

SCHEDULE 6

CONVEYANCE OF FREEHOLD AND GRANT OF LEASE IN PURSUANCE OF RIGHT TO BUY

PART III

LEASES

General

11. A lease shall be for the appropriate term defined in paragraph 12 and at a rent not exceeding £10 per annum, and the following provisions have effect with respect to the other terms of the lease.

The appropriate term

12.—(1) If at the time the grant is made the landlord's interest in the qualifying dwelling-house is not less than a lease for a term of which more than 125 years and five days are unexpired, the appropriate term is a term of not less than 125 years.

(2) In any other case the appropriate term is a term expiring five days before the term of the landlord's lease of the qualifying dwelling-house (or, as the case may require, five days before the first date on which the term of any lease under which the landlord holds any part of the qualifying dwelling-house) is to expire.

Common use of premises and facilities

13. Where the qualifying dwelling-house is a flat and the qualifying person enjoyed, during his tenancy, the use in common with others of any premises, facilities or services, the lease shall include rights to the like enjoyment, so far as the landlord is capable of granting them, unless otherwise agreed between the landlord and the qualifying person.

Covenants by the landlord

14.—(1) This paragraph applies where the qualifying dwelling-house is a flat.

(2) There are implied covenants by the landlord—

- (a) to keep in repair the structure and exterior of the qualifying dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure;
- (b) to keep in repair any other property over or in respect of which the tenant has rights by virtue of this Schedule;
- (c) to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.

(3) There is an implied covenant that the landlord shall rebuild or reinstate the qualifying dwelling-house and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure.

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(3A) Sub-paragraphs (2) and (3) have effect subject to paragraph 15(3) (certain obligations not to be imposed, where landlord's title is leasehold, by reason of provisions of superior lease).

(4) The county court may, by order made with the consent of the parties, authorise the inclusion in the lease or in an agreement collateral to it of provisions excluding or modifying the obligations of the landlord under the covenants implied by this paragraph, if it appears to the court that it is reasonable to do so.

15.—(1) This paragraph applies where the landlord's interest in the qualifying dwelling-house is leasehold.

(2) There is implied a covenant by the landlord to pay the rent reserved by the landlord's lease and, except in so far as they fall to be discharged by the tenant, to discharge its obligations under the covenants contained in that lease.

(3) A covenant implied by virtue of paragraph 14 (implied covenants where qualifying dwelling-house is a flat) shall not impose on the landlord an obligation which the landlord is not entitled to discharge under the provisions of the landlord's lease or a superior lease.

(4) Where the landlord's lease or a superior lease, or an agreement collateral to the landlord's lease or a superior lease, contains a covenant by a person imposing obligations which, but for sub-paragraph (3), would be imposed by a covenant implied by virtue of paragraph 14, there is implied a covenant by the landlord to use its best endeavours to secure that that person's obligations under the first-mentioned covenant are discharged.

Covenant by tenant

16. Unless otherwise agreed between the landlord and the qualifying person, there is implied a covenant by the tenant—

- (a) where the qualifying dwelling-house is a house, to keep the qualifying dwelling-house in good repair (including decorative repair);
- (b) where the qualifying dwelling-house is a flat, to keep the interior of the qualifying dwelling-house in such repair.

Service charges and other contributions payable by the tenant

16A.—(1) The lease may require the tenant to bear a reasonable part of the costs incurred by the landlord—

- (a) in discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2) (repairs, making good structural defects, provision of services, etc.), or
- (b) in insuring against the obligations imposed by the covenant implied by virtue of paragraph 14(3) (rebuilding or reinstatement, etc.),

and to the extent that by virtue of paragraph 15(3) (effect of provision of superior lease) such obligations are not imposed on the landlord, to bear a reasonable part of the costs incurred by the landlord in contributing to costs incurred by a superior landlord or other person in discharging or, as the case may be, insuring against obligations to the like effect.

(2) Where the lease requires the tenant to contribute to the costs of insurance, it shall provide that the tenant is entitled to inspect the relevant policy at such reasonable times as may be specified in the lease.

(3) Where the landlord does not insure against the obligations imposed by the covenant implied by virtue of paragraph 14(3), or, as the case may be, the superior landlord or other person does not

insure against his obligations to the like effect, the lease may require the tenant to pay a reasonable sum in place of the contribution he could be required to make if there were insurance.

