally have been paid to the mortgagor.

The term “the owner of the fee simple” means the freehold owner.

The term “reversioner” includes the freehold owner and any intermediate landlord as well as the immediate landlord of the tenant who served this notice.

*Purpose of this notice and information required*

This notice requires you to provide, in writing, the information requested in paragraph 2(a) and (c) of the notice and, if applicable in your case, in paragraph 2(b), (d) and (e). You do not need to use a special form for this purpose.

If, once you have given this information, you realise that it is not, or is no longer, correct, you must give the correct information within one month of becoming aware that the previous information is incorrect. Subject to the last paragraph in this section of these Notes, your duty to correct any information that you have already given continues for six months after you receive this notice (section 40(5)).

You should give the correct information to the tenant who gave you this notice unless you receive notice of the transfer of his or her interest, and of the name and address of the person to whom that interest has been transferred. In that case, the correct information must be given to that person.

If you do not provide the information requested, or fail to correct information that you have provided earlier, after realising that it is not, or is no longer, correct, proceedings may be taken against you and you may have to pay damages (section 40B).

If you are in any doubt as to the information that you should give, get advice immediately from a solicitor or a surveyor.

If you transfer your interest within the period of six months referred to above, your duty to correct information already given will cease if you notify the tenant of that transfer and of the name and address of the person to whom your interest has been transferred.

*Time limit for replying*

You must provide the relevant information within one month of the date of service of this notice (section 40(3), (4) and (5)).

*Validity of this notice*

The tenant who has given you this notice may not be the person from whom you receive rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about the validity of the notice, get advice immediately from a solicitor or a surveyor.

*Further information*

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at [www.odpm.gov.uk](http://www.odpm.gov.uk). Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

# APPENDIX F

## New section 26 request

*The Landlord and Tenant Act 1954, Part 2 (Notices)  
Regulations 2004, Schedule 2, form 3*

### TENANT'S REQUEST FOR A NEW BUSINESS TENANCY

#### Section 26 of the Landlord and Tenant Act 1954

**To:** *(insert name and address of landlord):*

**From:** *(insert name and address of tenant):*

1. This notice relates to the following property: *(insert address or description of property)*.
2. I am giving you notice under section 26 of the Landlord and Tenant Act 1954 that I request a new tenancy beginning on *(insert date)*.
3. You will find my proposals for the new tenancy, which we can discuss, in the Schedule to this notice.
4. If we cannot agree on all the terms of a new tenancy, either you or I may ask the court to order the grant of a new tenancy and settle the terms on which we cannot agree.
5. If you wish to ask the court to order the grant of a new tenancy you must do so by the date in paragraph 2, unless we agree in writing to a later date and do so before the date in paragraph 2.
6. You may oppose my request for a new tenancy only on one or more of the grounds set out in section 30(1) of the Landlord and Tenant Act 1954. You must tell me what your grounds are within two months of receiving this notice. If you miss this deadline you will not be able to oppose renewal of my tenancy and you will have to grant me a new tenancy.
7. Please send all correspondence about this notice to:

Name:

Address:

Signed:

Date:

\*[Tenant] \*[On behalf of the tenant] (\*delete whichever is inapplicable)

# SCHEDULE

## TENANT'S PROPOSALS FOR A NEW TENANCY

*(attach or insert proposed terms of the new tenancy)*

### **IMPORTANT NOTE FOR THE LANDLORD**

**This notice requests a new tenancy of your property or part of it. If you want to oppose this request you must act quickly.**

**Read the notice and all the Notes carefully. It would be wise to seek professional advice.**

### **NOTES**

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003)

#### *Tenant's request for a new tenancy*

This request by your tenant for a new tenancy brings his or her current tenancy to an end on the day before the date mentioned in paragraph 2 of this notice. Section 26 contains rules about the date that the tenant can put in paragraph 2 of this notice.

Your tenant can apply to the court under section 24 for a new tenancy. You may apply for a new tenancy yourself, under the same section, but not if your tenant has already served an application. Once an application has been made to the court, your tenant's current tenancy will continue after the date mentioned in paragraph 2 while the application is being considered by the court. Either you or your tenant can ask the court to fix the rent which your tenant will have to pay whilst the tenancy continues (sections 24A to 24D). The court will settle any terms of a new tenancy on which you and your tenant disagree (sections 34 and 35).

