



# Commonhold and Leasehold Reform Act 2002

## 2002 CHAPTER 15

### PART 2

#### LEASEHOLD REFORM

#### CHAPTER 1

#### RIGHT TO MANAGE

##### *Introductory*

#### **71 The right to manage**

- (1) This Chapter makes provision for the acquisition and exercise of rights in relation to the management of premises to which this Chapter applies by a company which, in accordance with this Chapter, may acquire and exercise those rights (referred to in this Chapter as a RTM company).
- (2) The rights are to be acquired and exercised subject to and in accordance with this Chapter and are referred to in this Chapter as the right to manage.

##### *Qualifying rules*

#### **72 Premises to which Chapter applies**

- (1) This Chapter applies to premises if—
  - (a) they consist of a self-contained building or part of a building, with or without appurtenant property,
  - (b) they contain two or more flats held by qualifying tenants, and

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*Status: This is the original version (as it was originally enacted).*

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- (c) the total number of flats held by such tenants is not less than two-thirds of the total number of flats contained in the premises.
- (2) A building is a self-contained building if it is structurally detached.
- (3) A part of a building is a self-contained part of the building if—
  - (a) it constitutes a vertical division of the building,
  - (b) the structure of the building is such that it could be redeveloped independently of the rest of the building, and
  - (c) subsection (4) applies in relation to it.
- (4) This subsection applies in relation to a part of a building if the relevant services provided for occupiers of it—
  - (a) are provided independently of the relevant services provided for occupiers of the rest of the building, or
  - (b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.
- (5) Relevant services are services provided by means of pipes, cables or other fixed installations.
- (6) Schedule 6 (premises excepted from this Chapter) has effect.

### **73 RTM companies**

- (1) This section specifies what is a RTM company.
- (2) A company is a RTM company in relation to premises if—
  - (a) it is a private company limited by guarantee, and
  - (b) its memorandum of association states that its object, or one of its objects, is the acquisition and exercise of the right to manage the premises.
- (3) But a company is not a RTM company if it is a commonhold association (within the meaning of Part 1).
- (4) And a company is not a RTM company in relation to premises if another company is already a RTM company in relation to the premises or to any premises containing or contained in the premises.
- (5) If the freehold of any premises is conveyed or transferred to a company which is a RTM company in relation to the premises, or any premises containing or contained in the premises, it ceases to be a RTM company when the conveyance or transfer is executed.

### **74 RTM companies: membership and regulations**

- (1) The persons who are entitled to be members of a company which is a RTM company in relation to premises are—
  - (a) qualifying tenants of flats contained in the premises, and
  - (b) from the date on which it acquires the right to manage (referred to in this Chapter as the “acquisition date”), landlords under leases of the whole or any part of the premises.

- (2) The appropriate national authority shall make regulations about the content and form of the memorandum of association and articles of association of RTM companies.
- (3) A RTM company may adopt provisions of the regulations for its memorandum or articles.
- (4) The regulations may include provision which is to have effect for a RTM company whether or not it is adopted by the company.
- (5) A provision of the memorandum or articles of a RTM company has no effect to the extent that it is inconsistent with the regulations.
- (6) The regulations have effect in relation to a memorandum or articles—
  - (a) irrespective of the date of the memorandum or articles, but
  - (b) subject to any transitional provisions of the regulations.
- (7) The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTM company—
  - (a) sections 2(7) and 3 (memorandum), and
  - (b) section 8 (articles).

## 75 Qualifying tenants

- (1) This section specifies whether there is a qualifying tenant of a flat for the purposes of this Chapter and, if so, who it is.
- (2) Subject as follows, a person is the qualifying tenant of a flat if he is tenant of the flat under a long lease.
- (3) Subsection (2) does not apply where the lease is a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.
- (4) Subsection (2) does not apply where—
  - (a) the lease was granted by sub-demise out of a superior lease other than a long lease,
  - (b) the grant was made in breach of the terms of the superior lease, and
  - (c) there has been no waiver of the breach by the superior landlord.
- (5) No flat has more than one qualifying tenant at any one time; and subsections (6) and (7) apply accordingly.
- (6) Where a flat is being let under two or more long leases, a tenant under any of those leases which is superior to that held by another is not the qualifying tenant of the flat.
- (7) Where a flat is being let to joint tenants under a long lease, the joint tenants shall (subject to subsection (6)) be regarded as jointly being the qualifying tenant of the flat.

## 76 Long leases

- (1) This section and section 77 specify what is a long lease for the purposes of this Chapter.
- (2) Subject to section 77, a lease is a long lease if—

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- (a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise,
  - (b) it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (but is not a lease by sub-demise from one which is not a long lease),
  - (c) it takes effect under section 149(6) of the Law of Property Act 1925 (c. 20) (leases terminable after a death or marriage),
  - (d) it was granted in pursuance of the right to buy conferred by Part 5 of the Housing Act 1985 (c. 68) or in pursuance of the right to acquire on rent to mortgage terms conferred by that Part of that Act,
  - (e) it is a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent., or
  - (f) it was granted in pursuance of that Part of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (c. 52) (the right to acquire).
- (3) “Shared ownership lease” means a lease—
- (a) granted on payment of a premium calculated by reference to a percentage of the value of the demised premises or the cost of providing them, or
  - (b) under which the tenant (or his personal representatives) will or may be entitled to a sum calculated by reference, directly or indirectly, to the value of those premises.
- (4) “Total share”, in relation to the interest of a tenant under a shared ownership lease, means his initial share plus any additional share or shares in the demised premises which he has acquired.

## 77 Long leases: further provisions

- (1) A lease terminable by notice after a death or marriage is not a long lease if—
- (a) the notice is capable of being given at any time after the death or marriage of the tenant,
  - (b) the length of the notice is not more than three months, and
  - (c) the terms of the lease preclude both its assignment otherwise than by virtue of section 92 of the Housing Act 1985 (assignments by way of exchange) and the sub-letting of the whole of the demised premises.
- (2) Where the tenant of any property under a long lease, on the coming to an end of the lease, becomes or has become tenant of the property or part of it under any subsequent tenancy (whether by express grant or by implication of law), that tenancy is a long lease irrespective of its terms.
- (3) A lease—
- (a) granted for a term of years certain not exceeding 21 years, but with a covenant or obligation for renewal without payment of a premium (but not for perpetual renewal), and
  - (b) renewed on one or more occasions so as to bring to more than 21 years the total of the terms granted (including any interval between the end of a lease and the grant of a renewal),
- is to be treated as if the term originally granted had been one exceeding 21 years.
- (4) Where a long lease—

- (a) is or was continued for any period under Part 1 of the Landlord and Tenant Act 1954 (c. 56) or under Schedule 10 to the Local Government and Housing Act 1989 (c. 42), or
  - (b) was continued for any period under the Leasehold Property (Temporary Provisions) Act 1951 (c. 38),
- it remains a long lease during that period.
- (5) Where in the case of a flat there are at any time two or more separate leases, with the same landlord and the same tenant, and—
- (a) the property comprised in one of those leases consists of either the flat or a part of it (in either case with or without appurtenant property), and
  - (b) the property comprised in every other lease consists of either a part of the flat (with or without appurtenant property) or appurtenant property only,
- there shall be taken to be a single long lease of the property comprised in such of those leases as are long leases.

*Claim to acquire right*

## 78 Notice inviting participation

- (1) Before making a claim to acquire the right to manage any premises, a RTM company must give notice to each person who at the time when the notice is given—
- (a) is the qualifying tenant of a flat contained in the premises, but
  - (b) neither is nor has agreed to become a member of the RTM company.
- (2) A notice given under this section (referred to in this Chapter as a “notice of invitation to participate”) must—
- (a) state that the RTM company intends to acquire the right to manage the premises,
  - (b) state the names of the members of the RTM company,
  - (c) invite the recipients of the notice to become members of the company, and
  - (d) contain such other particulars (if any) as may be required to be contained in notices of invitation to participate by regulations made by the appropriate national authority.
- (3) A notice of invitation to participate must also comply with such requirements (if any) about the form of notices of invitation to participate as may be prescribed by regulations so made.
- (4) A notice of invitation to participate must either—
- (a) be accompanied by a copy of the memorandum of association and articles of association of the RTM company, or
  - (b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTM company.
- (5) A statement under subsection (4)(b) must—
- (a) specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
  - (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both)

- within the seven days beginning with the day following that on which the notice is given,
- (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
  - (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.
- (6) Where a notice given to a person includes a statement under subsection (4)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.
- (7) A notice of invitation to participate is not invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.

## **79 Notice of claim to acquire right**

- (1) A claim to acquire the right to manage any premises is made by giving notice of the claim (referred to in this Chapter as a “claim notice”); and in this Chapter the “relevant date”, in relation to any claim to acquire the right to manage, means the date on which notice of the claim is given.
- (2) The claim notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.
- (3) The claim notice must be given by a RTM company which complies with subsection (4) or (5).
- (4) If on the relevant date there are only two qualifying tenants of flats contained in the premises, both must be members of the RTM company.
- (5) In any other case, the membership of the RTM company must on the relevant date include a number of qualifying tenants of flats contained in the premises which is not less than one-half of the total number of flats so contained.
- (6) The claim notice must be given to each person who on the relevant date is—
  - (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the Landlord and Tenant Act 1987 (c. 31) (referred to in this Part as “the 1987 Act”) to act in relation to the premises, or any premises containing or contained in the premises.
- (7) Subsection (6) does not require the claim notice to be given to a person who cannot be found or whose identity cannot be ascertained; but if this subsection means that the claim notice is not required to be given to anyone at all, section 85 applies.
- (8) A copy of the claim notice must be given to each person who on the relevant date is the qualifying tenant of a flat contained in the premises.
- (9) Where a manager has been appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, a copy of the claim notice must also be given to the leasehold valuation tribunal or court by which he was appointed.

**80 Contents of claim notice**

- (1) The claim notice must comply with the following requirements.
- (2) It must specify the premises and contain a statement of the grounds on which it is claimed that they are premises to which this Chapter applies.
- (3) It must state the full name of each person who is both—
  - (a) the qualifying tenant of a flat contained in the premises, and
  - (b) a member of the RTM company,and the address of his flat.
- (4) And it must contain, in relation to each such person, such particulars of his lease as are sufficient to identify it, including—
  - (a) the date on which it was entered into,
  - (b) the term for which it was granted, and
  - (c) the date of the commencement of the term.
- (5) It must state the name and registered office of the RTM company.
- (6) It must specify a date, not earlier than one month after the relevant date, by which each person who was given the notice under section 79(6) may respond to it by giving a counter-notice under section 84.
- (7) It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.
- (8) It must also contain such other particulars (if any) as may be required to be contained in claim notices by regulations made by the appropriate national authority.
- (9) And it must comply with such requirements (if any) about the form of claim notices as may be prescribed by regulations so made.

**81 Claim notice: supplementary**

- (1) A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.
- (2) Where any of the members of the RTM company whose names are stated in the claim notice was not the qualifying tenant of a flat contained in the premises on the relevant date, the claim notice is not invalidated on that account, so long as a sufficient number of qualifying tenants of flats contained in the premises were members of the company on that date; and for this purpose a “sufficient number” is a number (greater than one) which is not less than one-half of the total number of flats contained in the premises on that date.
- (3) Where any premises have been specified in a claim notice, no subsequent claim notice which specifies—
  - (a) the premises, or
  - (b) any premises containing or contained in the premises,may be given so long as the earlier claim notice continues in force.
- (4) Where a claim notice is given by a RTM company it continues in force from the relevant date until the right to manage is acquired by the company unless it has previously—

- (a) been withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
- (b) ceased to have effect by reason of any other provision of this Chapter.

## **82 Right to obtain information**

- (1) A company which is a RTM company in relation to any premises may give to any person a notice requiring him to provide the company with any information—
  - (a) which is in his possession or control, and
  - (b) which the company reasonably requires for ascertaining the particulars required by or by virtue of section 80 to be included in a claim notice for claiming to acquire the right to manage the premises.
- (2) Where the information is recorded in a document in the person's possession or control, the RTM company may give him a notice requiring him—
  - (a) to permit any person authorised to act on behalf of the company at any reasonable time to inspect the document (or, if the information is recorded in the document in a form in which it is not readily intelligible, to give any such person access to it in a readily intelligible form), and
  - (b) to supply the company with a copy of the document containing the information in a readily intelligible form on payment of a reasonable fee.
- (3) A person to whom a notice is given must comply with it within the period of 28 days beginning with the day on which it is given.

