

SCHEDULE 6

(introduced by sections 50, 58, 115 and
119)

REASONABLENESS OF WITHHOLDING CONSENT ETC.

PART 1

INTRODUCTORY

- 1 (1) This Schedule applies for the purpose of determining whether—
 - (a) it is reasonable for a landlord to refuse consent to a transaction, or
 - (b) a condition subject to which a landlord gives consent is reasonable.
- (2) Part 2 sets out circumstances which must be taken into account for that purpose, to the extent that they are relevant (and to the extent that there is no other requirement to take them into account for that purpose; for example, under the [Human Rights Act 1998 \(c. 42\)](#)).
- (3) Part 3 sets out circumstances (in addition to those in Part 2) which must be taken into account for that purpose in relation to specific kinds of transaction, to the extent that they are relevant (and to the extent that there is no other requirement to take them into account for that purpose).
- (4) Parts 2 and 3 also set out certain circumstances in which it is always reasonable for a landlord to refuse consent or impose conditions (subject to the Convention rights of the contract-holder and any other person affected by the landlord's decision).

PART 2

CIRCUMSTANCES WHICH MAY BE RELEVANT TO REASONABLENESS GENERALLY

Status of occupation contract

- 2 Whether any party to the contract has taken steps towards ending the contract or done any act which may cause the contract to end.

The dwelling

- 3 (1) The size and suitability of the dwelling affected by the transaction.
- (2) Whether, as a result of the transaction, the dwelling will—
 - (a) constitute an overcrowded dwelling for the purposes of Part 10 of the [Housing Act 1985 \(c. 68\)](#) (see section 324 of that Act),
 - (b) provide substantially more extensive accommodation than is reasonably required by the persons who will occupy the dwelling as a home, or
 - (c) provide accommodation that is not suitable to the needs of the persons who will occupy the dwelling as a home.
- (3) Whether, if the transaction were to take place, an estate management ground would become available to the landlord (see Schedule 8).

- (4) If the landlord has established requirements as to—
 - (a) the number of persons who are to occupy the dwelling affected by the transaction as a home, or
 - (b) the age or general characteristics of those persons,
 whether the persons who will occupy the dwelling as a home will meet those requirements.
- (5) But the landlord's requirements are to be taken into account under sub-paragraph (4) only to the extent that they are reasonable.

Circumstances of contract-holder and other occupiers

- 4 (1) The probable effect of the transaction on—
 - (a) the parties to the transaction, and
 - (b) any other person who occupies, or as a result of the transaction will occupy, the dwelling affected by the transaction as a home.
- (2) The financial interests of the contract-holder; but this sub-paragraph does not apply (subject to the contract-holder's Convention rights) if the occupation contract is a secure contract and the landlord is a community landlord.
- 5 (1) The conduct of the contract-holder (including, in particular, whether he or she is or has been in breach of the occupation contract).
- (2) Whether, if the landlord asked the contract-holder for information to enable the landlord to deal with the request for consent, the contract-holder provided that information.
- 6 If the contract-holder is in breach of the occupation contract when he or she requests the landlord's consent to the transaction, it is reasonable for the landlord to impose a condition that—
 - (a) the landlord's consent is to take effect only after the contract-holder ceases to be in breach, or
 - (b) despite anything in this Act or the occupation contract the person, or all the persons, who will be contract-holders after the transaction are to be liable in respect of the breach.

Circumstances of landlord

- 7 (1) The landlord's interests, including the landlord's financial interests.
- (2) If the landlord is a community landlord, the probable effect of the transaction on its ability to fulfil its housing functions.
- (3) Whether (and if so, when) a person would obtain a dwelling (or a dwelling similar to the dwelling affected by the transaction) from the landlord if the transaction did not take place.
- (4) If the landlord is required to publish a summary of rules under section 106 of the [Housing Act 1985 \(c. 68\)](#) (allocation of housing accommodation), those rules.
- (5) If the landlord is a local housing authority, its allocation scheme (within the meaning of section 167 of the [Housing Act 1996 \(c. 52\)](#)) and any information available

under section 167(4A) of that Act to a person applying for an allocation of housing accommodation.

- (6) If neither sub-paragraph (4) nor sub-paragraph (5) applies but the landlord has criteria for the allocation of accommodation, those criteria.
- 8 (1) The landlord's refusal of consent to a transaction is reasonable if—
- (a) the landlord is a local housing authority, and
 - (b) as a result of the transaction a person who is ineligible (or is to be treated as ineligible) for an allocation of housing accommodation by the landlord will become a contract-holder.
- (2) Sub-paragraph (1) does not apply to a transfer to a potential successor under section 114 or to a secure contract-holder under section 118.
- (3) Whether a person is ineligible, or is to be treated as ineligible, for an allocation of housing accommodation by the landlord is to be determined in accordance with section 160A of the [Housing Act 1996 \(c. 52\)](#) and regulations under that section.