(4) Where in any case the obligations imposed by the covenants implied by virtue of paragraph 14(2) or (3) are modified in accordance with paragraph 14(4) (power of county court to authorise modification), the references in this paragraph are to the obligations as so modified.

(5) This paragraph has effect subject to paragraph 16B (restrictions in certain cases as regards costs incurred in the initial period of the lease).

16B.—(1) Where a lease of a flat requires the tenant to pay service charges in respect of repairs (including works for the making good of structural defects), his liability in respect of costs incurred in the initial period of the lease is restricted as follows.

(2) He is not required to pay in respect of works itemised in the estimates contained in the landlord's notice under section 125 any more than the amount shown as his estimated contribution in respect of that item, together with an inflation allowance.

(3) He is not required to pay in respect of works not so itemised at a rate exceeding—

- (a) as regards parts of the initial period falling within the reference period for the purposes of the estimates contained in the landlord's notice under section 125, the estimated annual average amount shown in the estimates;
- (b) as regards parts of the initial period not falling within that reference period, the average rate produced by averaging over the reference period all works for which estimates are contained in the notice;

together, in each case, with an inflation allowance.

(4) The initial period of the lease for the purposes of this paragraph begins with the grant of the lease and ends five years after the grant, except that—

- (a) if the lease includes provision for service charges to be payable in respect of costs incurred in a period before the grant of a lease, the initial period begins with the beginning of that period;
- (b) if the lease provides for service charges to be calculated by reference to a specified annual period, the initial period continues until the end of the fifth such period beginning after the grant of the lease.

16C.—(1) Where a lease of a flat requires the tenant to pay improvement contributions, his liability in respect of costs incurred in the initial period of the lease is restricted as follows.

(2) He is not required to make any payment in respect of works for which no estimate was given in the landlord's notice under section 125.

(3) He is not required to pay in respect of works for which an estimate was given in that notice any more than the amount shown as his estimated contribution in respect of that item, together with an inflation allowance.

(4) The initial period of the lease for the purposes of this paragraph begins with the grant of the lease and ends five years after the grant, except that—

- (a) if the lease includes provision for improvement contributions to be payable in respect of costs incurred in a period before the grant of the lease, the initial period begins with the beginning of that period;
- (b) if the lease provides for improvement contributions to be calculated by reference to a specified annual period, the initial period continues until the end of the fifth such period beginning after the grant of the lease.

16D.—(1) The Secretary of State may by order prescribe—

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- (a) the method by which inflation allowances for the purposes of paragraph 16B or 16C are to be calculated by reference to published statistics; and
 - (b) the information to be given to a qualifying person when he is asked to pay a service charge or improvement contribution to which the provisions of paragraph 16B or 16C are or may be relevant.
- (2) An order—
- (a) may make different provision for different cases or descriptions of case, including different provision for different areas;
 - (b) may contain such incidental, supplementary or transitional provisions as the Secretary of State thinks appropriate; and
 - (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Avoidance of certain provisions

17.—(1) A provision of the lease, or of an agreement collateral to it, is void in so far as it purports to prohibit or restrict the assignment of the lease or the subletting, wholly or in part, of the qualifying dwelling-house.

(2) Sub-paragraph (1) has effect subject to section 157 (restriction on disposal of qualifying dwelling-houses in National Parks, etc.).

18. Where the qualifying dwelling-house is a flat, a provision of the lease or of an agreement collateral to it is void in so far as it purports—

- (a) to authorise the recovery of such a charge as is mentioned in paragraph 16A (contributions in respect of repairs, etc.) otherwise than in accordance with that paragraph and paragraph 16B (restrictions in initial period of lease); or
- (b) to authorise the recovery of any charge in respect of costs incurred by the landlord—
 - (i) in discharging the obligations imposed by the covenant implied by paragraph 14(3) (rebuilding or reinstatement, etc.), or those obligations as modified in accordance with paragraph 14(4), or
 - (ii) in contributing to costs incurred by a superior landlord or other person in discharging obligations to the like effect; or
- (c) to authorise the recovery of an improvement contribution otherwise than in accordance with paragraph 16C (restrictions in initial period of lease).

19. A provision of the lease, or of an agreement collateral to it, is void in so far as it purports to authorise a forfeiture, or to impose on the tenant a penalty or disability, in the event of his enforcing or relying on the preceding provisions of this Schedule.