## **83 Right of access**

- (1) Where a RTM company has given a claim notice in relation to any premises, each of the persons specified in subsection (2) has a right of access to any part of the premises if that is reasonable in connection with any matter arising out of the claim to acquire the right to manage.
- (2) The persons referred to in subsection (1) are—
  - (a) any person authorised to act on behalf of the RTM company,
  - (b) any person who is landlord under a lease of the whole or any part of the premises and any person authorised to act on behalf of any such person,
  - (c) any person who is party to such a lease otherwise than as landlord or tenant and any person authorised to act on behalf of any such person, and
  - (d) any manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, and any person authorised to act on behalf of any such manager.
- (3) The right conferred by this section is exercisable, at any reasonable time, on giving not less than ten days' notice—
  - (a) to the occupier of any premises to which access is sought, or
  - (b) if those premises are unoccupied, to the person entitled to occupy them.

## **84 Counter-notices**

- (1) A person who is given a claim notice by a RTM company under section 79(6) may give a notice (referred to in this Chapter as a "counter-notice") to the company no later than the date specified in the claim notice under section 80(6).



- (2) A counter-notice is a notice containing a statement either—
- (a) admitting that the RTM company was on the relevant date entitled to acquire the right to manage the premises specified in the claim notice, or
  - (b) alleging that, by reason of a specified provision of this Chapter, the RTM company was on that date not so entitled,
- and containing such other particulars (if any) as may be required to be contained in counter-notices, and complying with such requirements (if any) about the form of counter-notices, as may be prescribed by regulations made by the appropriate national authority.
- (3) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the company may apply to a leasehold valuation tribunal for a determination that it was on the relevant date entitled to acquire the right to manage the premises.
- (4) An application under subsection (3) must be made not later than the end of the period of two months beginning with the day on which the counter-notice (or, where more than one, the last of the counter-notices) was given.
- (5) Where the RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b), the RTM company does not acquire the right to manage the premises unless—
- (a) on an application under subsection (3) it is finally determined that the company was on the relevant date entitled to acquire the right to manage the premises, or
  - (b) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing that the company was so entitled.
- (6) If on an application under subsection (3) it is finally determined that the company was not on the relevant date entitled to acquire the right to manage the premises, the claim notice ceases to have effect.
- (7) A determination on an application under subsection (3) becomes final—
- (a) if not appealed against, at the end of the period for bringing an appeal, or
  - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
- (8) An appeal is disposed of—
- (a) if it is determined and the period for bringing any further appeal has ended, or
  - (b) if it is abandoned or otherwise ceases to have effect.

## **85 Landlords etc. not traceable**

- (1) This section applies where a RTM company wishing to acquire the right to manage premises—
- (a) complies with subsection (4) or (5) of section 79, and
  - (b) would not have been precluded from giving a valid notice under that section with respect to the premises,
- but cannot find, or ascertain the identity of, any of the persons to whom the claim notice would be required to be given by subsection (6) of that section.

- (2) The RTM company may apply to a leasehold valuation tribunal for an order that the company is to acquire the right to manage the premises.
- (3) Such an order may be made only if the company has given notice of the application to each person who is the qualifying tenant of a flat contained in the premises.
- (4) Before an order is made the company may be required to take such further steps by way of advertisement or otherwise as is determined proper for the purpose of tracing the persons who are—
  - (a) landlords under leases of the whole or any part of the premises, or
  - (b) parties to such leases otherwise than as landlord or tenant.
- (5) If any of those persons is traced—
  - (a) after an application for an order is made, but
  - (b) before the making of an order,
 no further proceedings shall be taken with a view to the making of an order.
- (6) Where that happens—
  - (a) the rights and obligations of all persons concerned shall be determined as if the company had, at the date of the application, duly given notice under section 79 of its claim to acquire the right to manage the premises, and
  - (b) the leasehold valuation tribunal may give such directions as it thinks fit as to the steps to be taken for giving effect to their rights and obligations, including directions modifying or dispensing with any of the requirements imposed by or by virtue of this Chapter.
- (7) An application for an order may be withdrawn at any time before an order is made and, after it is withdrawn, subsection (6)(a) does not apply.
- (8) But where any step is taken for the purpose of giving effect to subsection (6)(a) in the case of any application, the application shall not afterwards be withdrawn except—
  - (a) with the consent of the person or persons traced, or
  - (b) by permission of the leasehold valuation tribunal.
- (9) And permission shall be given only where it appears just that it should be given by reason of matters coming to the knowledge of the RTM company in consequence of the tracing of the person or persons traced.

## **86 Withdrawal of claim notice**

- (1) A RTM company which has given a claim notice in relation to any premises may, at any time before it acquires the right to manage the premises, withdraw the claim notice by giving a notice to that effect (referred to in this Chapter as a “notice of withdrawal”).
- (2) A notice of withdrawal must be given to each person who is—
  - (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant,
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, or
  - (d) the qualifying tenant of a flat contained in the premises.

**87 Deemed withdrawal**

- (1) If a RTM company has been given one or more counter-notices containing a statement such as is mentioned in subsection (2)(b) of section 84 but either—
  - (a) no application for a determination under subsection (3) of that section is made within the period specified in subsection (4) of that section, or
  - (b) such an application is so made but is subsequently withdrawn, the claim notice is deemed to be withdrawn.
- (2) The withdrawal shall be taken to occur—
  - (a) if paragraph (a) of subsection (1) applies, at the end of the period specified in that paragraph, and
  - (b) if paragraph (b) of that subsection applies, on the date of the withdrawal of the application.
- (3) Subsection (1) does not apply if the person by whom the counter-notice was given has, or the persons by whom the counter-notices were given have, (before the time when the withdrawal would be taken to occur) agreed in writing that the RTM company was on the relevant date entitled to acquire the right to manage the premises.
- (4) The claim notice is deemed to be withdrawn if—
  - (a) a winding-up order or an administration order is made, or a resolution for voluntary winding-up is passed, with respect to the RTM company,
  - (b) a receiver or a manager of the RTM company's undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the RTM company comprised in or subject to the charge,
  - (c) a voluntary arrangement proposed in the case of the RTM company for the purposes of Part 1 of the Insolvency Act 1986 (c. 45) is approved under that Part of that Act, or
  - (d) the RTM company's name is struck off the register under section 652 or 652A of the Companies Act 1985 (c. 6).

**88 Costs: general**

- (1) A RTM company is liable for reasonable costs incurred by a person who is—
  - (a) landlord under a lease of the whole or any part of any premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,in consequence of a claim notice given by the company in relation to the premises.
- (2) Any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
- (3) A RTM company is liable for any costs which such a person incurs as party to any proceedings under this Chapter before a leasehold valuation tribunal only if the tribunal dismisses an application by the company for a determination that it is entitled to acquire the right to manage the premises.

- (4) Any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by a leasehold valuation tribunal.

## **89 Costs where claim ceases**

- (1) This section applies where a claim notice given by a RTM company—
- (a) is at any time withdrawn or deemed to be withdrawn by virtue of any provision of this Chapter, or
  - (b) at any time ceases to have effect by reason of any other provision of this Chapter.
- (2) The liability of the RTM company under section 88 for costs incurred by any person is a liability for costs incurred by him down to that time.
- (3) Each person who is or has been a member of the RTM company is also liable for those costs (jointly and severally with the RTM company and each other person who is so liable).
- (4) But subsection (3) does not make a person liable if—
- (a) the lease by virtue of which he was a qualifying tenant has been assigned to another person, and
  - (b) that other person has become a member of the RTM company.
- (5) The reference in subsection (4) to an assignment includes—
- (a) an assent by personal representatives, and
  - (b) assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage).

### *Acquisition of right*

## **90 The acquisition date**

- (1) This section makes provision about the date which is the acquisition date where a RTM company acquires the right to manage any premises.
- (2) Where there is no dispute about entitlement, the acquisition date is the date specified in the claim notice under section 80(7).
- (3) For the purposes of this Chapter there is no dispute about entitlement if—
- (a) no counter-notice is given under section 84, or
  - (b) the counter-notice given under that section, or (where more than one is so given) each of them, contains a statement such as is mentioned in subsection (2)(a) of that section.
- (4) Where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the acquisition date is the date three months after the determination becomes final.
- (5) Where the right to manage the premises is acquired by the company by virtue of subsection (5)(b) of section 84, the acquisition date is the date three months after the day on which the person (or the last person) by whom a counter-notice containing a statement such as is mentioned in subsection (2)(b) of that section was given agrees

in writing that the company was on the relevant date entitled to acquire the right to manage the premises.

- (6) Where an order is made under section 85, the acquisition date is (subject to any appeal) the date specified in the order.

## **91 Notices relating to management contracts**

- (1) Section 92 applies where—
- (a) the right to manage premises is to be acquired by a RTM company (otherwise than by virtue of an order under section 85), and
  - (b) there are one or more existing management contracts relating to the premises.
- (2) A management contract is a contract between—
- (a) an existing manager of the premises (referred to in this Chapter as the “manager party”), and
  - (b) another person (so referred to as the “contractor party”),
- under which the contractor party agrees to provide services, or do any other thing, in connection with any matter relating to a function which will be a function of the RTM company once it acquires the right to manage.
- (3) And in this Chapter “existing management contract” means a management contract which—
- (a) is subsisting immediately before the determination date, or
  - (b) is entered into during the period beginning with the determination date and ending with the acquisition date.
- (4) An existing manager of the premises is any person who is—
- (a) landlord under a lease relating to the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises.
- (5) In this Chapter “determination date” means—
- (a) where there is no dispute about entitlement, the date specified in the claim notice under section 80(6),
  - (b) where the right to manage the premises is acquired by the company by virtue of a determination under section 84(5)(a), the date when the determination becomes final, and
  - (c) where the right to manage the premises is acquired by the company by virtue of subsection (5)(b) of section 84, the day on which the person (or the last person) by whom a counter-notice containing a statement such as is mentioned in subsection (2)(b) of that section was given agrees in writing that the company was on the relevant date entitled to acquire the right to manage the premises.

## **92 Duties to give notice of contracts**

- (1) The person who is the manager party in relation to an existing management contract must give a notice in relation to the contract—
- (a) to the person who is the contractor party in relation to the contract (a “contractor notice”), and

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- (b) to the RTM company (a “contract notice”).
- (2) A contractor notice and a contract notice must be given—
- (a) in the case of a contract subsisting immediately before the determination date, on that date or as soon after that date as is reasonably practicable, and
  - (b) in the case of a contract entered into during the period beginning with the determination date and ending with the acquisition date, on the date on which it is entered into or as soon after that date as is reasonably practicable.
- (3) A contractor notice must—
- (a) give details sufficient to identify the contract in relation to which it is given,
  - (b) state that the right to manage the premises is to be acquired by a RTM company,
  - (c) state the name and registered office of the RTM company,
  - (d) specify the acquisition date, and
  - (e) contain such other particulars (if any) as may be required to be contained in contractor notices by regulations made by the appropriate national authority,
- and must also comply with such requirements (if any) about the form of contractor notices as may be prescribed by regulations so made.
- (4) Where a person who receives a contractor notice (including one who receives a copy by virtue of this subsection) is party to an existing management sub-contract with another person (the “sub-contractor party”), the person who received the notice must—
- (a) send a copy of the contractor notice to the sub-contractor party, and
  - (b) give to the RTM company a contract notice in relation to the existing management sub-contract.
- (5) An existing management sub-contract is a contract under which the sub-contractor party agrees to provide services, or do any other thing, in connection with any matter relating to a function which will be a function of the RTM company once it acquires the right to manage and which—
- (a) is subsisting immediately before the determination date, or
  - (b) is entered into during the period beginning with the determination date and ending with the acquisition date.
- (6) Subsection (4) must be complied with—
- (a) in the case of a contract entered into before the contractor notice is received, on the date on which it is received or as soon after that date as is reasonably practicable, and
  - (b) in the case of a contract entered into after the contractor notice is received, on the date on which it is entered into or as soon after that date as is reasonably practicable.
- (7) A contract notice must—
- (a) give particulars of the contract in relation to which it is given and of the person who is the contractor party, or sub-contractor party, in relation to that contract, and
  - (b) contain such other particulars (if any) as may be required to be contained in contract notices by regulations made by the appropriate national authority,
- and must also comply with such requirements (if any) about the form of contract notices as may be prescribed by such regulations so made.

### **93 Duty to provide information**

- (1) Where the right to manage premises is to be acquired by a RTM company, the company may give notice to a person who is—
  - (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,requiring him to provide the company with any information which is in his possession or control and which the company reasonably requires in connection with the exercise of the right to manage.
- (2) Where the information is recorded in a document in his possession or control the notice may require him—
  - (a) to permit any person authorised to act on behalf of the company at any reasonable time to inspect the document (or, if the information is recorded in the document in a form in which it is not readily intelligible, to give any such person access to it in a readily intelligible form), and
  - (b) to supply the company with a copy of the document containing the information in a readily intelligible form.
- (3) A notice may not require a person to do anything under this section before the acquisition date.
- (4) But, subject to that, a person who is required by a notice to do anything under this section must do it within the period of 28 days beginning with the day on which the notice is given.