PART 3

CIRCUMSTANCES WHICH MAY BE RELEVANT TO REASONABLENESS IN RELATION TO PARTICULAR TRANSACTIONS

Section 49: proposed joint contract-holder

- 9 (1) This paragraph applies where the contract-holder under the occupation contract seeks the landlord's consent to adding a joint contract-holder under section 49.
- (2) Where this paragraph applies, the following circumstances (in addition to those in Part 2) must be taken into account (to the extent that they are relevant)—
- (a) whether the proposed joint contract-holder is a suitable contract-holder;
 - (b) whether he or she is a member of the contract-holder's family (see section 250) and, if so, the nature of the relationship;
 - (c) whether the proposed joint contract-holder is likely to become a sole contract-holder in relation to the dwelling;
 - (d) whether he or she is likely, but for being made a joint contract-holder, to succeed to the contract under section 73.
- (3) Circumstances relevant to sub-paragraph (2)(a) may include whether the proposed joint contract-holder—
- (a) is likely to comply with the contract, and
 - (b) has complied with other occupation contracts (whether as contract-holder under those contracts or otherwise).
- (4) Circumstances relevant to sub-paragraph (2)(c) may include—
- (a) whether the landlord would have been able to refuse consent if the contract-holder requested the landlord's consent to a transfer of the contract to the proposed joint contract-holder, and
 - (b) any circumstances that would be relevant if the landlord were considering whether to make a new occupation contract in relation to the dwelling with that person.

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

- (5) Circumstances relevant to sub-paragraph (2)(d) may include the probable effect of giving consent as regards—
 - (a) the persons who may in future be qualified to succeed to the occupation contract, and
 - (b) the period for which the occupation contract is likely to continue in force if one or more of those persons do succeed to it.
- 10 (1) This paragraph applies where the contract-holder under the occupation contract seeks the landlord's consent to adding a joint contract-holder under section 49.
- (2) If the landlord considers that the probable effect of giving consent is to substantially lengthen the period during which the occupation contract is likely to continue in force, it is reasonable for the landlord to impose the condition mentioned in sub-paragraph (3).
- (3) The condition is that the joint contract-holder is to be treated for the purposes of this Act as a priority successor or as a reserve successor in relation to the occupation contract.

Section 114: transfer to potential successor in relation to a secure contract

- 11 (1) This paragraph applies if a contract-holder under a secure contract seeks the landlord's consent to a transfer of the contract to a potential successor in accordance with section 114.
- (2) Where this paragraph applies the following circumstances (in addition to those in Part 2) must be taken into account (to the extent that they are relevant)—
 - (a) the probable effect of giving consent as regards the persons who may in future be qualified to succeed to the occupation contract, and
 - (b) the period for which the occupation contract is likely to continue in force if one or more of those persons do succeed to it.
- 12 (1) This paragraph applies if a contract-holder under a secure contract seeks the landlord's consent to a transfer of the contract to a potential successor in accordance with section 114.
- (2) If the landlord considers that the probable effect of giving consent is to lengthen substantially the period during which the occupation contract is likely to continue in force, it is reasonable for the landlord to impose the condition mentioned in sub-paragraph (3).
- (3) The condition is that the potential successor is to be treated for the purposes of this Act as a priority successor or as a reserve successor in relation to the occupation contract.

Section 118: transfer to secure contract-holder in relation to a secure contract with a community landlord

- 13 (1) This paragraph applies if a contract-holder under a secure contract ("the transferor") seeks to transfer the contract in accordance with section 118 to a person ("the transferee") who is a contract-holder under another secure contract.
- (2) Where this paragraph applies, the following circumstances (in addition to those in Part 2) must be taken into account (to the extent that they are relevant)—

- (a) whether the transfer is to be part of a series of transactions and, if it is, all the circumstances relating to the other transactions intended to be part of the series (see also paragraph 14(2)), and
 - (b) whether the transferee is a priority or reserve successor in relation to the secure contract under which he or she is a contract-holder before the transfer (see also paragraph 14(3)).
- 14 (1) This paragraph applies if a contract-holder under a secure contract (“the transferor”) seeks to transfer the contract in accordance with section 118 to a person (“the transferee”) who is a contract-holder under another secure contract.
- (2) If the transfer is to be part of a series of transactions it is reasonable to impose a condition that the transfer may take place only if the other transactions take place.
- (3) If the transferee is a priority or reserve successor in relation to the secure contract under which he or she is a contract-holder before the transfer, it is reasonable to impose a condition requiring that the transferee is to be treated for the purposes of this Act as a successor of that kind in relation to the secure contract transferred to him or her by the transferor.