

SCHEDULE 6

Sections 139 and 151

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

PART I

COMMON PROVISIONS

Rights to be conveyed or granted-general

1. The conveyance or grant shall not exclude or restrict the general words implied under section 62 of the Law of Property Act 1925, unless the tenant consents or the exclusion or restriction is made for the purpose of preserving or recognising an existing interest of the landlord in tenant's incumbrances or an existing right or interest of another person.

Rights of support, passage of water, etc

2.—(1) The conveyance or grant shall, by virtue of this Schedule, have the effect stated in subparagraph (2) as regards—

- (a) rights of support for a building or part of a building;
- (b) rights to the access of light and air to a building or part of a building;
- (c) rights to the passage of water or of gas or other piped fuel, or to the drainage or disposal of water, sewage, smoke or fumes, or to the use or maintenance of pipes or other installations for such passage, drainage or disposal;
- (d) rights to the use or maintenance of cables or other installations for the supply of electricity, for the telephone or for the receipt directly or by landline of visual or other wireless transmissions.

(2) The effect is—

- (a) to grant with the dwelling-house all such easements and rights over other property, so far as the landlord is capable of granting them, as are necessary to secure to the tenant as near as may be the same rights as at the relevant time were available to him under or by virtue of the tenancy or an agreement collateral to it, or under or by virtue of a grant, reservation or agreement made on the severance of the dwelling-house from other property then comprised in the same tenancy; and
- (b) to make the dwelling-house subject to all such easements and rights for the benefit of other property as are capable of existing in law and are necessary to secure to the person interested in the other property as nearly as may be the same rights as at the relevant time were available against the tenant under or by virtue of the tenancy or an agreement collateral to it, or under or by virtue of a grant, reservation or agreement made as mentioned in paragraph (a).

(3) This paragraph—

- (a) does not restrict any wider operation which the conveyance or grant may have apart from this paragraph; but
- (b) is subject to any provision to the contrary that may be included in the conveyance or grant with the consent of the tenant.

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Rights of way

3. The conveyance or grant shall include—

- (a) such provisions (if any) as the tenant may require for the purpose of securing to him rights of way over land not comprised in the dwelling-house, so far as the landlord is capable of granting them, being rights of way that are necessary for the reasonable enjoyment of the dwelling-house; and
- (b) such provisions (if any) as the landlord may require for the purpose of making the dwelling-house subject to rights of way necessary for the reasonable enjoyment of other property, being property in which at the relevant time the landlord has an interest, or to rights of way granted or agreed to be granted before the relevant time by the landlord or by the person then entitled to the reversion on the tenancy.

Covenants and conditions

4. The conveyance or grant shall include such provisions (if any) as the landlord may require to secure that a tenant is bound by, or to indemnify the landlord against breaches of, restrictive covenants (that is to say, covenants or agreements restrictive of the use of any land or premises) which affect the dwelling-house otherwise than by virtue of the tenancy or an agreement collateral to it and are enforceable for the benefit of other property.

4A. The conveyance or grant shall be expressed to be made by the landlord with full title guarantee (thereby implying the covenants for title specified in Part I of the Law of Property (Miscellaneous Provisions) Act 1994).

5. Subject to paragraph 6, and to Parts II and III of this Schedule, the conveyance or grant may include such other covenants and conditions as are reasonable in the circumstances.

No charge to be made for landlord's consent or approval

6. A provision of the conveyance or lease is void in so far as it purports to enable the landlord to charge the tenant a sum for or in connection with the giving of a consent or approval.

Meaning of "incumbrances" and "tenant's incumbrance"

7. In this Schedule—

"incumbrances" includes personal liabilities attaching in respect of the ownership of land or an interest in land though not charged on the land or interest; and

"tenant's incumbrance" means—

- (a) an incumbrance on the tenancy which is also an incumbrance on the reversion, and
- (b) an interest derived, directly or indirectly, out of the tenancy.

PART II

CONVEYANCE OF FREEHOLD

General

8. The conveyance shall not exclude or restrict the all estate clause implied under section 63 of the Law of Property Act 1925, unless the tenant consents or the exclusion or restriction is made for

the purpose of preserving or recognising an existing interest of the landlord in tenant's incumbrances or an existing right or interest of another person.

