



Leasehold Reform, Housing and Urban Development Act 1993

1993 CHAPTER 28

PART I

LANDLORD AND TENANT

CHAPTER II

INDIVIDUAL RIGHT OF TENANT OF FLAT TO ACQUIRE NEW LEASE

Preliminary

39 Right of qualifying tenant of flat to acquire new lease.

- (1) This Chapter has effect for the purpose of conferring on a tenant of a flat, in the circumstances mentioned in subsection (2), the right, exercisable subject to and in accordance with this Chapter, to acquire a new lease of the flat on payment of a premium determined in accordance with this Chapter.
- (2) Those circumstances are that on the relevant date for the purposes of this Chapter—
 - (a) the tenant [^{F1}has for the last two years been] a qualifying tenant of the flat; ^{F2} . . .
 - (b) ^{F2}
- (2A) ^{F3}
- (2B) ^{F4}
- (3) The following provisions, namely—
 - (a) section 5 (with the omission of subsections (5) and (6)),
 - (b) section 7, ^{F5} . . .
 - (c) ^{F6}

Status: Point in time view as at 26/07/2002.

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(d) ^{F6}

shall apply for the purposes of this Chapter as they apply for the purposes of Chapter I; and references in this Chapter to a qualifying tenant of a flat shall accordingly be construed by reference to those provisions.

[^{F7}(3A) On the death of a person who has for the two years before his death been a qualifying tenant of a flat, the right conferred by this Chapter is exercisable, subject to and in accordance with this Chapter, by his personal representatives; and, accordingly, in such a case references in this Chapter to the tenant shall, in so far as the context permits, be to the personal representatives.]

(4) For the purposes of this Chapter a person can be (or be among those constituting) the qualifying tenant of each of two or more flats at the same time, whether he is tenant of those flats under one lease or under two or more separate leases.

(4A) ^{F8}

(5) ^{F9}

^{F10}(6)

(7) The right conferred by this Chapter on a tenant to acquire a new lease shall not extend to underlying minerals comprised in his existing lease if—

- (a) the landlord requires the minerals to be excepted, and
- (b) proper provision is made for the support of the premises demised by that existing lease as they are enjoyed on the relevant date.

(8) In this Chapter “the relevant date”, in relation to a claim by a tenant under this Chapter, means the date on which notice of the claim is given to the landlord under section 42.

Textual Amendments

- F1** Words in s. 39(2)(a) substituted (26.7.2002 for E. and 1.1.2003 for W.) by **Commonhold and Leasehold Reform Act 2002 (c. 15), s. 130(2)**; S.I. 2002/1912, **art. 2(b)(i)** (subject to Sch. 2); S.I. 2002/3012, **art. 2(b)(i)** (subject to Sch. 2)
- F2** S. 39(2)(b) and preceding word repealed (26.7.2002 for E. and 1.1.2003 for W.) by **Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 130(3), 180, Sch. 14**; S.I. 2002/1912, **art. 2(b)**, Sch. 1 Pt. 1 (subject to Sch. 2); S.I. 2002/3012, **art. 2(b)**, Sch. 1 Pt. 1 (subject to Sch. 2)
- F3** S. 39(2A) repealed (26.7.2002 for E. and 1.1.2003 for W.) by **Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 130(3), 180, Sch. 14**; S.I. 2002/1912, **art. 2(b)**, Sch. 1 Pt. 1 (subject to Sch. 2); S. I. 2002/3012, **art. 2(b)**, Sch. 1 Pt. 1 (subject to Sch. 2)
- F4** S. 39(2B) repealed (26.7.2002 for E. and 1.1.2003 for W.) by **Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 130(3), 180, Sch. 14**; S.I. 2002/1912, **art. 2(b)**, Sch. 1 Pt. 1 (subject to Sch. 2); S. I. 2002/3012, **art. 2(b)**, Sch. 1 Pt. 1 (subject to Sch. 2)
- F5** Word in s. 39(3)(b) repealed (1.4.1997) by 1996 c. 52, s. 227, **Sch. 19 Pt. V**; S.I. 1997/618, **art. 2(1)**
- F6** S. 39(3)(c)(d) repealed (26.7.2002 for E. and 1.1.2003 for W.) by **Commonhold and Leasehold Reform Act 2002 (c. 15), ss. 131, 180, Sch. 14**; S.I. 2002/1912, **art. 2(b)(i)**, Sch. 1 Pt. 1 (subject to Sch. 2); S. I. 2002/3012, **art. 2(b)(i)**, Sch. 1 Pt. 1 (subject to Sch. 2)
- F7** S. 39(3A) inserted (26.7.2002 for E. and 1.1.2003 for W.) by **Commonhold and Leasehold Reform Act 2002 (c. 15), s. 132(1)**; S.I. 2002/1912, **art. 2(a)**; S.I. 2002/3012, **art. 2(a)**
- F8** S. 39(4A) repealed (26.7.2002 for E. and 1.1.2003 for W.) by **Commonhold and Leasehold Reform Act 2002 (c. 15), s. 180, Sch. 14**; S.I. 2002/1912, **art. 2(b)(ii)**, Sch. 1 Pt. 1 (subject to Sch. 2); S. I. 2002/3012, **art. 2(b)(ii)**, Sch. 1 Pt. 1 (subject to Sch. 2)

