

SCHEDULES

SCHEDULE 1

Section 22

MODIFICATIONS OF THE ARBITRATION ACT 1996 IN RELATION TO ARBITRATIONS UNDER THIS ACT

- 1 Part 1 of the Arbitration Act 1996 has effect in relation to arbitrations under this Act as if the following were omitted—
- (a) in section 14 (commencement of arbitral proceedings), subsections (1) and (2);
 - (b) in section 15 (arbitral tribunal), in subsection (1), the words “or umpire”;
 - (c) sections 16 to 19 (appointment of arbitrators);
 - (d) in section 20 (chairman), subsections (1) and (2);
 - (e) section 21 (umpire);
 - (f) in section 22 (decision-making where no chairman or umpire), subsection (1);
 - (g) in section 23 (revocation of the arbitrator’s authority), subsections (1), (2), (3)(a), (4) and (5)(a);
 - (h) in section 25 (resignation of arbitrator), subsections (1) and (2);
 - (i) in section 27 (filling of vacancy), subsections (1) to (3);
 - (j) in section 30 (competence of tribunal to rule on its own jurisdiction), in subsection (1), the words “Unless otherwise agreed by the parties”;
 - (k) in section 37 (power to appoint experts, legal advisers or assessors), in subsection (1), the words “Unless otherwise agreed by the parties”;
 - (l) in section 38 (general powers exercisable by the tribunal), subsections (1) to (4);
 - (m) in section 39 (power to make provisional awards), in subsection (2)(a), the words “or the disposition of property”;
 - (n) in section 48 (remedies), subsections (1), (2) and (5)(b) and (c);
 - (o) in section 49 (interest), subsections (1) to (3), (5) and (6);
 - (p) in section 51 (settlement)—
 - (i) in subsection (1), the words “unless otherwise agreed by the parties”; and
 - (ii) in subsection (2), the words “if so requested by the parties and not objected to by the tribunal”;
 - (q) in section 52 (form of award), subsections (1) and (2);
 - (r) in section 58 (effect of award), in subsection (1), the words “Unless otherwise agreed by the parties”;
 - (s) in section 68 (challenging the award: serious irregularity), in subsection (2)(e), the words “vested by the parties”.
- 2 Part 1 of the Arbitration Act 1996 has effect in relation to arbitrations under this Act as if —

Status: This is the original version (as it was originally enacted).

- (a) in section 20 (chairman), in subsection (3), at the beginning there were inserted “Where there is a chairman,”;
 - (b) in section 22 (decision-making where no chairman), in subsection (2) for “If there is no such agreement” there were substituted “Where there are two or more arbitrators with no chairman”;
 - (c) in section 34 (procedural and evidential matters), in subsection (1) after “matters”, there were inserted “(including in relation to oral hearings held in public)”;
 - (d) in section 35 (consolidation of proceedings and concurrent hearings), in subsection (2), for the words from “Unless” to “has no” there were substituted “The tribunal also has”;
 - (e) in section 37 (power to appoint experts, legal advisers or assessors), in subsection (1)(a), after “tribunal may” there were inserted “, where agreed by the parties”;
 - (f) in section 68 (challenging the award: serious irregularity), in subsection (2) (c), the words “procedure agreed by the parties” were substituted by “statutory procedure”;
 - (g) in section 74 (immunity of arbitral institutions)—
 - (i) in subsection (1), for “appoint or nominate” there were substituted “appoint, nominate or remove”;
 - (ii) in subsection (2), for “appointed or nominated”, in both places, there were substituted “appointed, nominated or removed”.
- 3 The modifications under paragraphs 1 and 2 are without prejudice to the operation of sections 94 to 98 of the Arbitration Act 1996 in relation to other provisions.