9.—(1) The conveyance shall be of an estate in fee simple absolute, subject to—

- (a) tenant's incumbrances,
- (b) burdens (other than burdens created by the conveyance) in respect of the upkeep or regulation for the benefit of any locality or any land, building, structure, works, ways or watercourses;

but otherwise free from incumbrances.

(2) Nothing in sub-paragraph (1) shall be taken as affecting the operation of paragraph 5 of this Schedule (reasonable covenants and conditions).

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 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 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 dwelling-house) is to expire.

Common use of premises and facilities

13. Where the dwelling-house is a flat and the tenant enjoyed, during the 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 tenant.

Covenants by the landlord

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

(2) There are implied covenants by the landlord—

- (a) to keep in repair the structure and exterior of the 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 the repair any other property over or in respect of which the tenant has rights by virtue of this Schedule;

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- (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 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.

(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 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 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 person's obligations under the first-mentioned covenant are discharged.

Covenant by tenant

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

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

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- (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—

- (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 tenant 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 dwelling-house.

18. Where the 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.

PART IV

CHARGES

Grant of lease

20. A charge (however created or arising) on the interest of the landlord which is not a tenant's incumbrance does not affect a lease granted in pursuance of the right to acquire provided that—

- (a) the landlord has complied with the requirements imposed on the landlord by paragraph 22, or
- (b) the holder of a charge has agreed in writing with the landlord that paragraph 22 shall not apply,

but the release does not affect the personal liability of the landlord or any other person in respect of any obligation the charge was created to secure.

Conveyance of freehold

21.—(1) This paragraph applies to a charge (however created or arising) on the freehold where the freehold is conveyed in pursuance of the right to acquire.

(2) If the charge is not a tenant's incumbrance and is not a rentcharge the conveyance is effective to release the freehold from the charge provided that—

- (a) the landlord has complied with the requirements imposed on the landlord by paragraph 22, or
- (b) the holder of the charge has agreed in writing with the landlord that paragraph 22 shall not apply;

but the release does not affect the personal liability of the landlord or any other person in respect of any obligation which the charge was created to secure.

(3) If the charge is a rentcharge the conveyance shall be made subject to the charge; but if the rentcharge also affects other land—

- (a) the conveyance shall contain a covenant by the landlord to indemnify the tenant and his successors in title in respect of any liability arising under the rentcharge, and
 - (b) if the rentcharge is of a kind which may be redeemed under the Rentcharges Act 1977 the landlord shall immediately after the conveyance take such steps as are necessary to redeem the rentcharge so far as it affects land owned by him.
- (4) In this paragraph “rentcharge” has the same meaning as in the Rentcharges Act 1977; and
- (a) for the purposes of sub-paragraph (3) land is owned by a person if he is the owner of it within the meaning of section 13(1) of that Act, and
 - (b) for the purposes of that sub-paragraph and that Act land which has been conveyed by the landlord in pursuance of the right to acquire but subject to the rentcharge shall be treated as if it had not been so conveyed but had continued to be owned by him.

Notice to lenders

22.—(1) This paragraph and paragraph 23 shall apply to a charge (however created or arising) on the interest of the landlord in the dwelling house, unless and until the landlord and the holder of the charge at any time agree otherwise in writing.

(2) Within 7 days of the landlord receiving the tenant's written notice of his intention to pursue his claim to the right to acquire under section 125D the landlord shall serve on the holder of any charge

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secured against the dwelling-house a written notice stating the purchase price of the dwelling-house and the amount of the discount and whether the landlord intends to redeem the charge in respect of the dwelling-house on the grant of the lease or the conveyance of the freehold to the tenant pursuant to the right to acquire.

(3) If the landlord's notice states that he intends to redeem the charge then, on the grant of the lease or the conveyance of the freehold, the sum required to redeem the charge shall be paid by the landlord to the charge holder and the charge holder shall supply to the landlord the necessary documentation to release the charge in respect of the dwelling-house.

