



# Commonhold and Leasehold Reform Act 2002

## 2002 CHAPTER 15

### PART 2

#### LEASEHOLD REFORM

### CHAPTER 5

#### OTHER PROVISIONS ABOUT LEASES

#### *Forfeiture of leases of dwellings*

#### **167 Failure to pay small amount for short period**

- (1) A landlord under a long lease of a dwelling may not exercise a right of re-entry or forfeiture for failure by a tenant to pay an amount consisting of rent, service charges or administration charges (or a combination of them) (“the unpaid amount”) unless the unpaid amount—
  - (a) exceeds the prescribed sum, or
  - (b) consists of or includes an amount which has been payable for more than a prescribed period.
- (2) The sum prescribed under subsection (1)(a) must not exceed £500.
- (3) If the unpaid amount includes a default charge, it is to be treated for the purposes of subsection (1)(a) as reduced by the amount of the charge; and for this purpose “default charge” means an administration charge payable in respect of the tenant’s failure to pay any part of the unpaid amount.
- (4) In this section “long lease of a dwelling” does not include—
  - (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,

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- (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
- (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).

(5) In this section—

- “administration charge” has the same meaning as in Part 1 of Schedule 11,
- “dwelling” has the same meaning as in the 1985 Act,
- “landlord” and “tenant” have the same meaning as in Chapter 1 of this Part,
- “long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share,
- “prescribed” means prescribed by regulations made by the appropriate national authority, and
- “service charge” has the meaning given by section 18(1) of the 1985 Act.

#### Annotations:

#### Commencement Information

- II** S. 167 wholly in force at 31.5.2005; s. 167 not in force at Royal Assent see s. 181(1); s. 167 in force for specified purposes at 26.7.2002 for E. by [S.I. 2002/1912](#), [art. 2\(c\)](#); s. 167 in force for specified purposes at 1.1.2003 for W. by [S.I. 2002/3012](#), [art. 2\(c\)](#); s. 167 in force so far as not already in force at 28.2.2005 for E. by [S.I. 2004/3056](#), [art. 3\(e\)](#); s. 167 in force so far as not already in force at 31.5.2005 for W. by [S.I. 2005/1353](#), [art. 2\(e\)](#)

## 168 No forfeiture notice before determination of breach

- (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
- (2) This subsection is satisfied if—
  - (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
  - (b) the tenant has admitted the breach, or
  - (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
- (3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
- (4) A landlord under a long lease of a dwelling may make an application to [<sup>F1</sup>the appropriate tribunal] for a determination that a breach of a covenant or condition in the lease has occurred.
- (5) But a landlord may not make an application under subsection (4) in respect of a matter which—
  - (a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (b) has been the subject of determination by a court, or

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- (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

[<sup>F2</sup>(6) For the purposes of subsection (4), “appropriate tribunal” means—

- (a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and  
 (b) in relation to a dwelling in Wales, a leasehold valuation tribunal.]

#### Annotations:

##### Amendments (Textual)

- F1** Words in s. 168(4) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), [art. 1](#), [Sch. 1 para. 141\(a\)](#) (with [Sch. 3](#))
- F2** S. 168(6) inserted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), [art. 1](#), [Sch. 1 para. 141\(b\)](#) (with [Sch. 3](#))

##### Commencement Information

- I2** S. 168 wholly in force at 31.5.2005; s. 168 not in force at Royal Assent see s. 181(1); s. 168 in force at 28.2.2005 for E. by [S.I. 2004/3056](#), [art. 3\(f\)](#) (with [art. 4\(2\)](#)); s. 168 in force at 31.5.2005 for W. by [S.I. 2005/1353](#), [art. 2\(f\)](#) (with [art. 3\(3\)](#))

## 169 Section 168: supplementary

- (1) An agreement by a tenant under a long lease of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or  
 (b) on particular evidence,  
 of any question which may be the subject of an application under section 168(4).
- (2) For the purposes of section 168 it is finally determined that a breach of a covenant or condition in a lease has occurred—
- (a) if a decision that it has occurred is not appealed against or otherwise challenged, at the end of the period for bringing an appeal or other challenge, or  
 (b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3).
- (3) The time referred to in subsection (2)(b) is the time when the appeal or other challenge is disposed of—
- (a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or  
 (b) by its being abandoned or otherwise ceasing to have effect.
- (4) In section 168 and this section “long lease of a dwelling” does not include—
- (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,  
 (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or  
 (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).

