

## SCHEDULES

### SCHEDULE 1

Section 3

#### PERMITTED PAYMENTS

##### *Rent*

- 1 (1) A payment of rent under a tenancy is a permitted payment.
- (2) But, subject as follows, if the amount of rent payable in respect of any relevant period (“P1”) is more than the amount of rent payable in respect of any later relevant period (“P2”), the additional amount payable in respect of P1 is a prohibited payment.
- (3) Where there is more than one later relevant period in respect of which the amount of rent payable is lower than the amount of rent payable in respect of P1—
  - (a) if different amounts of rent are payable for different later relevant periods, P2 is the relevant period for which the lowest amount of rent is payable;
  - (b) if the same amount of rent is payable for more than one later relevant periods, P2 is the first of those periods.
- (4) The following provisions apply for the purposes of determining—
  - (a) whether the amount of rent payable in respect of a relevant period is more than the amount of rent payable in respect of a later relevant period, and
  - (b) the difference between the amount of rent payable in respect of the earlier relevant period and that payable in respect of the later relevant period.
- (5) Where the later relevant period is a different length of time to the earlier relevant period, the amount of rent payable in respect of the later period is to be treated as the proportionate amount of rent that would be payable in respect of that period if it were the same length of time as the earlier period.
- (6) There is to be left out of account any difference between the rent payable in respect of the earlier relevant period and the rent payable in respect of the later relevant period as a result of a variation of the rent payable in respect of the later period—
  - (a) pursuant to a term in the tenancy agreement which enables the rent under the tenancy to be increased or reduced, according to the circumstances, or
  - (b) by agreement between the landlord and the tenant after the tenancy agreement has been entered into.
- (7) In this paragraph “relevant period”, in relation to a tenancy, means any period of time in respect of which rent is payable under the tenancy.
- (8) But “relevant period” does not include a period of time which begins after the end of one year beginning with the first day of the tenancy.

##### *Tenancy deposit*

- 2 (1) A payment of a tenancy deposit is a permitted payment.

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- (2) In this Act “tenancy deposit” means money intended to be held (by a landlord or otherwise) as security for—
- (a) the performance of any obligations of a tenant, or
  - (b) the discharge of any liability of a tenant,
- arising under or in connection with a tenancy.
- (3) But if the amount of the tenancy deposit exceeds—
- (a) the amount of five weeks’ rent, where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is less than £50,000, or
  - (b) the amount of six weeks’ rent, where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is £50,000 or more,
- the amount of the excess is a prohibited payment.
- (4) In this paragraph—
- (a) “five weeks’ rent” means five times one week’s rent,
  - (b) “six weeks’ rent” means six times one week’s rent, and
  - (c) “one week’s rent” means the amount of the annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 52.

#### *Holding deposit*

- 3 (1) Subject to sub-paragraphs (3) to (6), a payment of a holding deposit is a permitted payment.
- (2) In this Act “holding deposit” means money which is paid by or on behalf of a tenant to a landlord or letting agent before the grant of a tenancy with the intention that it should be dealt with by the landlord or letting agent in accordance with Schedule 2 (treatment of holding deposit).
- (3) If the amount of the holding deposit exceeds one week’s rent, the amount of the excess is a prohibited payment.
- (4) In sub-paragraph (3) “one week’s rent” means the amount of the annual rent payable in respect of the tenancy immediately after its grant, renewal or continuance divided by 52.
- (5) A payment of a holding deposit is not a permitted payment if—
- (a) the landlord or letting agent to whom the deposit was paid has previously received a holding deposit (“the earlier deposit”) in relation to the same housing,
  - (b) the landlord or letting agent has not repaid all or part of the earlier deposit, and
  - (c) none of paragraphs 6 to 12 of Schedule 2 have applied so as to permit the landlord or letting agent not to repay the earlier deposit or the part that has not been repaid.
- (6) The reference in sub-paragraph (5)(a) to a landlord or letting agent receiving a holding deposit does not include the landlord or letting agent doing so before the coming into force of Schedule 2.