(4) If the landlord does not intend to redeem the charge on the grant of the lease or conveyance of the freehold, the landlord's notice shall, in addition, offer to the holder of the sole charge or the charge having priority the option of either—

- (a) subject to sub-paragraph (5), taking as alternative security a charge on the interest in a property of the landlord which has a value (excluding any amount secured by a charge with priority on the landlord's interest in the property) equal to or greater than the purchase price of the dwelling-house plus the discount, or
- (b) an amount equal to the purchase price of the dwelling-house plus the discount.

(5) The landlord shall not be required to offer a property as alternative security unless the landlord owns a freehold or leasehold interest in a property with a value (excluding any amount secured by a charge on the interest which is being offered in the property) equal to or greater than the purchase price plus discount.

(6) Where sub-paragraph (4) applies within 14 days of receipt of the landlord's notice the charge holder shall serve on the landlord a written notice stating the option exercised by the charge holder.

(7) Where the charge holder exercises the option specified in sub-paragraph (4)(a) the landlord shall within 14 days of receipt of the charge holder's notice offer the charge holder a specified property in accordance with that sub-paragraph.

(8) Where the charge holder accepts the property offered as alternative security the landlord shall take all reasonable steps to enable the charge holder to secure a charge against the landlord's interest in the property within whichever is the later of—

- (a) 21 days of the date on which the landlord receives notification of the charge holder's acceptance of the property as alternative security, or
- (b) the grant of the lease or the conveyance of the freehold of the dwelling-house pursuant to the right to acquire.

(9) If the landlord fails to take all reasonable steps to enable the charge holder to secure a charge against the landlord's interest in accordance with sub-paragraph (8) the charge holder may require the landlord to pay within 7 days an amount equal to the purchase price of the dwelling-house plus discount.

(10) Where the charge holder rejects the property offered as alternative security the charge holder may require the landlord to pay an amount equal to the purchase price of the dwelling-house plus the discount within whichever is the later of—

- (a) 21 days of the date on which the landlord receives notification of the charge holder's rejection of the property, or
- (b) the grant of the lease or the conveyance of the freehold of the dwelling-house pursuant to the right to acquire.

(11) Where the charge holder exercises the option in sub-paragraph (4)(b) the landlord shall pay the sum specified in that sub-paragraph on the grant of a lease or the conveyance of the freehold of the dwelling-house pursuant to the right to acquire.

Discharge of the charge on the landlord's interest in the dwelling-house

23.—(1) Where the landlord and the charge holder have agreed in writing that the provisions of paragraph 22 shall not apply on the grant of the lease or the conveyance of the freehold pursuant to the right to acquire the landlord shall supply to the tenant a certificate confirming the agreement together with a copy of the agreement which is certified as a true copy.

(2) Where the provisions of paragraph 22 apply, provided that the landlord has complied with the requirements imposed on the landlord by that paragraph any holder of a charge on the landlord's interest in the dwelling-house shall, on the grant of the lease or the conveyance of the freehold of the dwelling-house pursuant to the right to acquire, provide to the landlord such documentation as is necessary to discharge their charge in respect of the dwelling-house.

(3) Where a charge holder does not provide the documentation in accordance with sub-paragraph (2), or where the charge holder has failed to serve a notice in accordance with paragraph 22(6), the landlord shall, on the grant of the lease or the conveyance of the freehold pursuant to the right to acquire, supply to the tenant a certificate stating that the landlord has complied with the requirements imposed on the landlord by paragraph 22.

(4) A certificate under sub-paragraphs (1) or (3) shall be effective to release the dwelling-house from the charge on the interest of the landlord to which the certificate applies but shall not affect the personal liability of the landlord or any other person in respect of any obligation which such a charge was created to secure.

(5) A certificate under sub-paragraphs (1) or (3) shall—

- (a) be in a form approved by the Chief Land Registrar, and
- (b) signed by such officer of the landlord or such other person as may be approved by the Chief Land Registrar.

(6) The Chief Land Registrar shall, for the purpose of registration of title, accept such certificate as sufficient evidence of the facts stated in it, but if as a result he has to meet a claim against him under the Land Registration Acts 1925 to 1971 the landlord is liable to indemnify him.