### **94 Duty to pay accrued uncommitted service charges**

- (1) Where the right to manage premises is to be acquired by a RTM company, a person who is—
  - (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.
- (2) The amount of any accrued uncommitted service charges is the aggregate of—
  - (a) any sums which have been paid to the person by way of service charges in respect of the premises, and
  - (b) any investments which represent such sums (and any income which has accrued on them),less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.
- (3) He or the RTM company may make an application to a leasehold valuation tribunal to determine the amount of any payment which falls to be made under this section.
- (4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.

### *Exercising right*

#### **95 Introductory**

Sections 96 to 103 apply where the right to manage premises has been acquired by a RTM company (and has not ceased to be exercisable by it).

#### **96 Management functions under leases**

- (1) This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.
- (2) Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.
- (3) And where a person is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.
- (4) Accordingly, any provisions of the lease making provision about the relationship of—
  - (a) a person who is landlord under the lease, and
  - (b) a person who is party to the lease otherwise than as landlord or tenant,in relation to such functions do not have effect.
- (5) “Management functions” are functions with respect to services, repairs, maintenance, improvements, insurance and management.
- (6) But this section does not apply in relation to—
  - (a) functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or
  - (b) functions relating to re-entry or forfeiture.
- (7) An order amending subsection (5) or (6) may be made by the appropriate national authority.

#### **97 Management functions: supplementary**

- (1) Any obligation owed by the RTM company by virtue of section 96 to a tenant under a lease of the whole or any part of the premises is also owed to each person who is landlord under the lease.
- (2) A person who is—
  - (a) landlord under a lease of the whole or any part of the premises,
  - (b) party to such a lease otherwise than as landlord or tenant, or
  - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except in accordance with an agreement made by him and the RTM company.
- (3) But subsection (2) does not prevent any person from insuring the whole or any part of the premises at his own expense.



- (4) So far as any function of a tenant under a lease of the whole or any part of the premises—
- (a) relates to the exercise of any function under the lease which is a function of the RTM company by virtue of section 96, and
  - (b) is exercisable in relation to a person who is landlord under the lease or party to the lease otherwise than as landlord or tenant,
- it is instead exercisable in relation to the RTM company.
- (5) But subsection (4) does not require or permit the payment to the RTM company of so much of any service charges payable by a tenant under a lease of the whole or any part of the premises as is required to meet costs incurred before the right to manage was acquired by the RTM company in connection with matters for which the service charges are payable.

## **98 Functions relating to approvals**

- (1) This section and section 99 apply in relation to the grant of approvals under long leases of the whole or any part of the premises; but nothing in this section or section 99 applies in relation to an approval concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant.
- (2) Where a person who is—
- (a) landlord under a long lease of the whole or any part of the premises, or
  - (b) party to such a lease otherwise than as landlord or tenant,
- has functions in relation to the grant of approvals to a tenant under the lease, the functions are instead functions of the RTM company.
- (3) Accordingly, any provisions of the lease making provision about the relationship of—
- (a) a person who is landlord under the lease, and
  - (b) a person who is party to the lease otherwise than as landlord or tenant,
- in relation to such functions do not have effect.
- (4) The RTM company must not grant an approval by virtue of subsection (2) without having given—
- (a) in the case of an approval relating to assignment, underletting, charging, parting with possession, the making of structural alterations or improvements or alterations of use, 30 days' notice, or
  - (b) in any other case, 14 days' notice,
- to the person who is, or each of the persons who are, landlord under the lease.
- (5) Regulations increasing the period of notice to be given under subsection (4)(b) in the case of any description of approval may be made by the appropriate national authority.
- (6) So far as any function of a tenant under a long lease of the whole or any part of the premises—
- (a) relates to the exercise of any function which is a function of the RTM company by virtue of this section, and
  - (b) is exercisable in relation to a person who is landlord under the lease or party to the lease otherwise than as landlord or tenant,
- it is instead exercisable in relation to the RTM company.

- (7) In this Chapter “approval” includes consent or licence and “approving” is to be construed accordingly; and an approval required to be obtained by virtue of a restriction entered on the register of title kept by the Chief Land Registrar is, so far as relating to a long lease of the whole or any part of any premises, to be treated for the purposes of this Chapter as an approval under the lease.

## **99 Approvals: supplementary**

- (1) If a person to whom notice is given under section 98(4) objects to the grant of the approval before the time when the RTM company would first be entitled to grant it, the RTM company may grant it only—
- (a) in accordance with the written agreement of the person who objected, or
  - (b) in accordance with a determination of (or on an appeal from) a leasehold valuation tribunal.
- (2) An objection to the grant of the approval may not be made by a person unless he could withhold the approval if the function of granting it were exercisable by him (and not by the RTM company).
- (3) And a person may not make an objection operating only if a condition or requirement is not satisfied unless he could grant the approval subject to the condition or requirement being satisfied if the function of granting it were so exercisable.
- (4) An objection to the grant of the approval is made by giving notice of the objection (and of any condition or requirement which must be satisfied if it is not to operate) to—
- (a) the RTM company, and
  - (b) the tenant,
- and, if the approval is to a tenant approving an act of a sub-tenant, to the sub-tenant.
- (5) An application to a leasehold valuation tribunal for a determination under subsection (1)(b) may be made by—
- (a) the RTM company,
  - (b) the tenant,
  - (c) if the approval is to a tenant approving an act of a sub-tenant, the sub-tenant, or
  - (d) any person who is landlord under the lease.

## **100 Enforcement of tenant covenants**

- (1) This section applies in relation to the enforcement of untransferred tenant covenants of a lease of the whole or any part of the premises.
- (2) Untransferred tenant covenants are enforceable by the RTM company, as well as by any other person by whom they are enforceable apart from this section, in the same manner as they are enforceable by any other such person.
- (3) But the RTM company may not exercise any function of re-entry or forfeiture.
- (4) In this Chapter “tenant covenant”, in relation to a lease, means a covenant falling to be complied with by a tenant under the lease; and a tenant covenant is untransferred if, apart from this section, it would not be enforceable by the RTM company.
- (5) Any power under a lease of a person who is—
- (a) landlord under the lease, or

(b) party to the lease otherwise than as landlord or tenant, to enter any part of the premises to determine whether a tenant is complying with any untransferred tenant covenant is exercisable by the RTM company (as well as by the landlord or party).

### **101 Tenant covenants: monitoring and reporting**

- (1) This section applies in relation to failures to comply with tenant covenants of leases of the whole or any part of the premises.
- (2) The RTM company must—
  - (a) keep under review whether tenant covenants of leases of the whole or any part of the premises are being complied with, and
  - (b) report to any person who is landlord under such a lease any failure to comply with any tenant covenant of the lease.
- (3) The report must be made before the end of the period of three months beginning with the day on which the failure to comply comes to the attention of the RTM company.
- (4) But the RTM company need not report to a landlord a failure to comply with a tenant covenant if—
  - (a) the failure has been remedied,
  - (b) reasonable compensation has been paid in respect of the failure, or
  - (c) the landlord has notified the RTM company that it need not report to him failures of the description of the failure concerned.

### **102 Statutory functions**

- (1) Schedule 7 (provision for the operation of certain enactments with modifications) has effect.
- (2) Other enactments relating to leases (including enactments contained in this Act or any Act passed after this Act) have effect with any such modifications as are prescribed by regulations made by the appropriate national authority.

### **103 Landlord contributions to service charges**

- (1) This section applies where—
  - (a) the premises contain at least one flat or other unit not subject to a lease held by a qualifying tenant (an “excluded unit”),
  - (b) the service charges payable under leases of flats contained in the premises which are so subject fall to be calculated as a proportion of the relevant costs, and
  - (c) the proportions of the relevant costs so payable, when aggregated, amount to less than the whole of the relevant costs.
- (2) Where the premises contain only one excluded unit, the person who is the appropriate person in relation to the excluded unit must pay to the RTM company the difference between—
  - (a) the relevant costs, and
  - (b) the aggregate amount payable in respect of the relevant costs under leases of flats contained in the premises which are held by qualifying tenants.

- (3) Where the premises contain more than one excluded unit, each person who is the appropriate person in relation to an excluded unit must pay to the RTM company the appropriate proportion of that difference.
- (4) And the appropriate proportion in the case of each such person is the proportion of the internal floor area of all of the excluded units which is internal floor area of the excluded unit in relation to which he is the appropriate person.
- (5) The appropriate person in relation to an excluded unit—
  - (a) if it is subject to a lease, is the landlord under the lease,
  - (b) if it is subject to more than one lease, is the immediate landlord under whichever of the leases is inferior to all the others, and
  - (c) if it is not subject to any lease, is the freeholder.

### *Supplementary*

#### **104 Registration**

- (1) In section 49(1) of the Land Registration Act 1925 (c. 21) (rules to provide for rights, interests and claims to be protected by notice), insert at the end—
  - “(1) the right to manage being exercisable by a RTM company under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.”
- (2) In section 64 of that Act (production of certificates for noting on certain dealings etc.), insert at the end—
  - “(8) Subsection (1) above shall also not require the production of the land certificate or of any charge certificate when a person applies for the registration of a notice in respect of the right to manage being exercisable by a RTM company under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.”
- (3) After section 111 of that Act insert—

#### **“111A Caution relating to right to manage**

A caution may be lodged under section 53 of this Act in respect of the right to manage being exercisable by a RTM company under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.”

#### **105 Cessation of management**

- (1) This section makes provision about the circumstances in which, after a RTM company has acquired the right to manage any premises, that right ceases to be exercisable by it.
- (2) Provision may be made by an agreement made between—
  - (a) the RTM company, and
  - (b) each person who is landlord under a lease of the whole or any part of the premises,
 for the right to manage the premises to cease to be exercisable by the RTM company.

- (3) The right to manage the premises ceases to be exercisable by the RTM company if—
  - (a) a winding-up order or an administration order is made, or a resolution for voluntary winding-up is passed, with respect to the RTM company,
  - (b) a receiver or a manager of the RTM company's undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the RTM company comprised in or subject to the charge,
  - (c) a voluntary arrangement proposed in the case of the RTM company for the purposes of Part 1 of the Insolvency Act 1986 (c. 45) is approved under that Part of that Act, or
  - (d) the RTM company's name is struck off the register under section 652 or 652A of the Companies Act 1985 (c. 6).
- (4) The right to manage the premises ceases to be exercisable by the RTM company if a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, begins so to act or an order under that Part of that Act that the right to manage the premises is to cease to be exercisable by the RTM company takes effect.
- (5) The right to manage the premises ceases to be exercisable by the RTM company if it ceases to be a RTM company in relation to the premises.

## **106 Agreements excluding or modifying right**

Any agreement relating to a lease (whether contained in the instrument creating the lease or not and whether made before the creation of the lease or not) is void in so far as it—

- (a) purports to exclude or modify the right of any person to be, or do any thing as, a member of a RTM company,
- (b) provides for the termination or surrender of the lease if the tenant becomes, or does any thing as, a member of a RTM company or if a RTM company does any thing, or
- (c) provides for the imposition of any penalty or disability if the tenant becomes, or does any thing as, a member of a RTM company or if a RTM company does any thing.

## **107 Enforcement of obligations**

- (1) A county court may, on the application of any person interested, make an order requiring a person who has failed to comply with a requirement imposed on him by, under or by virtue of any provision of this Chapter to make good the default within such time as is specified in the order.
- (2) An application shall not be made under subsection (1) unless—
  - (a) a notice has been previously given to the person in question requiring him to make good the default, and
  - (b) more than 14 days have elapsed since the date of the giving of that notice without his having done so.

**108 Application to Crown**

- (1) This Chapter applies in relation to premises in which there is a Crown interest.
- (2) There is a Crown interest in premises if there is in the premises an interest or estate—
  - (a) which is comprised in the Crown Estate,
  - (b) which belongs to Her Majesty in right of the Duchy of Lancaster,
  - (c) which belongs to the Duchy of Cornwall, or
  - (d) which belongs to a government department or is held on behalf of Her Majesty for the purposes of a government department.
- (3) Any sum payable under this Chapter to a RTM company by the Chancellor of the Duchy of Lancaster may be raised and paid under section 25 of the Duchy of Lancaster Act 1817 (c. 97) as an expense incurred in improvement of land belonging to Her Majesty in right of the Duchy.
- (4) Any sum payable under this Chapter to a RTM company by the Duke of Cornwall (or any other possessor for the time being of the Duchy of Cornwall) may be raised and paid under section 8 of the Duchy of Cornwall Management Act 1863 (c. 49) as an expense incurred in permanently improving the possessions of the Duchy.

