



# Housing Act 1988

## 1988 CHAPTER 50

### PART V

#### MISCELLANEOUS AND GENERAL

##### *Leases.*

#### **115 Premiums on long leases**

(1) With respect to—

- (a) any premium received or required to be paid after the commencement of this Act, or
- (b) any loan required to be made after that commencement,

section 127 of the Rent Act 1977 (allowable premiums in relation to certain long tenancies) shall have effect subject to the amendments in subsections (2) and (3) below.

(2) For subsections (2) and (3) there shall be substituted the following subsections—

“(2) The conditions mentioned in subsection (1)(a) above are—

- (a) that the landlord has no power to determine the tenancy at any time within twenty years beginning on the date when it was granted; and
- (b) that the terms of the tenancy do not inhibit both the assignment and the underletting of the whole of the premises comprised in the tenancy;

but for the purpose of paragraph (b) above there shall be disregarded any term of the tenancy which inhibits assignment and underletting only during a period which is or falls within the final seven years of the term for which the tenancy was granted.

(3) The reference in subsection (2) above to a power or re-entry or forfeiture for breach of any term or condition of the tenancy.”

(3) Subsections (3C) and (3D) shall be omitted and in subsection (5) for “(2)(c)” there shall be substituted “(2)(b)”.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Expressions used in subsection (1) above have the same meaning as in Part IX of the Rent Act 1977.

## **116 Repairing obligations in short leases**

- (1) In section 11 of the Landlord and Tenant Act 1985 (repairing obligations in short leases) after subsection (1) there shall be inserted the following subsections—

“(1A) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if—

- (a) the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and
- (b) any reference in paragraphs (b) and (c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either—
  - (i) forms part of any part of a building in which the lessor has an estate or interest; or
  - (ii) is owned by the lessor or under his control.

(1B) Nothing in subsection (1A) shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee’s enjoyment of the dwelling-house or of any common parts, as defined in section 60(1) of the Landlord and Tenant Act 1987, which the lessee, as such, is entitled to use.”

- (2) After subsection (3) of that section there shall be inserted the following subsection—

“(3A) In any case where—

- (a) the lessor’s repairing covenant has effect as mentioned in subsection (1A), and
- (b) in order to comply with the covenant the lessor needs to carry out works or repairs otherwise than in, or to an installation in, the dwelling-house, and
- (c) the lessor does not have a sufficient right in the part of the building or the installation concerned to enable him to carry out the required works or repairs,

then, in any proceedings relating to a failure to comply with the lessor’s repairing covenant, so far as it requires the lessor to carry out the works or repairs in question, it shall be a defence for the lessor to prove that he used all reasonable endeavours to obtain, but was unable to obtain, such rights as would be adequate to enable him to carry out the works or repairs.”

- (3) At the end of section 14(4) of the said Act of 1985 (which excludes from section 11 certain leases granted to various bodies) there shall be added—

“a housing action trust established under Part III of the Housing Act 1988”.

- (4) The amendments made by this section do not have effect with respect to—
- (a) a lease entered into before the commencement of this Act; or

- (b) a lease entered into pursuant to a contract made before the commencement of this Act.

## **117 Certain tenancies excluded from bankrupt’s estate**

- (1) In section 283 of the Insolvency Act 1986 (definition of bankrupt’s estate) at the end of subsection (3) (property excluded from the estate) there shall be inserted the following subsection—

“(3A) Subject to section 308A in Chapter IV, subsection (1) does not apply to—

- (a) a tenancy which is an assured tenancy or an assured agricultural occupancy, within the meaning of Part I of the Housing Act 1988, and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977, or
- (b) a protected tenancy, within the meaning of the Rent Act 1977, in respect of which, by virtue of any provision of Part IX of that Act, no premium can lawfully be required as a condition of assignment, or
- (c) a tenancy of a dwelling-house by virtue of which the bankrupt is, within the meaning of the Rent (Agriculture) Act 1976, a protected occupier of the dwelling-house, and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977, or
- (d) a secure tenancy, within the meaning of Part IV of the Housing Act 1985, which is not capable of being assigned, except in the cases mentioned in section 91(3) of that Act.”

- (2) After section 308 of that Act there shall be inserted the following section—

### **“308A Vesting in trustee of certain tenancies**

Upon the service on the bankrupt by the trustee of a notice in writing under this section, any tenancy—

- (a) which is excluded by virtue of section 283(3A) from the bankrupt’s estate, and
- (b) to which the notice relates,

vests in the trustee as part of the bankrupt’s estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee’s title to that tenancy has relation back to the commencement of the bankruptcy.”

- (3) In section 309 of that Act (time-limit for certain notices) in subsection (1)(b)—

- (a) after the words “section 308” there shall be inserted “or section 308A”; and
- (b) after the words “the property” there shall be inserted “or tenancy”.

- (4) In section 315 of that Act (disclaimer (general power)), in subsection (4) after the words “reasonable replacement value)” there shall be inserted “or 308A”.

## **118 Certain tenancies excluded from debtor’s estate: Scotland**

- (1) In section 31 of the Bankruptcy (Scotland) Act 1985 (vesting of debtor’s estate at date of sequestration) in subsection (8) after the word “means” there shall be inserted the words “, subject to subsection (9) below,”.

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

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(2) After the said subsection (8) there shall be added the following subsections—

“(9) Subject to subsection (10) below, the “whole estate of the debtor” does not include any interest of the debtor as tenant under any of the following tenancies—

- (a) a tenancy which is an assured tenancy within the meaning of Part II of the Housing (Scotland) Act 1988, or
- (b) a protected tenancy within the meaning of the Rent (Scotland) Act 1984 in respect of which, by virtue of any provision of Part VIII of that Act, no premium can lawfully be required as a condition of the assignation, or
- (c) a secure tenancy within the meaning of Part III of the Housing (Scotland) Act 1987.

(10) On the date on which the permanent trustee serves notice to that effect on the debtor, the interest of the debtor as tenant under any of the tenancies referred to in subsection (9) above shall form part of his estate and vest in the permanent trustee as if it had vested in him under section 32(6) of this Act.”

#### **119 Amendment of Landlord and tenant Act 1987**

The Landlord and Tenant Act 1987 shall have effect subject to the amendments in Schedule 13 to this Act.