



# Landlord and Tenant Act 1987

## 1987 CHAPTER 31

### PART IV

#### VARIATION OF LEASES

##### *Orders varying leases*

### 38 Orders<sup>F1</sup>... varying leases.

- (1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the [F2tribunal], the [F2tribunal] may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.
- (2) If—
  - (a) an application under section 36 was made in connection with that application, and
  - (b) the grounds set out in subsection (3) of that section are established to the satisfaction of the [F2tribunal] with respect to the leases specified in the application under section 36,the [F2tribunal] may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.
- (3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the [F2tribunal] with respect to the leases specified in the application, the [F2tribunal] may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.
- (4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the [F2tribunal] thinks fit.
- (5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the [F2tribunal] with respect to some but not all of the leases

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specified in the application, the power to make an order under that subsection shall extend to those leases only.

- (6) [<sup>F3</sup>A tribunal] shall not make an order under this section effecting any variation of a lease if it appears to [<sup>F4</sup>the tribunal] —
- (a) that the variation would be likely substantially to prejudice—
    - (i) any respondent to the application, or
    - (ii) any person who is not a party to the application,
 and that an award under subsection (10) would not afford him adequate compensation, or
  - (b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.
- (7) [<sup>F5</sup>A tribunal] shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—
- (a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or
  - (b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or
  - (c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.
- (8) [<sup>F5</sup>A tribunal] may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.
- (9) [<sup>F5</sup>A tribunal] may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.
- (10) Where [<sup>F6</sup>a tribunal] makes an order under this section varying a lease [<sup>F7</sup>the tribunal] may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that [<sup>F7</sup>the tribunal] considers he is likely to suffer as a result of the variation.

#### Textual Amendments

- F1** Words in s. 38 sidenote repealed (30.9.2003 for E.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 14](#); S.I. 2003/1986, art. 2(c)(iv), [Sch. 1 Pt. 1 \(with Sch. 2\)](#); S.I. 2004/669, art. 2(c)(iv), [Sch. 1 Pt. 1 \(with Sch. 2\)](#)
- F2** Word in s. 38(1)-(5) substituted (30.9.2003 for E.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), [ss. 163\(5\)\(a\)](#), 181(1); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)
- F3** Words in s. 38(6) substituted (30.9.2003 for E.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), [ss. 163\(5\)\(b\)\(i\)](#), 181(1); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)
- F4** Words in s. 38(6) substituted (30.9.2003 for E.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), [ss. 163\(5\)\(b\)\(ii\)](#), 181(1); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)

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- F5** Words in s. 38(7)-(9) substituted (30.9.2003 for E.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), ss. 163\(5\)\(c\)](#), 181(1); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)
- F6** Words in s. 38(10) substituted (30.9.2003 for E.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), ss. 163\(5\)\(d\)\(i\)](#), 181(1); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)
- F7** Words in s. 38(10) substituted (30.9.2003 for E.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), ss. 163\(5\)\(d\)\(ii\)](#), 181(1); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)

**Modifications etc. (not altering text)**

- C1** Ss. 38, 39 modified (30.9.2003 for E.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), s. 181\(1\), Sch. 7 para. 10](#); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)

**39 Effect of orders varying leases: applications by third parties.**

- (1) Any variation effected by an order under section 38 shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title of those parties), whether or not they were parties to the proceedings in which the order was made or were served with a notice by virtue of section 35(5).
- (2) Without prejudice to the generality of subsection (1), any variation effected by any such order shall be binding on any surety who has guaranteed the performance of any obligation varied by the order; and the surety shall accordingly be taken to have guaranteed the performance of that obligation as so varied.
- (3) Where any such order has been made and a person was, by virtue of section 35(5), required to be served with a notice relating to the proceedings in which it was made, but he was not so served, he may—
  - (a) bring an action for damages for breach of statutory duty against the person by whom any such notice was so required to be served in respect of that person's failure to serve it;
  - (b) apply to <sup>F8</sup>the appropriate tribunal] for the cancellation or modification of the variation in question.
- (4) <sup>F9</sup>A tribunal] may, on an application under subsection (3)(b) with respect to any variation of a lease—
  - (a) by order cancel that variation or modify it in such manner as is specified in the order, or
  - (b) make such an order as is mentioned in section 38(10) in favour of the person making the application,as it thinks fit.
- (5) Where a variation is cancelled or modified under paragraph (a) of subsection (4)—
  - (a) the cancellation or modification shall take effect as from the date of the making of the order under that paragraph or as from such later date as may be specified in the order, and
  - (b) the <sup>F10</sup>tribunal] may by order direct that a memorandum of the cancellation or modification shall be endorsed on such documents as are specified in the order;

and, in a case where a variation is so modified, subsections (1) and (2) above shall, as from the date when the modification takes effect, apply to the variation as modified.

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#### Textual Amendments

- F8** Words in s. 39(3)(b) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, [Sch. 1 para. 77](#) (with [Sch. 3](#))
- F9** Words in s. 39(4) substituted (30.9.2003 for E., 30.3.2004 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), [ss. 163\(6\)\(b\)](#), 181(1); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)
- F10** Word in s. 39(5)(b) substituted (30.9.2003 for E., 30.3.2004 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), [ss. 163\(6\)\(c\)](#), 181(1); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)

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#### Modifications etc. (not altering text)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 24(2)(abb) inserted by [2002 c. 15 Sch. 10 para. 14](#)