**109 Powers of trustees in relation to right**

- (1) Where trustees are the qualifying tenant of a flat contained in any premises, their powers under the instrument regulating the trusts include power to be a member of a RTM company for the purpose of the acquisition and exercise of the right to manage the premises.
- (2) But subsection (1) does not apply where the instrument regulating the trusts contains an explicit direction to the contrary.
- (3) The power conferred by subsection (1) is exercisable with the same consent or on the same direction (if any) as may be required for the exercise of the trustees' powers (or ordinary powers) of investment.
- (4) The purposes—
  - (a) authorised for the application of capital money by section 73 of the Settled Land Act 1925 (c. 18), and
  - (b) authorised by section 71 of that Act as purposes for which moneys may be raised by mortgage,
 include the payment of any expenses incurred by a tenant for life or statutory owner as a member of a RTM company.

**110 Power to prescribe procedure**

- (1) Where a claim to acquire the right to manage any premises is made by the giving of a claim notice, except as otherwise provided by this Chapter—
  - (a) the procedure for giving effect to the claim notice, and
  - (b) the rights and obligations of all parties in any matter arising in giving effect to the claim notice,
 shall be such as may be prescribed by regulations made by the appropriate national authority.

- (2) Regulations under this section may, in particular, make provision for a person to be discharged from performing any obligations arising out of a claim notice by reason of the default or delay of some other person.

## 111 Notices

- (1) Any notice under this Chapter—
- (a) must be in writing, and
  - (b) may be sent by post.
- (2) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is landlord under a lease of the whole or any part of the premises at the address specified in subsection (3) (but subject to subsection (4)).
- (3) That address is—
- (a) the address last furnished to a member of the RTM company as the landlord's address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or
  - (b) if no such address has been so furnished, the address last furnished to such a member as the landlord's address in accordance with section 47 of the 1987 Act (landlord's name and address to be contained in demands for rent).
- (4) But the RTM company may not give a notice under this Chapter to a person at the address specified in subsection (3) if it has been notified by him of a different address in England and Wales at which he wishes to be given any such notice.
- (5) A company which is a RTM company in relation to premises may give a notice under this Chapter to a person who is the qualifying tenant of a flat contained in the premises at the flat unless it has been notified by the qualifying tenant of a different address in England and Wales at which he wishes to be given any such notice.

### *Interpretation*

## 112 Definitions

- (1) In this Chapter—
- “appurtenant property”, in relation to a building or part of a building or a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the building or part or flat,
- “copy”, in relation to a document in which information is recorded, means anything onto which the information has been copied by whatever means and whether directly or indirectly,
- “document” means anything in which information is recorded,
- “dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling,
- “flat” means a separate set of premises (whether or not on the same floor)—
- (a) which forms part of a building,
  - (b) which is constructed or adapted for use for the purposes of a dwelling, and
  - (c) either the whole or a material part of which lies above or below some other part of the building,

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- “relevant costs” has the meaning given by section 18 of the 1985 Act,  
“service charge” has the meaning given by that section, and  
“unit” means—
- (a) a flat,
  - (b) any other separate set of premises which is constructed or adapted for use for the purposes of a dwelling, or
  - (c) a separate set of premises let, or intended for letting, on a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies.
- (2) In this Chapter “lease” and “tenancy” have the same meaning and both expressions include (where the context permits)—
- (a) a sub-lease or sub-tenancy, and
  - (b) an agreement for a lease or tenancy (or for a sub-lease or sub-tenancy),
- but do not include a tenancy at will or at sufferance.
- (3) The expressions “landlord” and “tenant”, and references to letting, to the grant of a lease or to covenants or the terms of a lease, shall be construed accordingly.
- (4) In this Chapter any reference (however expressed) to the lease held by the qualifying tenant of a flat is a reference to a lease held by him under which the demised premises consist of or include the flat (whether with or without one or more other flats).
- (5) Where two or more persons jointly constitute either the landlord or the tenant or qualifying tenant in relation to a lease of a flat, any reference in this Chapter to the landlord or to the tenant or qualifying tenant is (unless the context otherwise requires) a reference to both or all of the persons who jointly constitute the landlord or the tenant or qualifying tenant, as the case may require.
- (6) In the case of a lease which derives (in accordance with section 77(5)) from two or more separate leases, any reference in this Chapter to the date of the commencement of the term for which the lease was granted shall, if the terms of the separate leases commenced at different dates, have effect as references to the date of the commencement of the term of the lease with the earliest date of commencement.

### 113 Index of defined expressions

In this Chapter the expressions listed below are defined by the provisions specified.

<i>Expression</i>	<i>Interpretation provision</i>
Approval (and approving)	Section 98(7)
Appurtenant property	Section 112(1)
Acquisition date	Sections 74(1)(b) and 90
Claim notice	Section 79(1)
Contractor party	Section 91(2)(b)
Copy	Section 112(1)
Counter-notice	Section 84(1)



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<i>Expression</i>	<i>Interpretation provision</i>
Date of the commencement of the term of a lease	Section 112(6)
Determination date	Section 91(5)
Document	Section 112(1)
Dwelling	Section 112(1)
Existing management contract	Section 91(3)
Flat	Section 112(1)
Landlord	Section 112(3) and (5)
Lease	Section 112(2) to (4)
Letting	Section 112(3)
Long lease	Sections 76 and 77
Manager party	Section 91(2)(a)
No dispute about entitlement	Section 90(3)
Notice of invitation to participate	Section 78
Notice of withdrawal	Section 86(1)
Premises to which this Chapter applies	Section 72 (and Schedule 6)
Qualifying tenant	Sections 75 and 112(4) and (5)
Relevant costs	Section 112(1)
Relevant date	Section 79(1)
Right to manage	Section 71(2)
RTM company	Sections 71(1) and 73
Service charge	Section 112(1)
Tenancy	Section 112(2)
Tenant	Section 112(3) and (5)
Tenant covenant	Section 100(4)
Unit	Section 112(1)

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## CHAPTER 2

### COLLECTIVE ENFRANCHISEMENT BY TENANTS OF FLATS

#### *Introductory*

#### **114 Amendments of right to collective enfranchisement**

This Chapter amends the right to collective enfranchisement which is conferred by Chapter 1 of Part 1 of the 1993 Act.

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*Status: This is the original version (as it was originally enacted).*

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### *Qualifying rules*

#### **115 Non-residential premises**

In section 4(1) of the 1993 Act (right not to apply in case of premises having non-residential parts with floor area exceeding 10 per cent. of total), for “10 per cent.” substitute “25 per cent.”.

#### **116 Premises including railway track**

In section 4 of the 1993 Act (premises in the case of which right does not apply), insert at the end—

“(5) This Chapter does not apply to premises falling within section 3(1) if the freehold of the premises includes track of an operational railway; and for the purposes of this subsection—

- (a) “track” includes any land or other property comprising the permanent way of a railway (whether or not it is also used for other purposes) and includes any bridge, tunnel, culvert, retaining wall or other structure used for the support of, or otherwise in connection with, track,
- (b) “operational” means not disused, and
- (c) “railway” has the same meaning as in any provision of Part 1 of the Railways Act 1993 (c. 43) for the purposes of which that term is stated to have its wider meaning.”

#### **117 Qualifying leases**

- (1) In section 5(1) of the 1993 Act (which provides that a qualifying tenant is a tenant under a long lease which is at a low rent or for a particularly long term), omit “which is at a low rent or for a particularly long term”.
- (2) In section 69(1)(b) of the 1993 Act (estate management schemes), for “by virtue of the amendments of that Chapter made by paragraph 3 of Schedule 9 to the Housing Act 1996 (c. 52)” substitute “in circumstances in which, but for section 117(1) of the Commonhold and Leasehold Reform Act 2002 and the repeal by that Act of paragraph 3 of Schedule 9 to the Housing Act 1996, they would have been entitled to acquire it by virtue of the amendments of that Chapter made by that paragraph”.

#### **118 Premises with resident landlord**

- (1) Section 10 of the 1993 Act (premises with a resident landlord) is amended as follows.
- (2) For subsection (1) (requirements that premises not be or form part of purpose-built block of flats and that they have been occupied for at least twelve months as only or principal home of owner of freehold or a family member) substitute—
  - “(1) For the purposes of this Chapter any premises falling within section 3(1) are premises with a resident landlord at any time if—
    - (a) the premises are not, and do not form part of, a purpose-built block of flats;
    - (b) the same person has owned the freehold of the premises since before the conversion of the premises into two or more flats or other units; and

- (c) he, or an adult member of his family, has occupied a flat or other unit contained in the premises as his only or principal home throughout the period of twelve months ending with that time.”

(3) For subsection (4) (premises held on trust) substitute—

“(4) Where the freehold of any premises is held on trust, subsection (1) applies as if—

- (a) the requirement in paragraph (b) were that the same person has had an interest under the trust (whether or not also a trustee) since before the conversion of the premises, and
- (b) paragraph (c) referred to him or an adult member of his family.”

## **119 Proportion of tenants required to participate**

In section 13(2)(b) of the 1993 Act (persons by whom initial notice must be given), omit sub-paragraph (i) (initial notice to be given by at least two-thirds of qualifying tenants of flats contained in premises).

## **120 Abolition of residence condition**

In section 13(2) of the 1993 Act, omit the words following paragraph (b) (which require at least one-half of the qualifying tenants by whom the initial notice is given to satisfy the residence condition).

### *Exercise of right*

## **121 Right exercisable only by RTE company**

- (1) Section 13 of the 1993 Act is amended as follows.
- (2) In paragraph (b) of subsection (2), after “given by” insert “a RTE company which has among its participating members”.
- (3) After that subsection insert—

“(2ZA) But in a case where, at the relevant date, there are only two qualifying tenants of flats contained in the premises, subsection (2)(b) is not satisfied unless both are participating members of the RTE company.”

## **122 RTE companies**

After section 4 of the 1993 Act insert—

### **“4A RTE companies**

- (1) A company is a RTE company in relation to premises if—
  - (a) it is a private company limited by guarantee, and
  - (b) its memorandum of association states that its object, or one of its objects, is the exercise of the right to collective enfranchisement with respect to the premises.

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*Status: This is the original version (as it was originally enacted).*

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- (2) But a company is not a RTE company if it is a commonhold association (within the meaning of Part 1 of the Commonhold and Leasehold Reform Act 2002).
- (3) And a company is not a RTE company in relation to premises if another company which is a RTE company in relation to—
  - (a) the premises, or
  - (b) any premises containing or contained in the premises,
 has given a notice under section 13 with respect to the premises, or any premises containing or contained in the premises, and the notice continues in force in accordance with subsection (11) of that section.

#### **4B RTE companies: membership**

- (1) Before the execution of a relevant conveyance to a company which is a RTE company in relation to any premises the following persons are entitled to be members of the company—
  - (a) qualifying tenants of flats contained in the premises, and
  - (b) if the company is also a RTM company which has acquired the right to manage the premises, landlords under leases of the whole or any part of the premises.
- (2) In this section—
  - “relevant conveyance” means a conveyance of the freehold of the premises or of any premises containing or contained in the premises; and
  - “RTM company” has the same meaning as in Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.
- (3) On the execution of a relevant conveyance to the RTE company, any member of the company who is not a participating member ceases to be a member.
- (4) In this Chapter “participating member”, in relation to a RTE company, means a person who is a member by virtue of subsection (1)(a) of this section and who—
  - (a) has given a participation notice to the company before the date when the company gives a notice under section 13 or during the participation period, or
  - (b) is a participating member by virtue of either of the following two subsections.
- (5) A member who is the assignee of a lease by virtue of which a participating member was a qualifying tenant of his flat is a participating member if he has given a participation notice to the company within the period beginning with the date of the assignment and ending 28 days later (or, if earlier, on the execution of a relevant conveyance to the company).
- (6) And if the personal representatives of a participating member are a member, they are a participating member if they have given a participation notice to the company at any time (before the execution of a relevant conveyance to the company).
- (7) In this section “participation notice”, in relation to a member of the company, means a notice stating that he wishes to be a participating member.

- (8) For the purposes of this section a participation notice given to the company during the period—
- (a) beginning with the date when the company gives a notice under section 13, and
  - (b) ending immediately before a binding contract is entered into in pursuance of the notice under section 13,
- is of no effect unless a copy of the participation notice has been given during that period to the person who (in accordance with section 9) is the reversioner in respect of the premises.
- (9) For the purposes of this section “the participation period” is the period beginning with the date when the company gives a notice under section 13 and ending—
- (a) six months, or such other time as the Secretary of State may by order specify, after that date, or
  - (b) immediately before a binding contract is entered into in pursuance of the notice under section 13,
- whichever is the earlier.
- (10) In this section references to assignment include an assent by personal representatives, and assignment by operation of law where the assignment is to a trustee in bankruptcy or to a mortgagee under section 89(2) of the Law of Property Act 1925 (c. 20) (foreclosure of leasehold mortgage); and references to an assignee shall be construed accordingly.