#### *Time limit for opposing your tenant's request*

If you do not want to grant a new tenancy, you have two months from the making of your tenant's request in which to notify him or her that you will oppose any application made to the court for a new tenancy. You do not need a special form to do this, but the notice must be in writing and it must state on which of the grounds set out in section 30(1) you will oppose the application. If you do not use the same wording of the ground (or grounds), as set out below, your notice may be ineffective.

If there has been any delay in your seeing this notice, you may need to act very quickly. If you are in any doubt about what action you should take, get advice immediately from a solicitor or a surveyor.

*Grounds for opposing tenant's application*

If you wish to oppose the renewal of the tenancy, you can do so by opposing your tenant's application to the court, or by making your own application to the court for termination without renewal. However, you can only oppose your tenant's application, or apply for termination without renewal, on one or more of the grounds set out in section 30(1). These grounds are set out below. You will only be able to rely on the ground(s) of opposition that you have mentioned in your written notice to your tenant.

In this Table "the holding" means the property that is the subject of the tenancy.

<i>Paragraph of section 30(1)</i>	<i>Grounds</i>
(a)	Where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations.
(b)	That the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due.
(c)	That the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding.
(d)	That the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding.
(e)	Where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purposes of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy.
(f)	That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding.
(g)	On the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.

### *Compensation*

If your tenant cannot get a new tenancy solely because one or more of grounds (e), (f) and (g) applies, he or she is entitled to compensation under section 37. If you have opposed your tenant's application on any of the other grounds mentioned in section 30(1), as well as on one or more of grounds (e), (f) and (g), your tenant can only get compensation if the court's refusal to grant a new tenancy is based solely on ground (e), (f) or (g). In other words, your tenant cannot get compensation under section 37 if the court has refused the tenancy on *other* grounds, even if one or more of grounds (e), (f) and (g) also applies.

If you are an authority possessing compulsory purchase powers (such as a local authority), your tenant may be entitled to a disturbance payment under Part 3 of the Land Compensation Act 1973.

### *Negotiating a new tenancy*

Most tenancies are renewed by negotiation and your tenant has set out proposals for the new tenancy in paragraph 3 of this notice. You are not obliged to accept these proposals and may put forward your own. You and your tenant may agree in writing to extend the deadline for making an application to the court while negotiations continue. Your tenant may not apply to the court for a new tenancy until two months have passed from the date of the making of the request contained in this notice, unless you have already given notice opposing your tenant's request as mentioned in paragraph 6 of this notice (section 29A(3)).

If you try to agree a new tenancy with your tenant, remember:

- that one of you will need to apply to the court before the date in paragraph 2 of this notice, unless you both agree to extend the period for making an application.
- that any such agreement must be in writing and must be made before the date in paragraph 2 (sections 29A and 29B).

### *Validity of this notice*

The tenant who has given you this notice may not be the person from whom you receive rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

### *Further information*

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at [www.odpm.gov.uk](http://www.odpm.gov.uk). Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

# APPENDIX G

## New section 25 notice: landlord *not* opposing renewal

*The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004, Schedule 2, form 1*

### LANDLORD'S NOTICE ENDING A BUSINESS TENANCY WITH PROPOSALS FOR A NEW ONE

#### Section 25 of the Landlord and Tenant Act 1954

**IMPORTANT NOTE FOR THE LANDLORD:** If you are willing to grant a new tenancy, complete this form and send it to the tenant. If you wish to oppose the grant of a new tenancy, use form 2 in Schedule 2 to the Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 or, where the tenant may be entitled to acquire the freehold or an extended lease, form 7 in that Schedule, instead of this form.

**To:** *(insert name and address of tenant)*

**From:** *(insert name and address of landlord)*

1. This notice applies to the following property: *(insert address or description of property)*.
2. I am giving you notice under section 25 of the Landlord and Tenant Act 1954 to end your tenancy on *(insert date)*.
3. I am not opposed to granting you a new tenancy. You will find my proposals for the new tenancy, which we can discuss, in the Schedule to this notice.
4. If we cannot agree on all the terms of a new tenancy, either you or I may ask the court to order the grant of a new tenancy and settle the terms on which we cannot agree.
5. If you wish to ask the court for a new tenancy you must do so by the date in paragraph 2, unless we agree in writing to a later date and do so before the date in paragraph 2.
6. Please send all correspondence about this notice to:

Name:

Address:

Signed:

Date:

\*[Landlord] \*[On behalf of the landlord] \*[Mortgagee] \*[On behalf of the mortgagee]  
\*(delete if inapplicable)

# SCHEDULE

## LANDLORD'S PROPOSALS FOR A NEW TENANCY

*(attach or insert proposed terms of the new tenancy)*

### **IMPORTANT NOTE FOR THE TENANT**

This Notice is intended to bring your tenancy to an end. If you want to continue to occupy your property after the date specified in paragraph 2 you must act quickly. If you are in any doubt about the action that you should take, get advice immediately from a solicitor or a surveyor.

