

SCHEDULES

SCHEDULE 2

CONSEQUENCES OF CONVERSION OF PERPETUALLY RENEWABLE LEASES

Continuance of certain provisions of lease or sublease

1.—(1) The estate in fee simple which comes into existence under paragraph (4), or paragraphs (4) and (5), of Article 36 (“the fee simple”) takes effect in substitution for the estate created by the lease or sub-lease to which that paragraph, or those paragraphs, applied (“the lease”), and, subject to the necessary consequences of that substitution (and, in particular, to sub-paragraph (2)), the provisions of the lease then subsisting are the provisions subject to which the fee simple is held.

(2) The following provisions of the lease do not apply—

- (a) provisions about the falling of lives or the renewal of the lease or, subject to paragraph 7, the payment of fines, fees or costs upon, for or in respect of renewal;
- (b) provisions prohibiting or restricting assignment, sub-demise or parting with possession;
- (c) any other provisions that are repugnant to a fee simple;

but, subject thereto, the fee simple is (without prejudice to paragraphs 5 to 8 and 10) subject to a perpetual fee farm rent payable in the same amounts, at the same times and recoverable in the same manner as the rent under the lease and is subject to the same conditions, covenants, exceptions and reservations as in the lease.

(3) Where the lease is a sub-lease such as is mentioned in Article 36(5), the fee simple is also subject to a fee farm rent equal to the rent payable under the superior lease, or, as the case requires, to fee farm rents equal to the rents payable under the respective superior sub-lease or sub-leases and the superior lease, but subject to any agreement for indemnity relating to those rents.

Rights and equities

2.—(1) Subject to the provisions of this Schedule (and, in particular to paragraph 1(2)), the fee simple is for all purposes a graft on the estate created by the lease and is subject to any rights or equities arising from its being such a graft.

(2) Without prejudice to the generality of sub-paragraph (1), any mortgage of the estate created by the lease continues to have effect as if it were, and had been created as, a mortgage of the fee simple, and, in particular.—

- (a) where the instrument creating the mortgage was an assignment of the estate created by the lease, it has effect as if it were a conveyance of the fee simple;
- (b) where that instrument was a sub-lease, it has effect as if it were a lease for a term equivalent to the term of the sub-lease.

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Wills

3.—(1) Any provision of a will in respect of the estate created by the lease operates instead on the fee simple.

(2) Any such provision in respect of the estate created by a superior lease or sub-lease such as is mentioned in paragraph 1(3) operates instead on the fee farm rent.

Sub-leases not perpetually renewable

4. Sub-leases not coming within Article 36(5) continue to have effect, and, in the case of a sole sub-lease or, where there are two or more sub-leases, in the case of the more or most superior of them, does so as though created out of the fee simple.

Implied covenants

5. The fee simple is subject to—

- (a) an implied covenant by the owner thereof to notify in writing the former lessor, his solicitor or agent of every conveyance or devolution of the fee simple (including all probates or letters of administration), and the covenant so implied is in substitution for any express covenant to notify the former lessor, his solicitor or agent of assignments or devolutions and to pay fees and costs in respect of such notification;
- (b) a covenant by the former lessor that, if the owner of the fee simple produces, within one year from the appointed day, the lease or sufficient evidence of it (including an assignment of part of the land comprised in the lease), with any particulars required to show that the lease was subsisting for the purposes of Article 36 immediately before that day, to the former lessor or his solicitor or agent, the former lessor, his solicitor or agent will, subject to the payment of his costs in connection therewith, if the fact that the lease was subsisting for those purposes is admitted or proved, endorse notice of that fact on the lease, assignment or copy thereof, at the expense of the owner of the fee simple; and such endorsement, signed by or on behalf of the former lessor, is, in favour of a purchaser, conclusive evidence that the lease was subsisting as aforesaid, either in respect of the whole or part of the land, as the case may be.

Liability of original owner of the fee simple.

6.—(1) The person who becomes the owner of the fee simple on the appointed day is, notwithstanding any stipulation to the contrary, liable for fee farm rent accruing and for breaches of covenants and conditions committed only during the period he remains such owner.

(2) Sub-paragraph (1) does not affect the liability of any person in respect of rent accruing, or the breach of any covenant or condition occurring, before the appointed day.

Adjustment of rent to compensate for loss of fines

7.—(1) Where, under the lease, any fine was payable by the lessee on renewal, then an amount to be ascertained as hereinafter provided, unless commuted, is payable to the person entitled to the fee farm rent as additional rent; but no sums payable for the costs of examination of the lessee's title or of granting a new lease or any other work which is rendered unnecessary by this Order are to be taken into account in ascertaining the additional rent.