#### **4C RTE companies: regulations**

- (1) The Secretary of State shall by regulations make provision about the content and form of the memorandum of association and articles of association of RTE companies.
- (2) A RTE company may adopt provisions of the regulations for its memorandum or articles.
- (3) The regulations may include provision which is to have effect for a RTE company whether or not it is adopted by the company.
- (4) A provision of the memorandum or articles of a RTE company has no effect to the extent that it is inconsistent with the regulations.
- (5) The regulations have effect in relation to a memorandum or articles—
  - (a) irrespective of the date of the memorandum or articles, but
  - (b) subject to any transitional provisions of the regulations.
- (6) The following provisions of the Companies Act 1985 (c. 6) do not apply to a RTE company—
  - (a) sections 2(7) and 3 (memorandum), and
  - (b) section 8 (articles).”

### **123 Invitation to participate**

- (1) After section 12 of the 1993 Act insert—

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*Status: This is the original version (as it was originally enacted).*

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*“The notice of invitation to participate*

**12A Notice by RTE company inviting participation**

- (1) Before making a claim to exercise the right to collective enfranchisement with respect to any premises, a RTE company must give notice to each person who at the time when the notice is given—
  - (a) is the qualifying tenant of a flat contained in the premises, but
  - (b) neither is nor has agreed to become a participating member of the RTE company.
- (2) A notice given under this section (a “notice of invitation to participate”) must—
  - (a) state that the RTE company intends to exercise the right to collective enfranchisement with respect to the premises,
  - (b) state the names of the participating members of the RTE company,
  - (c) explain the rights and obligations of the members of the RTE company with respect to the exercise of the right (including their rights and obligations in relation to meeting the price payable in respect of the freehold, and any other interests to be acquired in pursuance of this Chapter, and associated costs),
  - (d) include an estimate of that price and those costs, and
  - (e) invite the recipients of the notice to become participating members of the RTE company.
- (3) A notice of invitation to participate must either—
  - (a) be accompanied by a copy of the memorandum of association and articles of association of the RTE company, or
  - (b) include a statement about inspection and copying of the memorandum of association and articles of association of the RTE company.
- (4) A statement under subsection (3)(b) must—
  - (a) specify a place (in England or Wales) at which the memorandum of association and articles of association may be inspected,
  - (b) specify as the times at which they may be inspected periods of at least two hours on each of at least three days (including a Saturday or Sunday or both) within the seven days beginning with the day following that on which the notice is given,
  - (c) specify a place (in England or Wales) at which, at any time within those seven days, a copy of the memorandum of association and articles of association may be ordered, and
  - (d) specify a fee for the provision of an ordered copy, not exceeding the reasonable cost of providing it.
- (5) Where a notice given to a person includes a statement under subsection (3)(b), the notice is to be treated as not having been given to him if he is not allowed to undertake an inspection, or is not provided with a copy, in accordance with the statement.
- (6) A notice of invitation to participate shall not be invalidated by any inaccuracy in any of the particulars required by or by virtue of this section.”

- (2) In section 13 of the 1993 Act, after subsection (2ZA) (inserted by section 121(3)) insert—

“(2ZB) The initial notice may not be given unless each person required to be given a notice of invitation to participate has been given such a notice at least 14 days before.”

## **124 Consequential amendments**

Schedule 8 (amendments consequential on sections 121 to 123) has effect.

## **125 Right of access**

- (1) In subsection (1) of section 17 of the 1993 Act (access by reversioner or other relevant landlord for purposes of valuation), insert at the end “or if it is reasonable in connection with any other matter arising out of the claim to exercise the right to collective enfranchisement”.
- (2) For the sidenote of that section substitute “Rights of access.”

### *Purchase price*

## **126 Valuation date**

- (1) In Schedule 6 to the 1993 Act (purchase price payable), for “the valuation date” (in each place) substitute “the relevant date”.
- (2) In section 18(1) of the 1993 Act (duty to disclose existence of agreements affecting premises etc.), for “valuation date for the purposes of Schedule 6” substitute “time when a binding contract is entered into in pursuance of the initial notice”.

## **127 Freeholder’s share of marriage value**

In paragraph 4(1) of Schedule 6 to the 1993 Act (freeholder’s share of marriage value), for the words after “freeholder’s share of the marriage value is” substitute “50 per cent. of that amount”.

## **128 Disregard of marriage value in case of very long leases**

- (1) Paragraph 4 of Schedule 6 to the 1993 Act is amended as follows.
- (2) In sub-paragraph (2) (meaning of marriage value), insert at the beginning “Subject to sub-paragraph (2A),”.
- (3) After that sub-paragraph insert—
- “(2A) Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.”

### CHAPTER 3

#### NEW LEASES FOR TENANTS OF FLATS

##### *Introductory*

#### **129 Amendments of right to acquire new lease**

This Chapter amends the right of tenants of flats to acquire new leases which is conferred by Chapter 2 of Part 1 of the 1993 Act.

##### *Qualifying rules*

#### **130 Replacement of residence test**

- (1) Section 39 of the 1993 Act (the right) is amended as follows.
- (2) In subsection (2)(a) (requirement that tenant is qualifying tenant of flat on the relevant date), for “is” substitute “has for the last two years been”.
- (3) Omit subsections (2)(b), (2A) and (2B) (requirement that tenant has occupied flat as only or principal home for three years).

#### **131 Qualifying leases**

In section 39(3) of the 1993 Act (which applies for the purposes of Chapter 2 of Part 1 of the 1993 Act the definition of qualifying tenant in Chapter 1 of that Part), omit paragraphs (c) and (d) (leases at a low rent and leases for a particularly long term).

#### **132 Personal representatives**

- (1) In section 39 of the 1993 Act, after subsection (3) insert—
 

“(3A) On the death of a person who has for the two years before his death been a qualifying tenant of a flat, the right conferred by this Chapter is exercisable, subject to and in accordance with this Chapter, by his personal representatives; and, accordingly, in such a case references in this Chapter to the tenant shall, in so far as the context permits, be to the personal representatives.”
- (2) In section 42 of the 1993 Act (notice by qualifying tenant of claim to exercise right), before subsection (5) insert—
 

“(4A) A notice under this section may not be given by the personal representatives of a tenant later than two years after the grant of probate or letters of administration.”

#### **133 Crown leases**

In section 94 of the 1993 Act (Crown land), for subsection (2) substitute—

- “(2) Chapter 2 applies as against a landlord under a lease from the Crown if—
- (a) a sub-tenant is seeking a new lease under that Chapter and the landlord, or a superior landlord under a lease from the Crown, is entitled to grant



- such a new lease without the concurrence of the appropriate authority,  
or
- (b) the appropriate authority notifies the landlord that, as regards any Crown interest affected, it will grant or concur in granting such a new lease.”

*Purchase price***134 Valuation date**

In Schedule 13 to the 1993 Act (premium and other amounts payable by tenant on grant of new lease), for “the valuation date” (in each place) substitute “the relevant date”.

**135 Landlord’s share of marriage value**

In paragraph 4(1) of Schedule 13 to the 1993 Act (landlord’s share of marriage value), for the words after “landlord’s share of the marriage value is” substitute “50 per cent. of that amount”.

**136 Disregard of marriage value in case of very long leases**

- (1) Paragraph 4 of Schedule 13 to the 1993 Act (meaning of marriage value) is amended as follows.
- (2) In sub-paragraph (2), insert at the beginning “Subject to sub-paragraph (2A),”.
- (3) After that sub-paragraph insert—
- “(2A) Where at the relevant date the unexpired term of the tenant’s existing lease exceeds eighty years, the marriage value shall be taken to be nil.”

**CHAPTER 4**

## LEASEHOLD HOUSES

*Introductory***137 Amendments of 1967 Act**

This Chapter amends the Leasehold Reform Act 1967 (c. 88) (referred to in this Part as “the 1967 Act”).

*Qualifying rules***138 Abolition of residence test**

- (1) In subsection (1) of section 1 of the 1967 Act (tenants of houses entitled to enfranchisement or extension), omit—
- (a) “, occupying the house as his residence,” and
- (b) “, and occupying it as his residence,”.

(2) After that subsection insert—

“(1ZA) Where a house is for the time being let under two or more tenancies, a tenant under any of those tenancies which is superior to that held by any tenant on whom this Part of this Act confers a right does not have any right under this Part of this Act.

(1ZB) Where a flat forming part of a house is let to a person who is a qualifying tenant of the flat for the purposes of Chapter 1 or 2 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28), a tenant of the house does not have any right under this Part of this Act unless, at the relevant time, he has been occupying the house, or any part of it, as his only or main residence (whether or not he has been using it for other purposes)—

- (a) for the last two years; or
- (b) for periods amounting to two years in the last ten years.”

(3) In subsection (3) of that section (exception where house is let to and occupied by tenant with other land or premises to which it is ancillary), for “occupation of it as his residence (but shall apply as if he were not so occupying it)” substitute “being a tenant of it”.

(4) In section 2(4) of the 1967 Act (premises previously let with house), for “occupied and used as mentioned in subsection (3) above” substitute “subject to a tenancy vested in him”.

(5) In section 6(1) of the 1967 Act (rights in case of trusts), for the words from the beginning to “right of the tenancy” substitute “A tenant of a house shall for purposes of this Part of this Act be treated as having been a tenant of it at any earlier time”.

(6) In section 7(3) and (4) of the 1967 Act (rights of members of family succeeding to tenancy on death), for “with him” substitute “in the house”.

### **139 Reduction of qualifying period as tenant etc**

(1) In subsection (1)(b) of section 1 of the 1967 Act (requirement that person claiming entitlement to enfranchisement or extension has been tenant of house for last three years or for periods amounting to three years in last ten), for “three years or for periods amounting to three years in the last ten years” substitute “two years”.

(2) After subsection (1A) of that section insert—

“(1B) This Part of this Act shall not have effect to confer any right on the tenant of a house under a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies unless, at the relevant time, the tenant has been occupying the house, or any part of it, as his only or main residence (whether or not he has been using it for other purposes)—

- (a) for the last two years; or
- (b) for periods amounting to two years in the last ten years.”

(3) In—

- (a) section 9(3)(b) of the 1967 Act (no new notice for three years after withdrawal), and
- (b) section 23(2)(b) of the 1967 Act (agreements excluding or restricting for period not exceeding three years right to give further notice),

for “three years” substitute “twelve months”.

#### **140 Exclusion of certain business tenancies**

After subsection (1ZB) of section 1 of the 1967 Act (inserted by section 138(2)) insert—

“(1ZC) The references in subsection (1)(a) and (b) to a long tenancy do not include a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (business tenancies) applies unless—

- (a) it is granted for a term of years certain exceeding thirty-five years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise,
- (b) it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, unless it is a tenancy by sub-demise from one which is not a tenancy which falls within any of the paragraphs in this subsection,
- (c) it is a tenancy taking effect under section 149(6) of the Law of Property Act 1925 (c. 20) (leases terminable after a death or marriage), or
- (d) it is a tenancy which—
  - (i) is or has been granted for a term of years certain not exceeding thirty-five years, but with a covenant or obligation for renewal without payment of a premium (but not for perpetual renewal), and
  - (ii) is or has been once or more renewed so as to bring to more than thirty-five years the total of the terms granted (including any interval between the end of a tenancy and the grant of a renewal).

(1ZD) Where this Part of this Act applies as if there were a single tenancy of property comprised in two or more separate tenancies, then, if each of the separate tenancies falls within any of the paragraphs of subsection (1ZC) above, that subsection shall apply as if the single tenancy did so.”

#### **141 Tenancies not at low rent**

(1) Section 1AA of the 1967 Act (additional right to enfranchisement where tenancy of house not at low rent) is amended as follows.

(2) Omit—

- (a) in subsection (1)(b), “falls within subsection (2) below and”, and
- (b) subsection (2) (tenancies for more than 35 years etc.).

(3) In subsection (3) (exceptions)—

- (a) in paragraph (b), for “the coming into force of section 106 of the Housing Act 1996 (c. 52)” substitute “1st April 1997 (the date on which section 106 of the Housing Act 1996 came into force)”, and
- (b) for paragraph (c) substitute—
  - “(c) the tenancy either—
    - (i) was granted on or before that date, or

- (ii) was granted after that date, but on or before the coming into force of section 141 of the Commonhold and Leasehold Reform Act 2002, for a term of years certain not exceeding thirty-five years.”