The landlord is prepared to offer you a new tenancy and has set out proposed terms in the Schedule to this notice. You are not bound to accept these terms. They are merely suggestions as a basis for negotiation. In the event of disagreement, ultimately the court would settle the terms of the new tenancy.

It would be wise to seek professional advice before agreeing to accept the landlord's terms or putting forward your own proposals.

### **NOTES**

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003).

#### *Ending of tenancy and grant of new tenancy*

This notice is intended to bring your tenancy to an end on the date given in paragraph 2. Section 25 contains rules about the date that the landlord can put in that paragraph.

However, your landlord is prepared to offer you a new tenancy and has set out proposals for it in the Schedule to this notice (section 25(8)). You are not obliged to accept these proposals and may put forward your own.

If you and your landlord are unable to agree terms either one of you may apply to the court. You may not apply to the court if your landlord has already done so (section 24(2A)). If you wish to apply to the court you must do so by the date given in paragraph 2 of this notice, unless you and your landlord have agreed in writing to extend the deadline (sections 29A and 29B).

The court will settle the rent and other terms of the new tenancy or those on which you and your landlord cannot agree (sections 34 and 35). If you apply to the court your tenancy will continue after the date shown in paragraph 2 of this notice while your application is being considered (section 24).

If you are in any doubt about what action you should take, get advice immediately from a solicitor or a surveyor.

*Negotiating a new tenancy*

Most tenancies are renewed by negotiation. You and your landlord may agree in writing to extend the deadline for making an application to the court while negotiations continue. Either you or your landlord can ask the court to fix the rent that you will have to pay while the tenancy continues (sections 24A to 24D).

You may only stay in the property after the date in paragraph 2 (or if we have agreed in writing to a later date, that date), if by then you or the landlord has asked the court to order the grant of a new tenancy.

If you do try to agree a new tenancy with your landlord remember:

- that your present tenancy will not continue after the date in paragraph 2 of this notice without the agreement in writing mentioned above, unless you have applied to the court or your landlord has done so, and
- that you will lose your right to apply to the court once the deadline in paragraph 2 of this notice has passed, unless there is a written agreement extending the deadline.

*Validity of this notice*

The landlord who has given you this notice may not be the landlord to whom you pay your rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

*Further information*

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at [www.odpm.gov.uk](http://www.odpm.gov.uk). Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

# APPENDIX H

## New section 25 notice: landlord opposing renewal

*The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004, Schedule 2, form 2*

### LANDLORD'S NOTICE ENDING A BUSINESS TENANCY AND REASONS FOR REFUSING A NEW ONE

#### Section 25 of the Landlord and Tenant Act 1954

**IMPORTANT NOTE FOR THE LANDLORD:** If you wish to oppose the grant of a new tenancy on any of the grounds in section 30(1) of the Landlord and Tenant Act 1954, complete this form and send it to the tenant. If the tenant may be entitled to acquire the freehold or an extended lease, use form 7 in Schedule 2 to the Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 instead of this form.

**To:** *(insert name and address of tenant)*

**From:** *(insert name and address of landlord)*

1. This notice relates to the following property: *(insert address or description of property)*
2. I am giving you notice under section 25 of the Landlord and Tenant Act 1954 to end your tenancy on *(insert date)*.
3. I am opposed to the grant of a new tenancy.
4. You may ask the court to order the grant of a new tenancy. If you do, I will oppose your application on the ground(s) mentioned in paragraph(s)\* of section 30(1) of that Act. I draw your attention to the Table in the Notes below, which sets out all the grounds of opposition.

*\*(insert letter(s) of the paragraph(s) relied on)*

5. If you wish to ask the court for a new tenancy you must do so before the date in paragraph 2 unless, before that date, we agree in writing to a later date.
6. I can ask the court to order the ending of your tenancy without granting you a new tenancy. I may have to pay you compensation if I have relied only on one or more of the grounds mentioned in paragraphs (e), (f) and (g) of section 30(1). If I ask the court to end your tenancy, you can challenge my application.