*Payment in the event of a default*

- 4 (1) Subject to sub-paragraphs (3) to (8), a payment in the event of a relevant default by the tenant is a permitted payment if the tenancy agreement requires the payment to be made.
- (2) In this paragraph “relevant default” means—
- (a) the loss of a key to, or other security device giving access to, the housing to which the tenancy relates, or
  - (b) a failure to make a payment of rent in full before the end of the period of 14 days beginning with the date (“the due date”) on which the payment is required to be made in accordance with the tenancy agreement.
- (3) If, in the case of a payment required to be made to a landlord or letting agent in respect of a relevant default within sub-paragraph (2)(a), the amount of the payment exceeds the costs which—
- (a) are reasonably incurred by the landlord or letting agent as a result of the default, and
  - (b) are supported by evidence in writing which is provided to the person on whom the requirement to make the payment is imposed,
- the amount of the excess is a prohibited payment.
- (4) If, in the case of a payment required to be made to a landlord or a letting agent in respect of a relevant default within sub-paragraph (2)(b), the amount of the payment exceeds the amount determined in accordance with sub-paragraph (5), the amount of the excess is a prohibited payment.
- (5) The amount referred to in sub-paragraph (4) is the aggregate of the amounts found by applying, in relation to each day after the due date for which the rent remains unpaid, an annual percentage rate of 3% above the Bank of England base rate to the amount of rent that remains unpaid at the end of that day.
- (6) In sub-paragraph (5) “Bank of England base rate” means—
- (a) the percentage rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or
  - (b) where an order under section 19 of the Bank of England Act 1998 is in force, any equivalent percentage rate determined by the Treasury under that section.
- (7) If—
- (a) a landlord requires a relevant person to make a payment to the landlord in respect of a relevant default within sub-paragraph (2)(b), and
  - (b) a letting agent subsequently requires a payment to be made to the letting agent in respect of the same default,
- the payment referred to in paragraph (b) is a prohibited payment.
- (8) If—
- (a) a letting agent requires a relevant person to make a payment to the letting agent in respect of a relevant default within sub-paragraph (2)(b), and
  - (b) a landlord subsequently requires a payment to be made to the landlord in respect of the same default,

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the payment referred to in paragraph (b) is a prohibited payment.

- 5 A payment of damages for breach of a tenancy agreement or an agreement between a letting agent and a relevant person is a permitted payment.

*Payment on variation, assignment or novation of a tenancy*

- 6 (1) A payment is a permitted payment if it is a payment—
- (a) to a landlord in consideration of the variation, assignment or novation of a tenancy at the tenant’s request, or
  - (b) to a letting agent in consideration of arranging the variation, assignment or novation of a tenancy at the tenant’s request.
- (2) But if the amount of the payment exceeds the greater of—
- (a) £50, or
  - (b) the reasonable costs of the person to whom the payment is to be made in respect of the variation, assignment or novation of the tenancy,
- the amount of the excess is a prohibited payment.

*Payment on termination of a tenancy*

- 7 (1) A payment is a permitted payment if it is a payment to a landlord in consideration of the termination of a tenancy at the tenant’s request—
- (a) in the case of a fixed term tenancy, before the end of the term, or
  - (b) in the case of a periodic tenancy, without the tenant giving the period of notice required under the tenancy agreement or by virtue of any rule of law.
- (2) But if the amount of the payment exceeds the loss suffered by the landlord as a result of the termination of the tenancy, the amount of the excess is a prohibited payment.
- (3) A payment is a permitted payment if it is a payment to a letting agent in consideration of arranging the termination of a tenancy at the tenant’s request—
- (a) in the case of a fixed term tenancy, before the end of the term, or
  - (b) in the case of a periodic tenancy, without the tenant giving the period of notice required under the tenancy agreement or by virtue of any rule of law.
- (4) But if the amount of the payment exceeds the reasonable costs of the letting agent in respect of the termination of the tenancy, the amount of the excess is a prohibited payment.
- (5) In this paragraph “fixed term tenancy” means any tenancy other than a periodic tenancy.