SCHEDULE 2

Section 23

TEMPORARY MORATORIUM ON ENFORCEMENT OF PROTECTED RENT DEBTS

Preliminary: interpretation

- 1 (1) This Schedule applies in relation to a protected rent debt under a business tenancy.
- (2) In this Schedule—
- (a) references to “the protected debt” or “the debt” are to the whole or any part of that protected rent debt;
 - (b) “the business tenancy” is the business tenancy under which the protected debt arose;
 - (c) “the landlord” and “the tenant” refer respectively to the landlord and the tenant under that tenancy;
 - (d) “the moratorium period”, in relation to the protected debt, has the meaning given by section 23(2);
 - (e) a reference to doing something “in relation to” the protected debt includes, where appropriate, its being done on the basis of the debt.

Making a debt claim

- 2 (1) The landlord may not, during the moratorium period for the debt, make a debt claim to enforce the protected debt.
- (2) In this paragraph “debt claim” means a claim to enforce a debt in civil proceedings (including by a counterclaim or any other way of claiming payment of a debt in such proceedings).

Debt claims made before the day on which this Act is passed

- 3 (1) This paragraph applies to proceedings on a debt claim which—
- (a) is made on or after 10 November 2021 but before the day on which this Act is passed,
 - (b) is made by the landlord against the tenant, and
 - (c) relates to, or to debts which include, the protected rent debt.
- (2) Either of the parties to the business tenancy may apply to the court for the proceedings on the debt claim to be stayed in order to enable the matter of payment of the protected rent debt to be resolved (whether by arbitration or otherwise).
- (3) Where such an application is made in respect of proceedings on a debt claim the court must stay the proceedings (unless it is satisfied that they are not proceedings to which this paragraph applies).
- (4) Sub-paragraphs (5) to (7) apply if judgment on the debt claim is given in favour of the landlord during the period described in sub-paragraph (1)(a).
- (5) So long as the judgment debt so far as relating to the protected rent debt, or any interest on it, is unpaid, then—
- (a) the matter of relief from payment of the judgment debt so far as relating to the protected rent debt, or any interest on it, may be resolved by arbitration under Part 2 of this Act or by agreement (as if that part of the judgment debt and any interest on it were a protected rent debt), despite the judgment having been given,
 - (b) the judgment debt, so far as relating to the protected rent debt or any interest on it, may not be enforced or relied on by the landlord before the end of the moratorium period for the protected rent debt, and
 - (c) if relief from payment is awarded or agreed, the effect of the judgment debt is to be taken as altered in accordance with the award or agreement.
- (6) Where it comes to the attention of the officer of the court in which the judgment is entered that—
- (a) the judgment relates solely to the protected rent debt,
 - (b) relief from payment of the protected rent debt has been awarded under Part 2 of this Act or agreed, and
 - (c) the moratorium period for the protected rent debt has ended,
- the officer must send a request to the registrar to cancel the entry in the register of judgments under section 98 of the Courts Act 2003.
- (7) Following receipt of a request under sub-paragraph (6), the registrar must cancel the entry.
- (8) In this paragraph—

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

“debt claim” has the same meaning as in paragraph 2;

“tenant” includes—

- (a) a person who has guaranteed the obligations of the tenant under a business tenancy,
- (b) a person other than the tenant who is liable on an indemnity basis for the payment of rent under a business tenancy, and
- (c) a former tenant who is liable for the payment of rent under a business tenancy.

Using CRAR (the commercial rent arrears recovery power)

- 4 (1) The landlord may not, during the moratorium period for the protected debt, use CRAR in relation to the debt.
- (2) This means that during that period—
 - (a) an authorisation to exercise CRAR on behalf of the landlord in relation to the protected debt may not be given,
 - (b) a notice of enforcement may not be given in relation to the protected debt on behalf of the landlord, and
 - (c) the protected debt is to be disregarded in calculating the net unpaid rent for the purposes of section 77 of the Tribunals, Courts and Enforcement Act 2007 (the rent recoverable using CRAR).
- (3) In this paragraph “CRAR” and “notice of enforcement” have the same meaning as in Chapter 2 of Part 3 of that Act.
- (4) In section 77 of that Act, after paragraph (b) of subsection (1) insert “;
 - (c) it is not excluded from recovery using CRAR by paragraph 4 of Schedule 2 to the Commercial Rent (Coronavirus) Act 2022 (temporary moratorium on enforcement of protected rent debts).”