7. Please send all correspondence about this notice to:

Name:

Address:

Signed:

Date:

\*[Landlord] \*[On behalf of the landlord] \*[Mortgagee] \*[On behalf of the mortgagee]

(\*delete if inapplicable)

### **IMPORTANT NOTE FOR THE TENANT**

This notice is intended to bring your tenancy to an end on the date specified in paragraph 2.

Your landlord is not prepared to offer you a new tenancy. You will not get a new tenancy unless you successfully challenge in court the grounds on which your landlord opposes the grant of a new tenancy.

If you want to continue to occupy your property you must act quickly. The notes below should help you to decide what action you now need to take. If you want to challenge your landlord's refusal to renew your tenancy, get advice immediately from a solicitor or a surveyor.

### **NOTES**

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003)

#### *Ending of your tenancy*

This notice is intended to bring your tenancy to an end on the date given in paragraph 2. Section 25 contains rules about the date that the landlord can put in that paragraph.

Your landlord is not prepared to offer you a new tenancy. If you want a new tenancy you will need to apply to the court for a new tenancy and successfully challenge the landlord's grounds for opposition (see the section below headed "*Landlord's opposition to new tenancy*"). If you wish to apply to the court you must do so before the date given in paragraph 2 of this notice, unless you and your landlord have agreed in writing, before that date, to extend the deadline (sections 29A and 29B).

If you apply to the court your tenancy will continue after the date given in paragraph 2 of this notice while your application is being considered (section 24). You may not apply to the court if your landlord has already done so (section 24(2A) and (2B)).

You may only stay in the property after the date given in paragraph 2 (or such later date as you and the landlord may have agreed in writing) if before that date you have asked the court to order the grant of a new tenancy or the landlord has asked the court to order the ending of your tenancy without granting you a new one.

If you are in any doubt about what action you should take, get advice immediately from a solicitor or a surveyor.

*Landlord's opposition to new tenancy*

If you apply to the court for a new tenancy, the landlord can only oppose your application on one or more of the grounds set out in section 30(1). If you match the letter(s) specified in paragraph 4 of this notice with those in the first column in the Table below, you can see from the second column the ground(s) on which the landlord relies.

<i>Paragraph of section 30(1)</i>	<i>Grounds</i>
(a)	Where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations.
(b)	That the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due.
(c)	That the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding.
(d)	That the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding.
(e)	Where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purposes of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy.
(f)	That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding.
(g)	On the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.

In this Table “the holding” means the property that is the subject of the tenancy.

In ground (e), “the landlord is the owner an interest in reversion expectant on the termination of that superior tenancy” means that the landlord has an interest in the property that will entitle him or her, when your immediate landlord’s tenancy comes to an end, to exercise certain rights and obligations in relation to the property that are currently exercisable by your immediate landlord.

If the landlord relies on ground (f), the court can sometimes still grant a new tenancy if certain conditions set out in section 31A are met.

If the landlord relies on ground (g), please note that “the landlord” may have an extended meaning. Where a landlord has a controlling interest in a company then either the landlord or the company can rely on ground (g). Where the landlord is a company and a person has a controlling interest in that company then either of them can rely on ground (g) (section 30(1A) and (1B)). A person has a “controlling interest” in a company if, had he been a company, the other company would have been its subsidiary (section 46(2)).

The landlord must normally have been the landlord for at least five years before he or she can rely on ground (g).

#### *Compensation*

If you cannot get a new tenancy solely because one or more of grounds (e), (f) and (g) applies, you may be entitled to compensation under section 37. If your landlord has opposed your application on any of the other grounds as well as (e), (f) or (g) you can only get compensation if the court's refusal to grant a new tenancy is based solely on one or more of grounds (e), (f) and (g). In other words, you cannot get compensation under section 37 if the court has refused your tenancy on other grounds, even if one or more of grounds (e), (f) and (g) also applies.

If your landlord is an authority possessing compulsory purchase powers (such as a local authority) you may be entitled to a disturbance payment under Part 3 of the Land Compensation Act 1973.

