

## SCHEDULES

### SCHEDULE 12

Section 42.

#### THE TENANT'S NOTICE: SUPPLEMENTARY PROVISIONS

##### PART I

##### EFFECT OF TENANT'S NOTICE ON OTHER NOTICES, FORFEITURES ETC.

###### *Prior notice by tenant terminating lease*

- 1 A notice given by a qualifying tenant of a flat under section 42 shall be of no effect if it is given—
- (a) after the tenant has given notice terminating the lease of the flat (other than a notice that has been superseded by the grant, express or implied, of a new tenancy); or
  - (b) during the subsistence of an agreement for the grant to the tenant of a future tenancy of the flat, where the agreement is one to which paragraph 17 of Schedule 10 to the Local Government and Housing Act 1989 applies.

###### *Prior notice by landlord terminating lease*

- 2 (1) Subject to sub-paragraph (2), a notice given by a qualifying tenant of a flat under section 42 shall be of no effect if it is given more than two months after a landlord's notice terminating the tenant's lease of the flat has been given under section 4 of the Landlord and Tenant Act 1954 or served under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989 (whether or not the notice has effect to terminate the lease).
- (2) Sub-paragraph (1) does not apply where the landlord gives his written consent to a notice being given under section 42 after the end of those two months.
- (3) Where in the case of a qualifying tenant of a flat who gives a notice under section 42—
- (a) any such landlord's notice is given or served as mentioned in sub-paragraph (1), but
  - (b) that notice was not given or served more than two months before the date on which the notice under section 42 is given to the landlord,
- the landlord's notice shall cease to have effect on that date.
- (4) If—
- (a) any such landlord's notice ceases to have effect by virtue of sub-paragraph (3), but
  - (b) the claim made by the tenant by the giving of his notice under section 42 is not effective,

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then sub-paragraph (5) shall apply to any landlord's notice terminating the tenant's lease of the flat which—

- (i) is given under section 4 of the Landlord and Tenant Act 1954 or served under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989, and
    - (ii) is so given or served within one month after the expiry of the period of currency of that claim.
- (5) Where this sub-paragraph applies to a landlord's notice, the earliest date which may be specified in the notice as the date of termination shall be—
- (a) in the case of a notice given under section 4 of that Act of 1954—
    - (i) the date of termination specified in the previous notice, or
    - (ii) the date of expiry of the period of three months beginning with the date of the giving of the new notice,
 whichever is the later; or
  - (b) in the case of a notice served under paragraph 4(1) of Schedule 10 to that Act of 1989—
    - (i) the date of termination specified in the previous notice, or
    - (ii) the date of expiry of the period of four months beginning with the date of service of the new notice,
 whichever is the later.
- (6) Where—
- (a) by virtue of sub-paragraph (5) a landlord's notice specifies as the date of termination of a lease a date earlier than six months after the date of the giving of the notice, and
  - (b) the notice proposes a statutory tenancy,
- section 7(2) of the Landlord and Tenant Act 1954 shall apply in relation to the notice with the substitution, for references to the period of two months ending with the date of termination specified in the notice and the beginning of that period, of references to the period of three months beginning with the date of the giving of the notice and the end of that period.

*Orders for possession and pending proceedings for forfeiture etc.*

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- (1) A notice given by a qualifying tenant of a flat under section 42 shall be of no effect if at the time when it is given he is obliged to give up possession of his flat in pursuance of an order of a court or will be so obliged at a date specified in such an order.
  - (2) Except with the leave of the court, a qualifying tenant of a flat shall not give a notice under section 42 at a time when any proceedings are pending to enforce a right of re-entry or forfeiture terminating his lease of the flat.
  - (3) Leave shall only be granted under sub-paragraph (2) if the court is satisfied that the tenant does not wish to give such a notice solely or mainly for the purpose of avoiding the consequences of the breach of the terms of his lease in respect of which proceedings are pending.
  - (4) If—
    - (a) leave is so granted, and
    - (b) the tenant by such a notice makes a claim to acquire a new lease of his flat,

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the tenant's lease shall be deemed for the purposes of the claim to be a subsisting lease despite the existence of those proceedings and any order made afterwards in those proceedings; and, if the claim is effective, the court in which those proceedings were brought may set aside or vary any such order to such extent and on such terms as appear to that court to be appropriate.

*Notice terminating lease given by tenant or landlord during currency of claim*

- 4 Where by a notice given under section 42 a tenant makes a claim to acquire a new lease of a flat, any notice terminating the tenant's lease of the flat, whether it is—
- (a) a notice given by the tenant, or
  - (b) a landlord's notice given under section 4 of the Landlord and Tenant Act 1954 or served under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989,
- shall be of no effect if it is given or served during the currency of the claim.