(2) In default of agreement and subject to the exercise by the Registrar or, as the case may be, the Lands Tribunal of the powers conferred by Article 42, the following provisions have effect for the purpose of ascertaining the instalments of additional rent—

- (a) the additional rent is to be ascertained on the basis of the fine which would have been payable on the occasion of the first renewal after the appointed day, if this Order had not been made;
- (b) where the lessee had a right to renew at different times, the occasion of the first renewal is such date as he may, by notice served on the lessor within one year after the appointed day, select from among the dates at which he would have been entitled to renew his lease, had it remained renewable, or, in default of such notice, the last day on which he would have been entitled to renew;
- (c) where the time at or within which the fine must be paid is not definitely fixed by or ascertainable from the lease, the fine is to be taken to be payable on such date as may be determined in accordance with Article 42 on a reference made by either the owner of the fee simple or the person entitled to the fee farm rent;
- (d) the yearly amount of the additional rent is to be ascertained by dividing the amount of the fine payable by the lessee on renewal by the number of years which represents the interval or average interval occurring between the dates of renewal;
- (e) the additional rent is payable by, as nearly as may be, equal instalments at the time at which the fee farm rent is payable, the first instalment falling due on the day for payment of fee farm rent which occurs on or nearest to the first anniversary of the appointed day;
- (f) the additional rent is deemed to be part of the fee farm rent for all purposes, including any covenant for payment of rent or for entry or re-entry contained in the lease;
- (g) if the lessee was liable to forfeit his right of renewal if he made default in payment of a fine or in doing any other act or thing within a time ascertained by the dropping of a life, but not otherwise, then five per cent. of the existing rent of the land (that is to say, the rent payable under the terms of the lease immediately before the appointed day), or such other percentage of that rent as may be agreed under paragraph 8(1)(a)(iv), is to be treated as added to the fine payable by the lessee on renewal for the purpose of ascertaining the amount of the instalments of additional rent and as compensation to the lessor for loss of his right of re-entry (present or future) which would have accrued, if this Order had not been made, by reason of any such liability to forfeit the right of renewal;
- (h) notwithstanding that, under the lease, any unpaid fine on a renewal carries interest, no instalment of additional rent payable in lieu thereof carries interest.

(3) Where by virtue of paragraph 1(3) more than one fee farm rent is payable, this paragraph applies to each of those rents in accordance with the terms of their respective leases.

8.—(1) Where—

- (a) the owner of the fee simple and the person entitled to the fee farm rent agree upon—
 - (i) the commutation or discharge of any claims in respect of additional rent, or any part of it;
 - (ii) the interval or average interval between dates of renewal;
 - (iii) the amount of instalments of additional rent;
 - (iv) the percentage of the existing rent which is to be treated as added to a fine under paragraph 7(2)(g);
 - (v) the amount of the fee farm rent (including the instalments of additional rent) which is to be apportioned in respect of any part of the land comprised in the lease; and

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- (b) a statement in writing of the agreement is endorsed on or attached to the lease (or a counterpart of it or an assignment of the benefit of it) and is signed by the owner and that person,

the statement is conclusive evidence of the matters stated in it, and where the agreement involves an apportionment such as is mentioned in head (a)(v), the former lessee's covenants are to be apportioned in regard to the land to which the apportionment relates.

(2) The costs in connection with the agreement and any negotiations therefor are to be borne by the owner of the fee simple and (without prejudice to any right of set-off or counterclaim) are recoverable in proceedings in any court of competent jurisdiction.

Powers of trustees

9.—(1) A power authorising a trustee or other person to apply or direct the application of or raise any money for or in discharge of fines, fees or costs payable on the renewal of the lease is hereby deemed to authorise the payment, application or raising of money for the commutation of any additional rent made payable by this Order.

(2) If the former lessor's estate is held under, or on the trusts of, a settlement or on trust for sale, any commutation money is to be treated as capital money or proceeds arising from the sale of the land (as the case requires).

(3) If the estate of the owner of the fee simple is held under, or upon the trusts of, a settlement or on trust for sale, the commutation money may be paid out of capital money or other property (not being land) held together with, or on the same trusts as, the land.

Interpretation

10. In this Schedule references to the former lessor are to the person who, immediately before the appointed day, was successor in title to the grantor of the lease; and, where the context permits, references to the former lessor include a successor in title of his.

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