## 142 Personal representatives

- (1) After section 6 of the 1967 Act insert—

### “6A Rights of personal representatives

- (1) Where a tenant of a house dies and, immediately before his death, he had under this Part of this Act—
- (a) the right to acquire the freehold, or
  - (b) the right to an extended lease,
- the right is exercisable by his personal representatives while the tenancy is vested in them (but subject to subsection (2) below); and, accordingly, in such a case references in this Part of this Act to the tenant shall, in so far as the context permits, be to the personal representatives.
- (2) The personal representatives of a tenant may not give notice of their desire to have the freehold or an extended lease by virtue of subsection (1) above later than two years after the grant of probate or letters of administration.”
- (2) In paragraph 6(2) of Schedule 3 (particulars to be contained in notice), after “6” (in both places) insert “, 6A”.

## 143 Abolition of limits on rights after lease extension

- (1) In section 16 of the 1967 Act (limits on rights after extension of lease), omit—
- (a) subsection (1)(a) (no right for tenant under extended tenancy to acquire freehold after end of original lease), and
  - (b) in subsection (4) (no right to freehold or extended lease in case of tenancy created by sub-demise under extended tenancy), the words “the freehold or”.
- (2) For subsection (1B) of that section (extended tenancy not an assured tenancy or assured agricultural occupancy or a tenancy to which Schedule 10 to the Local Government and Housing Act 1989 (c. 42) applies) substitute—
- “(1B) Schedule 10 to the Local Government and Housing Act 1989 applies to every tenancy extended under section 14 above (whether or not it is for the purposes of that Schedule a long tenancy at a low rent as respects which the qualifying condition is fulfilled).”
- (3) Paragraph (a) of subsection (1) and subsection (2) apply whether the tenancy in question is extended before or after the coming into force of that paragraph or subsection; and paragraph (b) of subsection (1) applies whether the lease by sub-demise in question is created before or after the coming into force of that paragraph.
- (4) In section 9 of the 1967 Act (purchase price), after subsection (1A) insert—
- “(1AA) Where, in a case in which the price payable for a house and premises is to be determined in accordance with subsection (1A) above, the tenancy has been extended under this Part of this Act—

- (a) if the relevant time is on or before the original term date, the assumptions set out in that subsection apply as if the tenancy is to terminate on the original term date; and
- (b) if the relevant time is after the original term date, the assumptions set out in paragraphs (a), (c) and (e) of that subsection apply as if the tenancy had terminated on the original term date and the assumption set out in paragraph (b) of that subsection applies as if the words “at the end of the tenancy” were omitted.”

#### **144 Exclusion of shared ownership leases**

- (1) Schedule 4A to the 1967 Act (exclusion of certain shared ownership leases) is amended as follows.
- (2) In paragraph 2 (exclusion of certain leases granted by certain public authorities when interest of landlord belongs to authority)—
  - (a) in sub-paragraph (1), after “such a body” insert “, to a registered social landlord”,
  - (b) in sub-paragraph (3)(b), at the end insert “or to a registered social landlord”, and
  - (c) at the end insert—
    - “(5) In this paragraph “registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996 (c. 52).”
- (3) In paragraph 3(2)(d) (conditions to be satisfied for exclusion of lease granted by a housing association), omit “assign”.

#### *Purchase price*

#### **145 Tenant’s share of marriage value**

- (1) Section 9 of the 1967 Act (purchase price etc.) is amended as follows.
- (2) In subsection (1C) (purchase price payable where the right to acquire freehold arises by virtue of section 1A, 1AA or 1B), omit paragraph (a) (tenant’s share of marriage value not to exceed one-half).
- (3) After that subsection insert—
  - “(1D) Where, in determining the price payable for a house and premises in accordance with this section, there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall be one-half of it.”

#### **146 Disregard of marriage value in case of very long leases**

In section 9 of the 1967 Act (purchase price etc.), after subsection (1D) (inserted by section 145) insert—

- “(1E) But where at the relevant time the unexpired term of the tenant’s tenancy exceeds eighty years, the marriage value shall be taken to be nil.”

**147 Purchase price for enfranchisement during lease extension**

- (1) In section 9 of the 1967 Act (purchase price on enfranchisement), in subsection (1C) (cases where price is to be determined in accordance with subsection (1A)), after “1B above” insert “, or where the tenancy of the house and premises has been extended under section 14 below and the notice under section 8(1) above was given (whether by the tenant or a sub-tenant) after the original term date of the tenancy,”.
- (2) In section 9A(1) of the 1967 Act (compensation payable in certain cases), after “1B above” insert “or where the tenancy of the house and premises has been extended under section 14 below and the notice under section 8(1) above was given (whether by the tenant or a sub-tenant) after the original term date of the tenancy”.

*Absent landlords***148 Applications to be to county court**

- (1) Section 27 of the 1967 Act (enfranchisement where landlord cannot be found) is amended as follows.
- (2) In subsection (1)—
  - (a) for “the High Court” (in both places), and
  - (b) for “the Court”,
 substitute “the court”.
- (3) In subsection (2)—
  - (a) for “the High Court” (in each place), and
  - (b) for “the Court” (in both places),
 substitute “the court”.
- (4) In subsection (3)—
  - (a) for “the Supreme Court”, and
  - (b) for “High Court” (in both places),
 substitute “court”.
- (5) In subsection (4), for “High Court” substitute “court”.
- (6) In subsection (6), for “the Supreme Court” substitute “court”.
- (7) In subsection (7)—
  - (a) for “the High Court” (in both places), and
  - (b) for “the Court”,
 substitute “the court”.

**149 Valuation by leasehold valuation tribunal**

- (1) In section 27 of the 1967 Act (enfranchisement where landlord cannot be found), for subsection (5) substitute—
  - “(5) The appropriate sum which, in accordance with subsection (3) above, is to be paid into court is the aggregate of—

- (a) such amount as may be determined by (or on appeal from) a leasehold valuation tribunal to be the price payable in accordance with section 9 above; and
  - (b) the amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.”
- (2) In section 21(1) of the 1967 Act (jurisdiction of leasehold valuation tribunals), after paragraph (c) insert—
- “(cza) the amount of the appropriate sum to be paid into court under section 27(5);”.

## CHAPTER 5

### OTHER PROVISIONS ABOUT LEASES

#### *Service charges, administration charges etc.*

#### **150 Extending meaning of service charge and management etc**

Schedule 9 (which amends certain provisions about management of, and service charges in respect of, leasehold properties and confers power further to amend certain of those provisions) has effect.

#### **151 Consultation about service charges**

For section 20 of the 1985 Act (limitation of service charges: estimates and consultation) substitute—

##### **“20 Limitation of service charges: consultation requirements**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or

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- (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

#### **20ZA Consultation requirements: supplementary**

- (1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- (2) In section 20 and this section—
- “qualifying works” means works on a building or any other premises, and
  - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
- (a) if it is an agreement of a description prescribed by the regulations, or
  - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
- (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
  - (b) to obtain estimates for proposed works or agreements,



- (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
  - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
  - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
- (a) may make provision generally or only in relation to specific cases, and
  - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## 152 Statements of account

For section 21 of the 1985 Act (request for summary of relevant costs) substitute—

### “21 Regular statements of account

- (1) The landlord must supply to each tenant by whom service charges are payable, in relation to each accounting period, a written statement of account dealing with—
- (a) service charges of the tenant and the tenants of dwellings associated with his dwelling,
  - (b) relevant costs relating to those service charges,
  - (c) the aggregate amount standing to the credit of the tenant and the tenants of those dwellings—
    - (i) at the beginning of the accounting period, and
    - (ii) at the end of the accounting period, and
  - (d) related matters.
- (2) The statement of account in relation to an accounting period must be supplied to each such tenant not later than six months after the end of the accounting period.
- (3) Where the landlord supplies a statement of account to a tenant he must also supply to him—
- (a) a certificate of a qualified accountant that, in the accountant's opinion, the statement of account deals fairly with the matters with which it is required to deal and is sufficiently supported by accounts, receipts and other documents which have been produced to him, and
  - (b) a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (4) The Secretary of State may make regulations prescribing requirements as to the form and content of—
- (a) statements of account,
  - (b) accountants' certificates, and

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- (c) summaries of rights and obligations,  
required to be supplied under this section.
- (5) The Secretary of State may make regulations prescribing exceptions from the requirement to supply an accountant's certificate.
- (6) If the landlord has been notified by a tenant of an address in England and Wales at which he wishes to have supplied to him documents required to be so supplied under this section, the landlord must supply them to him at that address.
- (7) And the landlord is to be taken to have been so notified if notification has been given to—
- (a) an agent of the landlord named as such in the rent book or similar document, or
  - (b) the person who receives the rent on behalf of the landlord;
- and where notification is given to such an agent or person he must forward it as soon as may be to the landlord.
- (8) For the purposes of this section a dwelling is associated with another dwelling if the obligations of the tenants of the dwellings under the terms of their leases as regards contributing to relevant costs relate to the same costs.
- (9) In this section “accounting period” means such period—
- (a) beginning with the relevant date, and
  - (b) ending with such date, not later than twelve months after the relevant date,
- as the landlord determines.
- (10) In the case of the first accounting period in relation to any dwellings, the relevant date is the later of—
- (a) the date on which service charges are first payable under a lease of any of them, and
  - (b) the date on which section 152 of the Commonhold and Leasehold Reform Act 2002 comes into force,
- and, in the case of subsequent accounting periods, it is the date immediately following the end of the previous accounting period.
- (11) Regulations under subsection (4) may make different provision for different purposes.
- (12) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **21A Withholding of service charges**

- (1) A tenant may withhold payment of a service charge if—
- (a) the landlord has not supplied a document to him by the time by which he is required to supply it under section 21, or
  - (b) the form or content of a document which the landlord has supplied to him under that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under subsection (4) of that section.

- (2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—
  - (a) the service charges paid by him in the accounting period to which the document concerned would or does relate, and
  - (b) so much of the aggregate amount required to be dealt with in the statement of account for that accounting period by section 21(1)(c)(i) as stood to his credit.
- (3) An amount may not be withheld under this section—
  - (a) in a case within paragraph (a) of subsection (1), after the document concerned has been supplied to the tenant by the landlord, or
  - (b) in a case within paragraph (b) of that subsection, after a document conforming exactly or substantially with the requirements prescribed by regulations under section 21(4) has been supplied to the tenant by the landlord by way of replacement of the one previously supplied.
- (4) If, on an application made by the landlord to a leasehold valuation tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.
- (5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.”

### **153 Notice to accompany demands for service charges**

After section 21A of the 1985 Act (inserted by section 152) insert—

#### **“21B Notice to accompany demands for service charges**

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**154 Inspection etc. of documents**

For section 22 of the 1985 Act (request to inspect documents supporting summary of relevant costs) substitute—

**“22 Inspection etc. of documents**

- (1) A tenant may by notice in writing require the landlord—
  - (a) to afford him reasonable facilities for inspecting accounts, receipts or other documents relevant to the matters which must be dealt with in a statement of account required to be supplied to him under section 21 and for taking copies of or extracts from them, or
  - (b) to take copies of or extracts from any such accounts, receipts or other documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
- (2) If the tenant is represented by a recognised tenants' association and he consents, the notice may be served by the secretary of the association instead of by the tenant (and in that case any requirement imposed by it is to afford reasonable facilities, or to send copies or extracts, to the secretary).
- (3) A notice under this section may not be served after the end of the period of six months beginning with the date by which the tenant is required to be supplied with the statement of account under section 21.
- (4) But if—
  - (a) the statement of account is not supplied to the tenant on or before that date, or
  - (b) the statement of account so supplied does not conform exactly or substantially with the requirements prescribed by regulations under section 21(4),
 the six month period mentioned in subsection (3) does not begin until any later date on which the statement of account (conforming exactly or substantially with those requirements) is supplied to him.
- (5) A notice under this section is duly served on the landlord if it is served on—
  - (a) an agent of the landlord named as such in the rent book or similar document, or
  - (b) the person who receives the rent on behalf of the landlord;
 and a person on whom such a notice is so served must forward it as soon as may be to the landlord.
- (6) The landlord must comply with a requirement imposed by a notice under this section within the period of twenty-one days beginning with the day on which he receives the notice.
- (7) To the extent that a notice under this section requires the landlord to afford facilities for inspecting documents—
  - (a) he must do so free of charge, but
  - (b) he may treat as part of his costs of management any costs incurred by him in doing so.

- (8) The landlord may make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under this section.”

### **155 Liability to pay service charges: jurisdiction**

- (1) After section 27 of the 1985 Act insert—

#### **“27A Liability to pay service charges: jurisdiction**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).

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- (7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.”
- (2) In section 38 of the 1985 Act (definitions), at the end of the definitions of “arbitration agreement”, “arbitration agreement” and “arbitral tribunal”, insert “and post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen;”.
- (3) In section 39 of the 1985 Act (index of defined expressions), in the first column, in the entry “arbitration agreement, arbitration agreement and arbitral tribunal”, for “and arbitral tribunal” substitute “, arbitral tribunal and post-dispute arbitration agreement”.