*Payment in respect of council tax*

- 8 (1) A payment to a billing authority in respect of council tax is a permitted payment.
- (2) In this paragraph “billing authority” has the same meaning as in Part 1 of the Local Government Finance Act 1992 (see section 1(2) of that Act).

*Payment in respect of utilities etc*

- 9 (1) A payment for or in connection with the provision of a utility is a permitted payment if the tenancy agreement requires the payment to be made.
- (2) A payment towards energy efficiency improvements under a green deal plan (within the meaning of section 1 of the Energy Act 2011) is a permitted payment if the tenancy agreement requires the payment to be made.
- (3) In this Act “utility” means—
- (a) electricity, gas or other fuel, or
  - (b) water or sewerage.

*Payment in respect of a television licence*

- 10 (1) A payment to the British Broadcasting Corporation in respect of a television licence is a permitted payment if the tenancy agreement requires the payment to be made.
- (2) In this Act “television licence” means a licence for the purposes of section 363 of the Communications Act 2003.

*Payment in respect of communication services*

- 11 (1) A payment for or in connection with the provision of a communication service is a permitted payment if the tenancy agreement requires the payment to be made.
- (2) But, in the case of a payment to a landlord, if the amount of the payment exceeds the reasonable costs incurred by the landlord for or in connection with the provision of the service, the amount of the excess is a prohibited payment.
- (3) In this Act “communication service” means a service enabling any of the following to be used—
- (a) a telephone other than a mobile telephone;
  - (b) the internet;
  - (c) cable television;
  - (d) satellite television.

SCHEDULE 2

Section 5

TREATMENT OF HOLDING DEPOSIT

*Application*

- 1 This Schedule applies where a holding deposit is paid to a landlord or letting agent in respect of a proposed tenancy of housing in England.

*Interpretation*

- 2 (1) In this Schedule “the deadline for agreement” means the fifteenth day of the period beginning with the day on which the landlord or letting agent receives the holding deposit.

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- (2) But the landlord or the letting agent may agree with the tenant in writing that a different day is to be the deadline for agreement for the purposes of this Schedule.

*Requirement to repay holding deposit*

- 3 Subject as follows, the person who received the holding deposit must repay it if—
- (a) the landlord and the tenant enter into a tenancy agreement relating to the housing,
  - (b) the landlord decides before the deadline for agreement not to enter into a tenancy agreement relating to the housing, or
  - (c) the landlord and the tenant fail to enter into a tenancy agreement relating to the housing before the deadline for agreement.
- 4 If paragraph 3 applies, the deposit must be repaid within the period of 7 days beginning with—
- (a) where paragraph 3(a) applies, the date of the tenancy agreement,
  - (b) where paragraph 3(b) applies, the date on which the landlord decides not to enter into the tenancy agreement, or
  - (c) where paragraph 3(c) applies, the deadline for agreement.
- 5 (1) The person who received the holding deposit must repay it if—
- (a) that person believes that any of paragraphs 8 to 12 applies in relation to the deposit, but
  - (b) that person does not give the person who paid the deposit a notice in writing within the relevant period explaining why the person who received it intends not to repay it.
- (2) In sub-paragraph (1) “the relevant period” means—
- (a) where the landlord decides not to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the date on which the landlord decides not to do so;
  - (b) where the landlord and tenant fail to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the deadline for agreement.

*Exceptions*

- 6 Paragraph 3(a) does not apply if or to the extent that the amount of the deposit is applied, with the consent of the person by whom it was paid—
- (a) towards the first payment of rent under the tenancy, or
  - (b) towards the payment of the tenancy deposit in respect of the tenancy.
- 7 If all or part of the amount of the deposit is applied in accordance with paragraph 6(b), the amount applied is treated for the purposes of section 213 of the Housing Act 2004 (requirements in connection with deposits) as having been received by the landlord on the date of the tenancy agreement.
- 8 Paragraph 3(b) or (c) does not apply if—
- (a) the landlord is prohibited by section 22 of the Immigration Act 2014 (persons disqualified by immigration status) from granting a tenancy of the housing to the tenant,