Enforcing a right of re-entry or forfeiture

- 5 (1) The landlord may not, during the moratorium period for the protected debt, enforce, by action or otherwise, a right of re-entry or forfeiture for non-payment of the debt.
- (2) No conduct by or on behalf of the landlord during the moratorium period, other than giving an express waiver in writing, is to be regarded as waiving a right of re-entry or forfeiture, under the business tenancy, for non-payment of the debt.
- (3) For the purposes of determining whether the ground mentioned in section 30(1)(b) of the Landlord and Tenant Act 1954 (persistent delay in paying rent which has become due) is established in relation to the business tenancy, any failure to pay the debt during the moratorium period is to be disregarded.
- 6 (1) This paragraph applies where—
 - (a) a superior landlord enforces, by action or otherwise, a right of re-entry or forfeiture in relation to a superior tenancy during the moratorium period, and
 - (b) the tenant applies for relief from forfeiture in relation to its interest in the property comprised in the tenancy.

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

- (2) For the purposes of determining whether to grant the tenant relief from forfeiture and, if so, the terms of such relief, the court must disregard any failure to pay the protected rent debt.

Using landlord's right to appropriate rent

- 7 (1) This paragraph applies in relation to a payment of rent under a business tenancy which is paid during the moratorium period for the debt at a time when—
 - (a) the tenant owes the landlord an unprotected rent debt in addition to the debt, and
 - (b) the tenant has not exercised the tenant's right to appropriate the payment to any particular rent debt owed to the landlord.
- (2) The landlord's right to appropriate the payment must be used to apply the payment to meet the unprotected rent debt before it is applied to the protected rent debt.
- (3) In this paragraph an "unprotected rent debt" is a debt consisting of—
 - (a) rent that is not protected rent, or
 - (b) interest on rent that is not protected rent.
- 8 (1) This paragraph applies in relation to any payment of rent under a business tenancy which was paid during the period mentioned in sub-paragraph (2) at a time when—
 - (a) the tenant owed the landlord an unprotected rent debt in addition to the debt, and
 - (b) the tenant had not exercised the tenant's right to appropriate the payment to any particular rent debt.
- (2) The period relevant for the purposes of sub-paragraph (1) is the period—
 - (a) beginning with the day after the last day of the protected period for the debt, and
 - (b) ending with the day before the first day of the moratorium period for the debt.
- (3) During the moratorium period for the debt, the landlord's right to appropriate the payment must be used to apply the payment to meet the unprotected rent debt before it is applied to the protected rent debt.
- (4) If the landlord used that right during the period mentioned in sub-paragraph (2) to appropriate the rent to the debt, then—
 - (a) the appropriation of the payment to the debt is ineffective to the extent of the unprotected rent debt, and
 - (b) the payment is to be treated for all purposes as having been appropriated to the unprotected rent debt first.
- (5) In this paragraph "unprotected rent debt" has the same meaning as in paragraph 7.

Using tenant's deposit to apply towards unpaid rent debt

- 9 (1) This paragraph applies where a tenancy deposit is available to the landlord for the purpose of applying towards an unpaid rent debt.
- (2) The landlord may not, during the moratorium period for the debt, recover the debt from the tenancy deposit.

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

- (3) If the landlord has lawfully recovered the debt from the tenancy deposit before the beginning of the moratorium period, the tenant is not required to make good any shortfall in the deposit before the end of that period.