*Tenant's notice operates to prevent termination of lease*

- 5 (1) Where by a notice under section 42 a tenant makes a claim to acquire a new lease of a flat, then during the currency of the claim and for three months thereafter the lease of the flat shall not terminate—
- (a) by effluxion of time, or
  - (b) in pursuance of a notice to quit given by the immediate landlord of the tenant, or
  - (c) by the termination of a superior lease;
- but if the claim is not effective, and but for this sub-paragraph the lease would have so terminated before the end of those three months, the lease shall so terminate at the end of those three months.
- (2) Sub-paragraph (1) shall not be taken to prevent an earlier termination of the lease in any manner not mentioned in that sub-paragraph, and shall not affect—
- (a) the power under section 146(4) of the Law of Property Act 1925 (relief against forfeiture of leases) to grant a tenant relief against the termination of a superior lease, or
  - (b) any right of the tenant to relief under section 16(2) of the Landlord and Tenant Act 1954 (relief where landlord proceeding to enforce covenants) or under paragraph 9 of Schedule 5 to that Act (relief in proceedings brought by superior landlord).

*Restriction on proceedings to enforce right of re-entry or forfeiture*

- 6 Where by a notice under section 42 a tenant makes a claim to acquire a new lease of a flat, then during the currency of the claim—
- (a) no proceedings to enforce any right of re-entry or forfeiture terminating the lease of the flat shall be brought in any court without the leave of that court, and
  - (b) leave shall only be granted if the court is satisfied that the notice was given solely or mainly for the purpose of avoiding the consequences of the breach of the terms of the tenant's lease in respect of which proceedings are proposed to be brought;
- but where leave is granted, the notice shall cease to have effect.

*Effect of notice under section 16(2) of Landlord and Tenant Act 1954 on tenant's notice*

- 7 (1) A tenant who, in proceedings to enforce a right of re-entry or forfeiture or a right to damages in respect of a failure to comply with any terms of his lease, applies for relief under section 16 of the Landlord and Tenant Act 1954 is not thereby precluded from making a claim to acquire a new lease under this Chapter; but if he gives notice under section 16(2) of that Act (under which the tenant is relieved from any order for recovery of possession or for payment of damages, but the tenancy is cut short), any notice given by him under section 42 with respect to property comprised in his lease shall be of no effect or, if already given, shall cease to have effect.
- (2) Sub-paragraph (1) shall apply in relation to proceedings relating to a superior tenancy with the substitution for the references to section 16 and to section 16(2) of the Landlord and Tenant Act 1954 of references to paragraph 9 and to paragraph 9(2) of Schedule 5 to that Act.

*Interpretation*

- 8 (1) For the purposes of this Part of this Schedule—
- (a) references to a notice under section 42 include, in so far as the context permits, references to a notice purporting to be given under that section (whether by a qualifying tenant or not), and references to the tenant by whom a notice is given shall be construed accordingly;
  - (b) references to a claim being effective are references to a new lease being acquired in pursuance of the claim; and
  - (c) references to the currency of a claim are—
    - (i) where the claim is made by a valid notice under section 42, references to the period during which the notice continues in force in accordance with subsection (8) of that section, or
    - (ii) where the claim is made by a notice which is not a valid notice under section 42, references to the period beginning with the giving of the notice and ending with the time when the notice is set aside by the court or is withdrawn or when it would (if valid) cease to have effect or be deemed to have been withdrawn.
- (2) For the purposes of sub-paragraph (1)(c) the date when a notice is set aside, or would (if valid) cease to have effect, in consequence of an order of a court shall be taken to be the date when the order becomes final.
- (3) The references in this Schedule—
- (a) to section 16 of the Landlord and Tenant Act 1954 and subsection (2) of that section, and
  - (b) to paragraph 9 of Schedule 5 to that Act and sub-paragraph (2) of that paragraph,
- include references to those provisions as they apply in relation to Schedule 10 to the Local Government and Housing Act 1989 (security of tenure on ending of long residential tenancies).

## PART II

### OTHER PROVISIONS

- 9 (1) The tenant's notice shall not be invalidated by any inaccuracy in any of the particulars required by section 42(3) or by any misdescription of any of the property to which the claim extends.
- (2) Where the tenant's notice—
- (a) specifies any property which he is not entitled to have demised to him under a new lease granted in pursuance of this Chapter, or
  - (b) fails to specify any property which he is entitled to have so demised to him, the notice may, with the leave of the court and on such terms as the court may think fit, be amended so as to exclude or include the property in question.