- (b) the landlord did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted, and
  - (c) if the landlord has instructed a letting agent in relation to the proposed tenancy, the letting agent did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted.
- 9 Paragraph 3(b) or (c) does not apply if the tenant provides false or misleading information to the landlord or letting agent and—
  - (a) the landlord is reasonably entitled to take into account the difference between the information provided by the tenant and the correct information in deciding whether to grant a tenancy to the tenant, or
  - (b) the landlord is reasonably entitled to take the tenant’s action in providing false or misleading information into account in deciding whether to grant such a tenancy.
- 10 Subject to paragraph 13, paragraph 3(c) does not apply if the tenant notifies the landlord or letting agent before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement.
- 11 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the landlord if—
  - (a) the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, and
  - (b) if the landlord has instructed a letting agent in relation to the proposed tenancy, the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before that date, but
  - (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.
- 12 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the letting agent if—
  - (a) the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before the deadline for agreement, and
  - (b) the landlord takes all reasonable steps to enter into a tenancy agreement before that date, but
  - (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.
- 13 Paragraph 10, 11 or 12 does not apply (so that paragraph 3(c) does apply) if, before the deadline for agreement—
  - (a) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy breaches section 1 or 2 by imposing a requirement under that section on the tenant or a person who is a relevant person in relation to the tenant, or
  - (b) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy behaves towards the tenant, or a person who is a relevant person in relation to the tenant, in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord.

## SCHEDULE 3

Section 8

### FINANCIAL PENALTIES ETC

#### *Interpretation*

- 1 (1) In this Schedule references to a financial penalty include a reference to an amount which is required to be paid under section 10(2), (5) or (8) or 11(1).
- (2) In this Schedule references to imposing a financial penalty include a reference to requiring the payment of such an amount.
- (3) This paragraph does not apply to paragraph 4(4) (period for payment), 6(6) or (7) (appeals), 7 (recovery of financial penalty), 10 or 11 (proceeds of financial penalties).

#### *Notice of intent*

- 2 (1) This paragraph applies where an enforcement authority proposes to impose a financial penalty for a breach of section 1 (prohibitions applying to landlords) or 2 (prohibitions applying to letting agents) or Schedule 2 (treatment of holding deposit).
- (2) Before imposing the financial penalty, the enforcement authority must serve a notice on the landlord or letting agent of its proposal to do so (a “notice of intent”).
- (3) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the enforcement authority has sufficient evidence of the breach, subject to sub-paragraph (4).
- (4) If the breach is committed on that day, and the breach continues beyond the end of that day, the notice of intent may be served—
- (a) at any time when the breach is continuing, or
  - (b) within the period of 6 months beginning with the last day on which the breach occurs.
- (5) The notice of intent must set out—
- (a) the date on which the notice of intent is served,
  - (b) the amount of the proposed financial penalty,
  - (c) the reasons for proposing to impose the penalty, and
  - (d) information about the right to make representations under paragraph 3.

#### *Right to make representations*

- 3 A person who receives a notice of intent may, within the period of 28 days beginning with the day after the day on which the notice of intent was served, make written representations to the authority about the proposal to impose a financial penalty on that person.

#### *Final notice*

- 4 (1) After the end of the period mentioned in paragraph 3 the enforcement authority must—
- (a) decide whether to impose a financial penalty on the person, and
  - (b) if it decides to do so, decide the amount of the penalty.



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- (2) If the enforcement authority decides to impose a financial penalty, it must serve a notice on the person (a “final notice”) imposing that penalty.
- (3) The final notice must require the penalty to be paid within the relevant period.
- (4) In sub-paragraph (3) “the relevant period” means—
  - (a) in relation to a financial penalty under section 8, the period of 28 days beginning with the day after that on which the notice is served;
  - (b) in relation to an amount which is required to be paid under section 10(2), (5) or (8) or 11(1), the period specified in the notice.
- (5) A period specified as mentioned in sub-paragraph (4)(b) must be a period of at least 7 days but not more than 14 days beginning with the day after that on which the notice is served.
- (6) The final notice must set out—
  - (a) the date on which the final notice is served,
  - (b) the amount of the financial penalty,
  - (c) the reasons for imposing the penalty,
  - (d) information about how to pay the penalty,
  - (e) the period for payment of the penalty,
  - (f) information about rights of appeal, and
  - (g) the consequences of failure to comply with the notice.