#### *Validity of this notice*

The landlord who has given you this notice may not be the landlord to whom you pay your rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

#### *Further information*

An explanation of the main points to consider when renewing or ending a business tenancy, “Renewing and Ending Business Leases: a Guide for Tenants and Landlords”, can be found at [www.odpm.gov.uk](http://www.odpm.gov.uk). Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

# APPENDIX I

## Summary of procedures for applications to court (following service of section 25 notice or section 26 request for a new tenancy)

APPLICATION TO COURT (BY)	NOTICE SERVED		
	Landlord's section 25 notice, <u>not</u> opposing renewal	Landlord's section 25 notice, opposing renewal	Tenant's section 26 request
<b>Tenant</b>	May apply for renewal at any time between receiving landlord's notice and the date specified for termination in the notice.	May apply for renewal at any time between receiving landlord's notice and the date specified for termination in the notice.	May apply once the landlord has served a counternotice (or has had the two months within which to do so). The application must be made by the day before the date specified (for the beginning of the new tenancy) in the tenant's request for a new tenancy.
<b>Landlord</b>	May apply for renewal at any time between serving the notice and the date specified for termination in the notice.	May apply for termination without renewal any time after serving the notice on the tenant. (If neither party applies to court by the date specified in the landlord's notice, the tenant loses the right to renew.)	May apply for renewal at any time after receiving the request. May apply for termination without renewal at any time after serving a counternotice, but may not make such an application if he or she has failed to serve a counternotice within two months of the section 26 request. If there is no application to court by the day before the date specified (for the beginning of the new tenancy) in the tenant's request, the tenant loses the right to renew.

In all cases, the parties may agree to extend the deadline for applying to court, provided they do so in writing and before the current deadline expires.

## APPENDIX J

# Interim rent – amount payable

Conditions	Full rent for the new tenancy <sup>1</sup>	Full rent adjusted to earlier base date <sup>2</sup>	“Reasonable” rent <sup>3</sup>	Rent with “cushioning” effect <sup>4</sup>
1. Unopposed grant of new tenancy of the whole premises with tenant in full occupation	✓			
2. Where condition 1 above applies, but where one of the parties satisfies the court that the full rent for the new tenancy would differ substantially from a rent established on an equivalent basis on the date from which interim rent became payable		✓		
3. Where condition 1 applies, but where one of the parties satisfies the court that the terms of the new tenancy differ so much from those of the old tenancy that a rent reflecting those terms, established on the date from which interim rent became payable, would differ substantially from the full rent for the new tenancy			✓	
4. Where both conditions 2 and 3 apply			✓	
5. Where the landlord is unsuccessful in opposing renewal of the tenancy				✓
6. Where the landlord is unwilling to grant a new tenancy of the whole premises (whether or not such a tenancy is actually granted)				✓
7. Where the tenant applies to the court for revocation of the grant of a new tenancy				✓

<sup>1</sup> The rent will be the same as the rent for the new tenancy.

<sup>2</sup> The rent will be the rent that would have been determined as payable if the new tenancy began on the date from which interim rent became payable.

<sup>3</sup> The court will determine a rent that will be reasonable for the parties to pay.

<sup>4</sup> The court will determine a rent taking into account the rent payable under the old tenancy, but otherwise apply the rules for fixing the rent for a new tenancy, but on the basis of the terms of an existing tenancy and on the assumption that the new lease will be granted from year to year.

# APPENDIX K

## Agreement to Surrender a Business Tenancy

Warning notice to be served on tenant before the  
parties enter into an agreement to surrender

*See paragraphs 56-60 of the guidance and Schedule 3 to the Regulatory Reform (Business  
Tenancies) (England and Wales) Order 2003*

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### FORM OF NOTICE THAT AN AGREEMENT TO SURRENDER A BUSINESS TENANCY IS TO BE MADE

**To:** [Name and address of tenant]

**From:** [Name and address of landlord]

### **IMPORTANT NOTICE FOR TENANT**

**Do not commit yourself to any agreement to surrender your lease unless you have read this message carefully and discussed it with a professional adviser.**

Normally, you have the right to renew your lease when it expires. By committing yourself to an agreement to surrender, **you will be giving up this important statutory right.**

- You will **not** be able to continue occupying the premises beyond the date provided for under the agreement for surrender, **unless** the landlord chooses to offer you a further term (in which case you would lose the right to ask the court to determine the new rent). You will need to leave the premises.
- You will be unable to claim compensation for the loss of your premises, unless the lease or agreement for surrender gives you this right.

A qualified surveyor, lawyer or accountant would be able to offer you professional advice on your options.

**You do not have to commit yourself to the agreement to surrender your lease unless you want to.**

If you receive this notice at least 14 days before committing yourself to the agreement to surrender, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the agreement to surrender.

