

SCHEDULE 1

AMENDMENTS TO PARTS 1 TO 10 AND 13 TO 16 OF THE PRINCIPAL RULES

New rules 194A, 194B, 194C, 194D, 194E, 194F and 194G

61. After rule 194, insert—

“Arbitration requested by proprietor

194A.—(1) This rule applies where a proprietor with the right under paragraph 10(1) of Schedule 6 to the Act to require apportionment has given the chargor notice in accordance with paragraph (2).

(2) The notice referred to in paragraph (1) must—

- (a) identify the proprietor and give an address for communications to the proprietor from the chargor,
- (b) make proposals as to the values of the registered estate and the other property subject to the charge,
- (c) state the proprietor’s intention, in the absence of agreement on the respective values of the registered estate and the other property subject to the charge, to request the President of the Royal Institution of Chartered Surveyors to appoint a qualified surveyor to determine these values, and
- (d) be served by post to, or by leaving the notice at, any postal address or by electronic transmission to an electronic address (if there is one) entered in the register as an address for service for the chargor.

(3) If the chargor does not provide the proprietor with the chargor’s written agreement to the values referred to in paragraph (2)(b), or to any other valuations acceptable to the proprietor, within one month of when the notice was received, the proprietor may make the request referred to in paragraph (2)(c).

(4) Where a qualified surveyor has been appointed pursuant to a request under paragraph (3)—

- (a) the proprietor shall be liable for the costs of that appointment,
- (b) the qualified surveyor shall act as an arbitrator and the provisions of the Arbitration Act 1996(1) shall apply,
- (c) the proprietor and the chargor shall be parties to the arbitration,
- (d) the chargee may elect to be joined as a party to the arbitration, and the qualified surveyor must ascertain whether the chargee so elects, and
- (e) the proprietor and the chargor must allow the qualified surveyor access to the land any estate in which is subject to the charge.

(5) In this rule, “an address for communications” means a postal address but if additionally the proprietor provides an e-mail address then that is also an address for communications.

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Notice of required apportionment

194B.—(1) The right of the proprietor of a registered estate under paragraph 10(1) of Schedule 6 to the Act to require a chargee to apportion the amount secured by a charge is exercisable by notice being given by the proprietor to the chargee.

(2) The notice referred to in paragraph (1) must—

- (a) identify the proprietor and give an address for communications to him from the chargee,
- (b) state that apportionment is required under paragraph 10 of Schedule 6 to the Act,
- (c) identify the chargor and the date of the charge,
- (d) state whether the valuations accompanying the notice were by a qualified surveyor appointed pursuant to a request under rule 194A and, if they were, state the effect of rule 194C(1), and
- (e) be served by post to, or by leaving the notice at, any postal address or by electronic transmission to an electronic address (if there is one) entered in the register as an address for service for the chargee.

(3) Subject to paragraph (4), the notice referred to in paragraph (1) must be accompanied by—

- (a) valuations of the registered estate and of the other property subject to the charge by a qualified surveyor dated no earlier than two months before the notice is sent,
- (b) the chargor’s written agreement to the valuations,
- (c) an official copy of the individual register and title plan of the registered estate, and
- (d) a copy of the individual register and title plan, supplied in response to an application under rule 144, in respect of the registered title which immediately before the registration under Schedule 6 to the Act comprised the registered estate, unless such a copy is unavailable.

(4) If the valuations of the registered estate and of the other property subject to the charge are by a qualified surveyor appointed pursuant to a request under rule 194A, the requirements in paragraph (3)(b), (c) and (d) do not apply.

(5) In this rule, “an address for communications” means a postal address but if additionally the proprietor provides an e-mail address then that is also an address for communications.

Apportionment

194C.—(1) If the valuations accompanying the notice referred to in rule 194B(1) are by a qualified surveyor appointed pursuant to a request under rule 194A, the chargee must, within two months of when the notice was received, apportion the amount secured by the charge at the time referred to in paragraph 10(1) of Schedule 6 to the Act on the basis of these valuations.