SCHEDULE 3

Section 27

WINDING-UP AND BANKRUPTCY PETITIONS

Prohibition on presenting a winding-up petition solely in relation to a protected rent debt

- 1 (1) This paragraph applies where a landlord under a business tenancy is owed a protected rent debt and the tenant is a company.
- (2) The landlord may not, during the moratorium period for the debt, present a petition for the winding up of the company under section 124 of the Insolvency Act 1986 on a ground specified—
- (a) in the case of a registered company, in section 122(1)(f) of that Act, or
 - (b) in the case of an unregistered company, in section 221(5)(b) of that Act,
- unless the landlord is owed a debt by the company which is not a protected rent debt.
- (3) In this paragraph—
- “the moratorium period”, in relation to a protected rent debt, has the same meaning as in section 23;
 - “registered company” means a company registered under the Companies Act 2006 in England and Wales or Scotland;
 - “unregistered company” has the same meaning as in Part 5 of the Insolvency Act 1986.
- (4) This paragraph, so far as relating to registered companies, applies to limited liability partnerships.

Prohibition on presenting a bankruptcy order petition in relation to a protected rent debt

- 2 (1) This paragraph (and paragraph 3) applies where the landlord under a business tenancy is owed a protected rent debt and the tenant is an individual.
- (2) The landlord may not present a petition for a bankruptcy order against the tenant on a ground specified in section 268(1)(a) or (2) of the Insolvency Act 1986 where the demand referred to in those provisions related to any protected rent debt and was served during the relevant period.
- (3) The landlord may not present a petition for a bankruptcy order against the tenant on a ground specified in section 268(1)(b) of that Act where the judgment or order referred to in that provision related to any protected rent debt and the claim for that debt was issued during the relevant period.
- (4) If a petition mentioned in sub-paragraph (2) or (3) is presented, the court may make such order or give such directions as it thinks appropriate to restore the position to what it would have been if the petition had not been presented.

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

- (5) If it appears to the interim receiver or special manager that the petition is one mentioned in sub-paragraph (2) or (3), the interim receiver or special manager must refer the matter to the court to determine whether to make an order or give directions under sub-paragraph (4).
- (6) Neither the interim receiver or special manager is liable in any civil or criminal proceedings for anything done pursuant to an order made under section 286 or 370 of the Insolvency Act 1986 in relation to a petition that relates to any protected rent debt.
- (7) The “relevant period” is the period which begins on 10 November 2021 and ends with the day mentioned in section 23(2)(b).
- (8) In this paragraph “claim” includes a counterclaim or any other way of claiming payment of a debt in civil proceedings.
- (9) This paragraph is to be regarded as having come into force on 10 November 2021.

Bankruptcy orders made before the day on which this Act is passed

- 3 (1) This paragraph applies where—
 - (a) a court makes a bankruptcy order against the tenant on a petition from the landlord under section 267 of the Insolvency Act 1986,
 - (b) the order was made on or after 10 November 2021 but before the day on which this Schedule comes into force, and
 - (c) the order was not one which the court would have made had this Schedule been in force at the time.
- (2) The court is to be regarded as having had no power to make the order (and, accordingly, the order is to be regarded as void).
- (3) Neither the trustee, official receiver, interim receiver or special manager is liable in any civil or criminal proceedings for anything done pursuant to the order.
- (4) The court may make such order or give such directions as it thinks appropriate to restore the position to what it was immediately before the petition was presented.
- (5) If at any time it appears to the trustee, official receiver, interim receiver or special manager that—
 - (a) a bankruptcy order made by the court is void by virtue of sub-paragraph (2), and
 - (b) it might be appropriate for the court to make an order or give directions under sub-paragraph (4),the trustee, official receiver, interim receiver or special manager must refer the matter to the court to determine whether to make such an order or give such directions.

Interpretation

- 4 (1) In this Schedule—
 - “interim receiver” means a person appointed under section 286 of the Insolvency Act 1986;
 - “special manager” means a person appointed under section 370 of that Act;
 - “trustee” means the trustee of a bankrupt’s estate.

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

- (2) In this Schedule, references to the “tenant” include—
- (a) a person who has guaranteed the obligations of the tenant under a business tenancy,
 - (b) a person other than the tenant who is liable on an indemnity basis for the payment of rent under a business tenancy, and
 - (c) a former tenant who is liable for the payment of rent under a business tenancy.