#### *Withdrawal or amendment of notice*

- 5 (1) The enforcement authority may at any time—
  - (a) withdraw a notice of intent or final notice,
  - (b) reduce an amount specified in a notice of intent or final notice, or
  - (c) amend a notice of intent or final notice to remove the requirement to pay an amount which the authority required to be paid under section 10(2), (5) or (8) or 11(1).
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the person on whom the notice was served.

#### *Appeals*

- 6 (1) A person on whom a final notice is served may appeal to the First-tier Tribunal against—
  - (a) the decision to impose the penalty, or
  - (b) the amount of the penalty.
- (2) An appeal under this paragraph must be brought within the period that is the relevant period in relation to the penalty by virtue of paragraph 4(4).
- (3) If an appeal is brought under this paragraph, the final notice is suspended so far as it relates to the penalty which is the subject of the appeal until the appeal is finally determined, withdrawn or abandoned.
- (4) An appeal under this paragraph—
  - (a) is to be a re-hearing of the authority’s decision, but

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- (b) may be determined having regard to matters of which the authority was unaware.
- (5) On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice.
- (6) The final notice may not be varied so as to make it impose a financial penalty of more than £5,000 unless section 8(3) applies.
- (7) If section 8(3) applies, the final notice may not be varied so as to make it impose a financial penalty of more than £30,000.

*Recovery of financial penalty*

- 7 (1) This paragraph applies if a person who is liable to pay a financial penalty under section 8 does not pay the whole or any part of that financial penalty in accordance with the final notice imposing that penalty.
- (2) The enforcement authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.
- (3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—
  - (a) signed by the chief finance officer of the authority which imposed the penalty, and
  - (b) states that the amount due has not been received by a date specified in the certificate,
 is evidence of that fact.
- (4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.
- (5) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

*Recovery of prohibited payment etc*

- 8 (1) This paragraph applies if a person who is liable to pay an amount under section 10(2), (5) or (8) or 11(1) does not pay the whole or any part of that amount in accordance with the final notice requiring payment of that amount.
- (2) The relevant person may recover that amount or part on the order of the county court as if it were payable under an order of that court.

*Assistance to recover prohibited payment etc*

- 9 (1) An enforcement authority may help a relevant person to make an application under paragraph 8(2).
- (2) An enforcement authority may, for example, help the relevant person to apply by conducting proceedings or by giving advice to the relevant person.

*Proceeds of financial penalties*

- 10 Where an enforcement authority imposes a financial penalty under this Act, it may apply the proceeds towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions under this Act or otherwise in relation to the private rented sector.
- 11 Any proceeds of a financial penalty imposed under this Act which are not applied in accordance with paragraph 10 must be paid to the Secretary of State.
- 12 (1) In paragraph 10, “enforcement functions in relation to the private rented sector” means enforcement functions relating to—
- (a) residential premises in England that are let, or intended to be let, under a tenancy,
  - (b) the common parts of such premises,
  - (c) the activities of a landlord under a tenancy of residential premises in England,
  - (d) the activities of a person carrying on English letting agency work within the meaning of section 54 of the Housing and Planning Act 2016 in relation to such premises, or
  - (e) the activities of a person carrying on English property management work within the meaning of section 55 of the Housing and Planning Act 2016 in relation to such premises.
- (2) For the purposes of this paragraph “residential premises” has the meaning given by section 1 of the Housing Act 2004 except that it does not include social housing.
- (3) For the purposes of this paragraph, “tenancy” means—
- (a) a tenancy, whether or not the tenancy is an assured shorthold tenancy, or
  - (b) a licence to occupy.