(2) If the valuations accompanying the notice referred to in rule 194B(1) are not by a qualified surveyor pursuant to a request under rule 194A, the chargee must, within two months of when the notice was received, either—

- (a) apportion the amount secured by the charge at the time referred to in paragraph 10(1) of Schedule 6 to the Act on the basis of the valuations accompanying the notice, or on the basis of other valuations agreed by the proprietor and the chargor, or

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- (b) request the President of the Royal Institution of Chartered Surveyors to appoint a qualified surveyor to value the registered estate and the other property subject to the charge.
- (3) Where a qualified surveyor has been appointed pursuant to a request under paragraph (2)(b)—
 - (a) the chargee shall be liable for the costs of that appointment,
 - (b) the qualified surveyor shall act as an arbitrator and the provisions of the Arbitration Act 1996 shall apply,
 - (c) the proprietor and the chargee shall be parties to the arbitration,
 - (d) the chargor may elect to be joined as a party to the arbitration, and the qualified surveyor must ascertain whether the chargor so elects, and
 - (e) the proprietor and the chargor must allow the qualified surveyor access to the land any estate in which is subject to the charge.
- (4) Where a qualified surveyor has been appointed pursuant to a request under paragraph (2)(b), the chargee must, within two months of when the valuations by the qualified surveyor were received, apportion the amount secured by the charge at the time referred to in paragraph 10(1) of Schedule 6 to the Act on the basis of those valuations.

Basis of valuation

194D.—(1) For the purposes of rules 194A, 194B and 194C, where the other property affected by the charge includes an estate in land, the value of the proprietor’s registered estate shall be the diminution in value of that other property as determined in accordance with paragraph (2).

- (2) The diminution in value of the other property is the difference between—
 - (a) the value of all the property subject to the charge if the chargor were the proprietor and in possession of the proprietor’s registered estate, and
 - (b) the value of the property subject to the charge without the proprietor’s registered estate.

Receipt of notice etc

194E.—(1) Notices and valuations shall be treated as received for the purposes of rules 194A(3) and 194C(1), (2) and (4) on—

- (a) the second working day after posting, where the notice is posted to an address in the United Kingdom,
- (b) the working day after it was left, where the notice is left at a postal address,
- (c) the seventh working day after posting, where the notice is posted to an address outside the United Kingdom, and
- (d) the second working day after transmission, where the notice is sent by electronic transmission (including email).

Notice of apportionment

194F.—(1) Within ten working days of any apportionment under rule 194C, the chargee must issue notice of the apportionment to the proprietor and to the chargor.

- (2) The notice referred to in paragraph (1) must state—

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- (a) the amount secured by the charge at the time referred to in paragraph 10(1) of Schedule 6 to the Act,
 - (b) the amount apportioned to the registered estate, and
 - (c) the costs incurred by the chargee as a result of the apportionment and payable under paragraph 10(2)(b) of Schedule 6 to the Act.
- (3) The notice referred to in paragraph (1) which is issued to the proprietor must be served by post to, or by leaving the notice at, the postal address or by electronic transmission to any e-mail address given in the notice of required apportionment under rule 194B(1) or at another postal or e-mail address agreed in writing by the chargee and the proprietor.

Costs

194G.—(1) Where in the award under rule 194A(4) or rule 194C(3) the qualified surveyor decides that the chargee shall be responsible for payment of the costs incurred by the chargee or any other party to the arbitration, such costs shall be excluded from the costs payable under paragraph 10(2)(b) of Schedule 6 to the Act.

(2) Subject to paragraph (3), the chargor shall be entitled to be paid by the proprietor those costs reasonably incurred by the chargor in the apportionment and, in particular, those in relation to valuations obtained for the purpose of the apportionment.

(3) Where in the award the qualified surveyor decides that the chargor shall be responsible for payment of the costs incurred by the chargor or any other party to the arbitration, such costs shall be excluded from the costs payable under paragraph (2).”