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(5) In section 168 and this section—

“arbitration agreement” and “arbitral tribunal” have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and “post-dispute arbitration agreement”, in relation to any breach (or alleged breach), means an arbitration agreement made after the breach has occurred (or is alleged to have occurred),

“dwelling” has the same meaning as in the 1985 Act,

“landlord” and “tenant” have the same meaning as in Chapter 1 of this Part, and

“long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share.

(6) Section 146(7) of the Law of Property Act 1925 (c. 20) applies for the purposes of section 168 and this section.

(7) Nothing in section 168 affects the service of a notice under section 146(1) of the Law of Property Act 1925 in respect of a failure to pay—

(a) a service charge (within the meaning of section 18(1) of the 1985 Act), or

(b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).

#### Annotations:

#### Commencement Information

- I3** S. 169 wholly in force at 31.5.2005; s. 169 not in force at Royal Assent see s. 181(1); s. 169 in force at 28.2.2005 for E. by [S.I. 2004/3056, art. 3\(f\)](#); s. 169 in force at 31.5.2005 for W. by [S.I. 2005/1353, art. 2\(f\)](#)

## 170 Forfeiture for failure to pay service charge etc

(1) Section 81 of the Housing Act 1996 (c. 52) (restriction on forfeiture for failure to pay service charge) is amended as follows.

(2) In subsection (1), for the words from “to pay” to the end substitute “by a tenant to pay a service charge or administration charge unless—

(a) it is finally determined by (or on appeal from) a leasehold valuation tribunal or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or

(b) the tenant has admitted that it is so payable.”

(3) For subsection (2) substitute—

“(2) The landlord may not exercise a right of re-entry or forfeiture by virtue of subsection (1)(a) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.”

(4) For subsection (3) substitute—

“(3) For the purposes of this section it is finally determined that the amount of a service charge or administration charge is payable—

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- (a) if a decision that it is payable is not appealed against or otherwise challenged, at the end of the time for bringing an appeal or other challenge, or
  - (b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3A).
- (3A) The time referred to in subsection (3)(b) is the time when the appeal or other challenge is disposed of—
- (a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or
  - (b) by its being abandoned or otherwise ceasing to have effect.”
- (5) After subsection (4) insert—
- “(4A) References in this section to the exercise of a right of re-entry or forfeiture include the service of a notice under section 146(1) of the Law of Property Act 1925 (restriction on re-entry or forfeiture).”
- (6) In subsection (5), after “this section” insert—
- “(a) “administration charge” has the meaning given by Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002,
  - (b) “arbitration agreement” and “arbitral tribunal” have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and “post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen,
  - (c) “dwelling” has the same meaning as in the Landlord and Tenant Act 1985 (c. 70), and
  - (d)”.

#### Annotations:

#### Commencement Information

- I4** S. 170 wholly in force at 31.5.2005; s. 170 not in force at Royal Assent see s. 181(1); s. 170 in force at 28.2.2005 for E. by S.I. 2004/3056, **art. 3(f)** (with **art. 4(3)**); s. 170 in force at 31.5.2005 for W. by S.I. 2005/1353, **art. 2(f)** (with **art. 3(4)**)

## 171 Power to prescribe additional or different requirements

- (1) The appropriate national authority may by regulations prescribe requirements which must be met before a right of re-entry or forfeiture may be exercised in relation to a breach of a covenant or condition in a long lease of an unmortgaged dwelling.
- (2) The regulations may specify that the requirements are to be in addition to, or instead of, requirements imposed otherwise than by the regulations.
- (3) In this section “long lease of a dwelling” does not include—
  - (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
  - (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or

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- (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
- (4) For the purposes of this section a dwelling is unmortgaged if it is not subject to a mortgage, charge or lien.
- (5) In this section—
- “dwelling” has the same meaning as in the 1985 Act, and
- “long lease” has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant’s total share.

**Annotations:**

**Commencement Information**

- I5** S. 171 wholly in force at 31.5.2005; s. 171 not in force at Royal Assent see s. 181(1); s. 171 in force for specified purposes at 26.7.2002 for E. by [S.I. 2002/1912](#), [art. 2\(c\)](#); s. 171 in force for specified purposes at 1.1.2003 for W. by [S.I. 2002/3012](#), [art. 2\(c\)](#); s. 171 in force so far as not already in force at 28.2.2005 for E. by [S.I. 2004/3056](#), [art. 3\(g\)](#); s. 171 in force so far as not already in force at 31.5.2005 for W. by [S.I. 2005/1353](#), [art. 2\(g\)](#)

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