## **156 Service charge contributions to be held in separate account**

- (1) After section 42 of the 1987 Act insert—

### **“42A Service charge contributions to be held in designated account**

- (1) The payee must hold any sums standing to the credit of any trust fund in a designated account at a relevant financial institution.
- (2) An account is a designated account in relation to sums standing to the credit of a trust fund if—
- (a) the relevant financial institution has been notified in writing that sums standing to the credit of the trust fund are to be (or are) held in it, and
  - (b) no other funds are held in the account,
- and the account is an account of a description specified in regulations made by the Secretary of State.
- (3) Any of the contributing tenants, or the sole contributing tenant, may by notice in writing require the payee—
- (a) to afford him reasonable facilities for inspecting documents evidencing that subsection (1) is complied with and for taking copies of or extracts from them, or
  - (b) to take copies of or extracts from any such documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
- (4) If the tenant is represented by a recognised tenants' association and he consents, the notice may be served by the secretary of the association instead of by the tenant (and in that case any requirement imposed by it is to afford reasonable facilities, or to send copies or extracts, to the secretary).
- (5) A notice under this section is duly served on the payee if it is served on—
- (a) an agent of the payee named as such in the rent book or similar document, or
  - (b) the person who receives the rent on behalf of the payee;
- and a person on whom such a notice is so served must forward it as soon as may be to the payee.

- (6) The payee must comply with a requirement imposed by a notice under this section within the period of twenty-one days beginning with the day on which he receives the notice.
- (7) To the extent that a notice under this section requires the payee to afford facilities for inspecting documents—
  - (a) he must do so free of charge, but
  - (b) he may treat as part of his costs of management any costs incurred by him in doing so.
- (8) The payee may make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under this section.
- (9) Any of the contributing tenants, or the sole contributing tenant, may withhold payment of a service charge if he has reasonable grounds for believing that the payee has failed to comply with the duty imposed on him by subsection (1); and any provisions of his tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (10) Nothing in this section applies to the payee if the circumstances are such as are specified in regulations made by the Secretary of State.
- (11) In this section—
  - “recognised tenants' association” has the same meaning as in the 1985 Act, and
  - “relevant financial institution” has the meaning given by regulations made by the Secretary of State;and expressions used both in section 42 and this section have the same meaning as in that section.

#### **42B Failure to comply with section 42A**

- (1) If a person fails, without reasonable excuse, to comply with a duty imposed on him by or by virtue of section 42A he commits an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) Where an offence under this section committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in such a capacity, or
  - (b) to be due to any neglect on the part of such an officer or person, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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(5) Proceedings for an offence under this section may be brought by a local housing authority (within the meaning of section 1 of the Housing Act 1985 (c. 68)).”

(2) In section 53(2)(b) of the 1987 Act (regulations subject to negative procedure), insert at the end “or 42A”.

### **157 Service charges: minor and consequential amendments**

Schedule 10 (minor and consequential amendments about service charges) has effect.

### **158 Administration charges**

Schedule 11 (which makes provision about administration charges payable by tenants of dwellings) has effect.

### **159 Charges under estate management schemes**

(1) This section applies where a scheme under—

- (a) section 19 of the 1967 Act (estate management schemes in connection with enfranchisement under that Act),
- (b) Chapter 4 of Part 1 of the 1993 Act (estate management schemes in connection with enfranchisement under the 1967 Act or Chapter 1 of Part 1 of the 1993 Act), or
- (c) section 94(6) of the 1993 Act (corresponding schemes in relation to areas occupied under leases from Crown),

includes provision imposing on persons occupying or interested in property an obligation to make payments (“estate charges”).

(2) A variable estate charge is payable only to the extent that the amount of the charge is reasonable; and “variable estate charge” means an estate charge which is neither—

- (a) specified in the scheme, nor
- (b) calculated in accordance with a formula specified in the scheme.

(3) Any person on whom an obligation to pay an estate charge is imposed by the scheme may apply to a leasehold valuation tribunal for an order varying the scheme in such manner as is specified in the application on the grounds that—

- (a) any estate charge specified in the scheme is unreasonable, or
- (b) any formula specified in the scheme in accordance with which any estate charge is calculated is unreasonable.

(4) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the scheme in such manner as is specified in the order.

(5) The variation specified in the order may be—

- (a) the variation specified in the application, or
- (b) such other variation as the tribunal thinks fit.

(6) An application may be made to a leasehold valuation tribunal for a determination whether an estate charge is payable by a person and, if it is, as to—

- (a) the person by whom it is payable,



- (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (7) Subsection (6) applies whether or not any payment has been made.
- (8) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of subsection (6) is in addition to any jurisdiction of a court in respect of the matter.
- (9) No application under subsection (6) may be made in respect of a matter which—
- (a) has been agreed or admitted by the person concerned,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which that person is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (10) But the person is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (11) An agreement (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under subsection (6).
- (12) In this section—
- “post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen, and
- “arbitration agreement” and “arbitral tribunal” have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).

*Managers appointed by leasehold valuation tribunal*

**160 Third parties with management responsibilities**

- (1) The 1987 Act has effect subject to the following amendments.
- (2) In section 22 (notice by tenant before application for appointment of manager is made)
- 
- (a) in subsection (1), for “on the landlord by the tenant” substitute “by the tenant on—
    - (i) the landlord, and
    - (ii) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy”,
  - (b) in subsection (2)(a), for “the landlord” substitute “any person on whom the notice is served”,

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- (c) in subsection (2)(b), for “landlord complies with the requirement specified in pursuance of that paragraph” substitute “requirement specified in pursuance of that paragraph is complied with”,
  - (d) in subsection (2)(d), for “the landlord, require the landlord” substitute “any person on whom the notice is served, require him”, and
  - (e) in subsection (3)—
    - (i) after “this section” insert “on a person”, and
    - (ii) for “landlord” substitute “person”.
- (3) In section 23(1) (application to tribunal for appointment of manager), for “landlord having taken the steps that he was required to take in pursuance of that provision” substitute “person required to take steps in pursuance of that paragraph having taken them”.
- (4) In section 24 (appointment of manager by tribunal)—
- (a) in subsection (2), for “the landlord” (in both places) substitute “any relevant person”,
  - (b) after that subsection insert—
 

“(2ZA) In this section “relevant person” means a person—

    - (a) on whom a notice has been served under section 22, or
    - (b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.”,
  - (c) in subsection (5), for “the landlord” substitute “any relevant person”,
  - (d) in subsection (9A), for “a landlord’s application” substitute “the application of any relevant person”, and
  - (e) in subsection (11), for “section” substitute “Part”.
- (5) In section 29(3), insert at the end “which was made by reason of an act or omission on the part of the landlord.”

## **161 Restriction of resident landlord exception**

In section 21 of the 1987 Act (tenant’s right to apply to tribunal for appointment of manager), after subsection (3) insert—

“(3A) But this Part is not prevented from applying to any premises because the interest of the landlord in the premises is held by a resident landlord if at least one-half of the flats contained in the premises are held on long leases which are not tenancies to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) applies.”

### *Variation of leases*

## **162 Grounds for application by party to lease**

- (1) Section 35 of the 1987 Act (application by party to lease for variation of lease) is amended as follows.
- (2) In subsection (2) (grounds for application), for paragraph (b) substitute—
  - “(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);”.

- (3) After paragraph (f) of that subsection insert—
- “(g) such other matters as may be prescribed by regulations made by the Secretary of State.”
- (4) After subsection (3) insert—
- “(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.”
- (5) In section 53(2)(b) of the 1987 Act (regulations subject to negative Parliamentary procedure), after “section 20(4)” insert “or 35(2)(g)”.

### **163 Transfer of jurisdiction of court to tribunal**

- (1) Part 4 of the 1987 Act (variation of leases) is amended as follows.
- (2) In section 35 (application by party to lease for variation of lease)—
- (a) in subsection (1), for “the court” substitute “a leasehold valuation tribunal”, and
- (b) in subsection (5), for “Rules of court” substitute “Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002”.
- (3) In section 36(1) (application by respondent for variation of other leases), for “court” substitute “tribunal”.
- (4) In section 37(1) (application by majority of parties for variation of leases), for “the court” substitute “a leasehold valuation tribunal”.
- (5) In section 38 (orders varying leases)—
- (a) in subsections (1) to (5), for “court” (in each place) substitute “tribunal”,
- (b) in subsection (6)—
- (i) for “The court” substitute “A tribunal”, and
- (ii) for “the court” substitute “the tribunal”,
- (c) in subsections (7) to (9), for “The court” substitute “A tribunal”, and
- (d) in subsection (10)—
- (i) for “the court”, in the first place, substitute “a tribunal”, and
- (ii) for “the court”, in the other two places, substitute “the tribunal”.
- (6) In section 39 (applications by third parties for orders varying leases)—
- (a) in subsection (3)(b), for “the court” substitute “a leasehold valuation tribunal”,
- (b) in subsection (4), for “The court” substitute “A tribunal”, and
- (c) in subsection (5)(b), for “court” substitute “tribunal”.
- (7) In section 40(1) (variation of insurance provisions of dwelling other than flat), for “the court” substitute “a leasehold valuation tribunal”.
- (8) In consequence of the preceding provisions, in section 52(2)(a) of the 1987 Act (jurisdiction of county courts), for “, 3 and 4” substitute “and 3”.

### *Insurance*

#### **164 Insurance otherwise than with landlord's insurer**

- (1) This section applies where a long lease of a house requires the tenant to insure the house with an insurer nominated or approved by the landlord (“the landlord’s insurer”).
- (2) The tenant is not required to effect the insurance with the landlord’s insurer if—
  - (a) the house is insured under a policy of insurance issued by an authorised insurer,
  - (b) the policy covers the interests of both the landlord and the tenant,
  - (c) the policy covers all the risks which the lease requires be covered by insurance provided by the landlord’s insurer,
  - (d) the amount of the cover is not less than that which the lease requires to be provided by such insurance, and
  - (e) the tenant satisfies subsection (3).
- (3) To satisfy this subsection the tenant—
  - (a) must have given a notice of cover to the landlord before the end of the period of fourteen days beginning with the relevant date, and
  - (b) if (after that date) he has been requested to do so by a new landlord, must have given a notice of cover to him within the period of fourteen days beginning with the day on which the request was given.
- (4) For the purposes of subsection (3)—
  - (a) if the policy has not been renewed the relevant date is the day on which it took effect and if it has been renewed it is the day from which it was last renewed, and
  - (b) a person is a new landlord on any day if he acquired the interest of the previous landlord under the lease on a disposal made by him during the period of one month ending with that day.
- (5) A notice of cover is a notice specifying—
  - (a) the name of the insurer,
  - (b) the risks covered by the policy,
  - (c) the amount and period of the cover, and
  - (d) such further information as may be prescribed.
- (6) A notice of cover—
  - (a) must be in the prescribed form, and
  - (b) may be sent by post.
- (7) If a notice of cover is sent by post, it may be addressed to the landlord at the address specified in subsection (8).
- (8) That address is—
  - (a) the address last furnished to the tenant as the landlord’s address for service in accordance with section 48 of the 1987 Act (notification of address for service of notices on landlord), or

- (b) if no such address has been so furnished, the address last furnished to the tenant as the landlord's address in accordance with section 47 of the 1987 Act (landlord's name and address to be contained in demands for rent).
- (9) But the tenant may not give a notice of cover to the landlord at the address specified in subsection (8) if he has been notified by the landlord of a different address in England and Wales at which he wishes to be given any such notice.
- (10) In this section—
- “authorised insurer”, in relation to a policy of insurance, means a person who may carry on in the United Kingdom the business of effecting or carrying out contracts of insurance of the sort provided under the policy without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (c. 8),
- “house” has the same meaning as for the purposes of Part 1 of the 1967 Act,
- “landlord” and “tenant” have the same meanings as in Chapter 1 of this Part,
- “long lease” has the meaning given by sections 76 and 77 of this Act, and
- “prescribed” means prescribed by regulations made by the appropriate national authority.

#### **165 Extension of right to challenge landlord's choice of insurer**

- (1) Paragraph 8 of the Schedule to the 1985 Act (right to challenge landlord's nomination of insurer) is amended as follows.
- (2) In sub-paragraphs (1) and (2), after “nominated” insert “or approved”.
- (3) In sub-paragraph (4), after “nominate” (in both places) insert “or approve”.