**But if you do not receive at least 14 days notice, you will need to sign a “statutory” declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).**

Unless there is a special reason for committing yourself to the agreement to surrender sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to end your lease, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

# APPENDIX L

## Agreement to surrender a business tenancy

*Simple declaration to be made by tenant (who has received at least 14 days' notice of a proposal for an agreement to surrender the tenancy)*

*See paragraphs 56-60 of the guidance and Schedule 4 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003*

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I .....(name of declarant) of .....

.....(address) declare that –

1. I have/..... (name of tenant) has a tenancy of premises at  
.....  
.....(address of premises) for a term commencing on .....
2. I /The tenant propose(s) to enter into an agreement with .....  
(name of landlord) to surrender the tenancy on a date or in circumstances specified in the agreement.
3. The landlord has not less than 14 days before I/the tenant enter(s) into the agreement referred to in paragraph 2 above, or (if earlier) become(s) contractually bound to do so, served on me/the tenant a notice in the form, or substantially in the form, set out in Schedule 3 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.
4. I have/The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.
5. (as appropriate) I am duly authorised by the tenant to make this declaration.

DECLARED this ..... day of.....

**To:** [Name and address of tenant]

**From:** [Name and address of landlord]

### IMPORTANT NOTICE FOR TENANT

**Do not commit yourself to any agreement to surrender your lease unless you have read this message carefully and discussed it with a professional adviser.**

Normally, you have the right to renew your lease when it expires. By committing yourself to an agreement to surrender, **you will be giving up this important statutory right.**

- You will **not** be able to continue occupying the premises beyond the date provided for under the agreement for surrender, **unless** the landlord chooses to offer you a further term (in which case you would lose the right to ask the court to determine the new rent). You will need to leave the premises.
- You will be unable to claim compensation for the loss of your premises, unless the lease or agreement for surrender gives you this right.

A qualified surveyor, lawyer or accountant would be able to offer you professional advice on your options.

**You do not have to commit yourself to the agreement to surrender your lease unless you want to.**

If you receive this notice at least 14 days before committing yourself to the agreement to surrender, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the agreement to surrender.

**But if you do not receive at least 14 days notice, you will need to sign a “statutory” declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).**

Unless there is a special reason for committing yourself to the agreement to surrender sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to end your lease, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

# APPENDIX M

## Agreement to surrender a business tenancy

*Statutory declaration to be made by tenant (who has received less than 14 days' notice of a proposal for an agreement to surrender the tenancy)*

*See paragraphs 56-60 of the guidance and Schedule 4 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003*

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I .....(name of declarant) of .....  
.....(address) do solemnly and sincerely declare that –

1. I have/..... (name of tenant) has a tenancy of premises at  
..... (address of premises)

for a term commencing on .....

2. I/The tenant propose(s) to enter into an agreement with .....  
(name of landlord) to surrender the tenancy on a date or in circumstances specified in the agreement.

3. The landlord has served on me/the tenant a notice in the form, or substantially in the form, set out in Schedule 3 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.

4. I have/The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.

5. (as appropriate) I am duly authorised by the tenant to make this declaration.

**To:** [Name and address of tenant]

**From:** [Name and address of landlord]

**IMPORTANT NOTICE FOR TENANT**

**Do not commit yourself to any agreement to surrender your lease unless you have read this message carefully and discussed it with a professional adviser.**

Normally, you have the right to renew your lease when it expires. By committing yourself to an agreement to surrender, **you will be giving up this important statutory right.**

- You will **not** be able to continue occupying the premises beyond the date provided for under the agreement for surrender, **unless** the landlord chooses to offer you a further term (in which case you would lose the right to ask the court to determine the new rent). You will need to leave the premises.
- You will be unable to claim compensation for the loss of your premises, unless the lease or agreement for surrender gives you this right.

A qualified surveyor, lawyer or accountant would be able to offer you professional advice on your options.

**You do not have to commit yourself to the agreement to surrender your lease unless you want to.**

If you receive this notice at least 14 days before committing yourself to the agreement to surrender, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the agreement to surrender.

**But if you do not receive at least 14 days notice, you will need to sign a “statutory” declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).**

Unless there is a special reason for committing yourself to the agreement to surrender sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to end your lease, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835

DECLARED at ..... this ..... day of.....

Before me

*(signature of person before whom declaration is made)*

A commissioner for oaths *or*

A solicitor empowered to administer oaths *or (as appropriate)*