#### *Ground rent*

#### **166 Requirement to notify long leaseholders that rent is due**

- (1) A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice.
- (2) The notice must specify—
- the amount of the payment,
  - the date on which the tenant is liable to make it, and
  - if different from that date, the date on which he would have been liable to make it in accordance with the lease,
- and shall contain any such further information as may be prescribed.
- (3) The date on which the tenant is liable to make the payment must not be—
- either less than 30 days or more than 60 days after the day on which the notice is given, or
  - before that on which he would have been liable to make it in accordance with the lease.

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*Status: This is the original version (as it was originally enacted).*

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- (4) If the date on which the tenant is liable to make the payment is after that on which he would have been liable to make it in accordance with the lease, any provisions of the lease relating to non-payment or late payment of rent have effect accordingly.
- (5) The notice—
- (a) must be in the prescribed form, and
  - (b) may be sent by post.
- (6) If the notice is sent by post, it must be addressed to a tenant at the dwelling unless he has notified the landlord in writing of a different address in England and Wales at which he wishes to be given notices under this section (in which case it must be addressed to him there).
- (7) In this section “rent” does not include—
- (a) a service charge (within the meaning of section 18(1) of the 1985 Act), or
  - (b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).
- (8) In this section “long lease of a dwelling” does not include—
- (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
  - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
  - (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (9) In this section—
- “dwelling” has the same meaning as in the 1985 Act,
- “landlord” and “tenant” have the same meanings as in Chapter 1 of this Part,
- “long lease” has the meaning given by sections 76 and 77 of this Act, and
- “prescribed” means prescribed by regulations made by the appropriate national authority.

### *Forfeiture of leases of dwellings*

#### **167 Failure to pay small amount for short period**

- (1) A landlord under a long lease of a dwelling may not exercise a right of re-entry or forfeiture for failure by a tenant to pay an amount consisting of rent, service charges or administration charges (or a combination of them) (“the unpaid amount”) unless the unpaid amount—
- (a) exceeds the prescribed sum, or
  - (b) consists of or includes an amount which has been payable for more than a prescribed period.
- (2) The sum prescribed under subsection (1)(a) must not exceed £500.
- (3) If the unpaid amount includes a default charge, it is to be treated for the purposes of subsection (1)(a) as reduced by the amount of the charge; and for this purpose “default charge” means an administration charge payable in respect of the tenant’s failure to pay any part of the unpaid amount.

- (4) In this section “long lease of a dwelling” does not include—
- (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
  - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
  - (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (5) In this section—
- “administration charge” has the same meaning as in Part 1 of Schedule 11,
  - “dwelling” has the same meaning as in the 1985 Act,
  - “landlord” and “tenant” have the same meaning as in Chapter 1 of this Part,
  - “long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share,
  - “prescribed” means prescribed by regulations made by the appropriate national authority, and
  - “service charge” has the meaning given by section 18(1) of the 1985 Act.

## **168 No forfeiture notice before determination of breach**

- (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
- (2) This subsection is satisfied if—
- (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
  - (b) the tenant has admitted the breach, or
  - (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
- (3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
- (4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.
- (5) But a landlord may not make an application under subsection (4) in respect of a matter which—
- (a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (b) has been the subject of determination by a court, or
  - (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

**169 Section 168: supplementary**

- (1) An agreement by a tenant under a long lease of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or
  - (b) on particular evidence,
 of any question which may be the subject of an application under section 168(4).
- (2) For the purposes of section 168 it is finally determined that a breach of a covenant or condition in a lease has occurred—
  - (a) if a decision that it has occurred is not appealed against or otherwise challenged, at the end of the period for bringing an appeal or other challenge, or
  - (b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3).
- (3) The time referred to in subsection (2)(b) is the time when the appeal or other challenge is disposed of—
  - (a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or
  - (b) by its being abandoned or otherwise ceasing to have effect.
- (4) In section 168 and this section “long lease of a dwelling” does not include—
  - (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
  - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
  - (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (5) In section 168 and this section—
 

“arbitration agreement” and “arbitral tribunal” have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and “post-dispute arbitration agreement”, in relation to any breach (or alleged breach), means an arbitration agreement made after the breach has occurred (or is alleged to have occurred),

“dwelling” has the same meaning as in the 1985 Act,

“landlord” and “tenant” have the same meaning as in Chapter 1 of this Part, and

“long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share.
- (6) Section 146(7) of the Law of Property Act 1925 (c. 20) applies for the purposes of section 168 and this section.
- (7) Nothing in section 168 affects the service of a notice under section 146(1) of the Law of Property Act 1925 in respect of a failure to pay—
  - (a) a service charge (within the meaning of section 18(1) of the 1985 Act), or
  - (b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).



**170 Forfeiture for failure to pay service charge etc**

- (1) Section 81 of the Housing Act 1996 (c. 52) (restriction on forfeiture for failure to pay service charge) is amended as follows.
- (2) In subsection (1), for the words from “to pay” to the end substitute “by a tenant to pay a service charge or administration charge unless—
- (a) it is finally determined by (or on appeal from) a leasehold valuation tribunal or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or
  - (b) the tenant has admitted that it is so payable.”
- (3) For subsection (2) substitute—
- “(2) The landlord may not exercise a right of re-entry or forfeiture by virtue of subsection (1)(a) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.”
- (4) For subsection (3) substitute—
- “(3) For the purposes of this section it is finally determined that the amount of a service charge or administration charge is payable—
- (a) if a decision that it is payable is not appealed against or otherwise challenged, at the end of the time for bringing an appeal or other challenge, or
  - (b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3A).
- (3A) The time referred to in subsection (3)(b) is the time when the appeal or other challenge is disposed of—
- (a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or
  - (b) by its being abandoned or otherwise ceasing to have effect.”
- (5) After subsection (4) insert—
- “(4A) References in this section to the exercise of a right of re-entry or forfeiture include the service of a notice under section 146(1) of the Law of Property Act 1925 (restriction on re-entry or forfeiture).”
- (6) In subsection (5), after “this section” insert—
- “(a) “administration charge” has the meaning given by Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002,
  - (b) “arbitration agreement” and “arbitral tribunal” have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and “post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen,
  - (c) “dwelling” has the same meaning as in the Landlord and Tenant Act 1985 (c. 70), and
  - (d)”.

**171 Power to prescribe additional or different requirements**

- (1) The appropriate national authority may by regulations prescribe requirements which must be met before a right of re-entry or forfeiture may be exercised in relation to a breach of a covenant or condition in a long lease of an unmortgaged dwelling.
- (2) The regulations may specify that the requirements are to be in addition to, or instead of, requirements imposed otherwise than by the regulations.
- (3) In this section “long lease of a dwelling” does not include—
  - (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
  - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
  - (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (4) For the purposes of this section a dwelling is unmortgaged if it is not subject to a mortgage, charge or lien.
- (5) In this section—
 

“dwelling” has the same meaning as in the 1985 Act, and

“long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share.

*Crown application***172 Application to Crown**

- (1) The following provisions apply in relation to Crown land (as in relation to other land)
  - (a) sections 18 to 30B of (and the Schedule to) the 1985 Act (service charges, insurance and managing agents),
  - (b) Part 2 of the 1987 Act (appointment of manager by leasehold valuation tribunal),
  - (c) Part 4 of the 1987 Act (variation of leases),
  - (d) sections 46 to 49 of the 1987 Act (information to be furnished to tenants),
  - (e) Chapter 5 of Part 1 of the 1993 Act (management audit),
  - (f) section 81 of the Housing Act 1996 (c. 52) (restriction on termination of tenancy for failure to pay service charge etc.),
  - (g) section 84 of (and Schedule 4 to) that Act (right to appoint surveyor), and
  - (h) in this Chapter, the provisions relating to any of the provisions within paragraphs (a) to (g), Part 1 of Schedule 11 and sections 164 to 171.
- (2) Land is Crown land if there is or has at any time been an interest or estate in the land—
  - (a) comprised in the Crown Estate,
  - (b) belonging to Her Majesty in right of the Duchy of Lancaster,
  - (c) belonging to the Duchy of Cornwall, or
  - (d) belonging to a government department or held on behalf of Her Majesty for the purposes of a government department.

- (3) No failure by the Crown to perform a duty imposed by or by virtue of any of sections 21 to 23A of, or any of paragraphs 2 to 4A of the Schedule to, the 1985 Act makes the Crown criminally liable; but the High Court may declare any such failure without reasonable excuse to be unlawful.
- (4) Any sum payable under any of the provisions mentioned in subsection (1) by the Chancellor of the Duchy of Lancaster may be raised and paid under section 25 of the Duchy of Lancaster Act 1817 (c. 97) as an expense incurred in improvement of land belonging to Her Majesty in right of the Duchy.
- (5) Any sum payable under any such provision by the Duke of Cornwall (or any other possessor for the time being of the Duchy of Cornwall) may be raised and paid under section 8 of the Duchy of Cornwall Management Act 1863 (c. 49) as an expense incurred in permanently improving the possessions of the Duchy.
- (6) In section 56 of the 1987 Act (Crown land)—
  - (a) in subsection (1), for “This Act” substitute “Parts 1 and 3 and sections 42 to 42B (and so much of this Part as relates to those provisions)”, and
  - (b) in subsection (3), for “this Act” substitute “the provisions mentioned in subsection (1)”.

## CHAPTER 6

### LEASEHOLD VALUATION TRIBUNALS

#### 173 Leasehold valuation tribunals

- (1) Any jurisdiction conferred on a leasehold valuation tribunal by or under any enactment is exercisable by a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977 (c. 42).
- (2) When so constituted for exercising any such jurisdiction a rent assessment committee is known as a leasehold valuation tribunal.

#### 174 Procedure

Schedule 12 (leasehold valuation tribunals: procedure) has effect.

#### 175 Appeals

- (1) A party to proceedings before a leasehold valuation tribunal may appeal to the Lands Tribunal from a decision of the leasehold valuation tribunal.
- (2) But the appeal may be made only with the permission of—
  - (a) the leasehold valuation tribunal, or
  - (b) the Lands Tribunal.
- (3) And it must be made within the time specified by rules under section 3(6) of the Lands Tribunal Act 1949 (c. 42).
- (4) On the appeal the Lands Tribunal may exercise any power which was available to the leasehold valuation tribunal.

- (5) And a decision of the Lands Tribunal on the appeal may be enforced in the same way as a decision of the leasehold valuation tribunal.
- (6) The Lands Tribunal may not order a party to the appeal to pay costs incurred by another party in connection with the appeal unless he has, in the opinion of the Lands Tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the appeal.
- (7) In such a case the amount he may be ordered to pay shall not exceed the maximum amount which a party to proceedings before a leasehold valuation tribunal may be ordered to pay in the proceedings under or by virtue of paragraph 10(3) of Schedule 12.
- (8) No appeal lies from a decision of a leasehold valuation tribunal to the High Court by virtue of section 11(1) of the Tribunals and Inquiries Act 1992 (c. 53).
- (9) And no case may be stated for the opinion of the High Court in respect of such a decision by virtue of that provision.
- (10) For the purposes of section 3(4) of the Lands Tribunal Act 1949 (which enables a person aggrieved by a decision of the Lands Tribunal to appeal to the Court of Appeal) a leasehold valuation tribunal is not a person aggrieved.

## 176 Consequential amendments

Schedule 13 (minor and consequential amendments about leasehold valuation tribunals) has effect.

## CHAPTER 7

### GENERAL

## 177 Wales

The references to the 1985 Act, the 1987 Act and the 1993 Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) are to be treated as referring to those Acts as amended by this Part.

## 178 Orders and regulations

- (1) An order or regulations under any provision of this Part—
  - (a) may include incidental, supplementary, consequential and transitional provision,
  - (b) may make provision generally or only in relation to specified cases, and
  - (c) may make different provision for different purposes.
- (2) Regulations under Schedule 12 may make different provision for different areas.
- (3) Any power to make an order or regulations under this Part is exercisable by statutory instrument.
- (4) Regulations shall not be made by the Secretary of State under section 167 or 171 or paragraph 9(3)(b) or 10(3)(b) of Schedule 12 unless a draft of the instrument

containing them has been laid before and approved by a resolution of each House of Parliament.

- (5) A statutory instrument containing an order or regulations made by the Secretary of State under this Part shall, if not so approved, be subject to annulment in pursuance of a resolution of either House of Parliament.

## **179 Interpretation**

- (1) In this Part “the appropriate national authority” means—

- (a) the Secretary of State (as respects England), and
- (b) the National Assembly for Wales (as respects Wales).

- (2) In this Part—

- “the 1967 Act” means the Leasehold Reform Act 1967 (c. 88),
- “the 1985 Act” means the Landlord and Tenant Act 1985 (c. 70),
- “the 1987 Act” means the Landlord and Tenant Act 1987 (c. 31), and
- “the 1993 Act” means the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28).