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- F9** S. 39(5) repealed (26.7.2002 for E. and 1.1.2003 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 180, [Sch. 14](#); S.I. 2002/1912, [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to Sch. 2); S. I. 2002/3012, [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to Sch. 2)
- F10** S. 39(6) repealed (1.10.1996) by 1996 c. 52, s. 227, [Sch. 19 Pt. V](#); S.I. 1996/2212, [art. 2\(2\)](#) (with savings in [art. 2\(2\)](#), [Sch. para. 4](#))

40 The landlord for the purposes of this Chapter.

- (1) In this Chapter “the landlord”, in relation to the lease held by a qualifying tenant of a flat, means the person who is the owner of that interest in the flat which for the time being fulfils the following conditions, namely—
- (a) it is an interest in reversion expectant (whether immediately or not) on the termination of the tenant’s lease, and
 - (b) it is either a freehold interest or a leasehold interest whose duration is such as to enable that person to grant a new lease of that flat in accordance with this Chapter,
- and is not itself expectant (whether immediately or not) on an interest which fulfils those conditions.
- (2) Where in accordance with subsection (1) the immediate landlord under the lease of a qualifying tenant of a flat is not the landlord in relation to that lease for the purposes of this Chapter, the person who for those purposes is the landlord in relation to it shall conduct on behalf of all the other landlords all proceedings arising out of any notice given by the tenant with respect to the flat under section 42 (whether the proceedings are for resisting or giving effect to the claim in question).
- (3) Subsection (2) has effect subject to the provisions of Schedule 11 to this Act (which makes provision in relation to the operation of this Chapter in cases to which that subsection applies).
- (4) In this section and that Schedule—
- (a) “the tenant” means any such qualifying tenant as is referred to in subsection (2) and “the tenant’s lease” means the lease by virtue of which he is a qualifying tenant;
 - (b) “the competent landlord” means the person who, in relation to the tenant’s lease, is the landlord (as defined by subsection (1)) for the purposes of this Chapter;
 - (c) “other landlord” means any person (other than the tenant or a trustee for him) in whom there is vested a concurrent tenancy intermediate between the interest of the competent landlord and the tenant’s lease.
- (5) Schedule 2 (which makes provision with respect to certain special categories of landlords) has effect for the purposes of this Chapter.

Preliminary inquiries by qualifying tenant

41 Right of qualifying tenant to obtain information about superior interests etc.

- (1) A qualifying tenant of a flat may give—
- (a) to his immediate landlord, or
 - (b) to any person receiving rent on behalf of his immediate landlord,

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a notice requiring the recipient to state whether the immediate landlord is the owner of the freehold interest in the flat and, if not, to give the tenant such information as is mentioned in subsection (2) (so far as known to the recipient).

- (2) That information is—
- (a) the name and address of the person who owns the freehold interest in the flat;
 - (b) the duration of the leasehold interest in the flat of the tenant's immediate landlord and the extent of the premises in which it subsists; and
 - (c) the name and address of every person who has a leasehold interest in the flat which is superior to that of the tenant's immediate landlord, the duration of any such interest and the extent of the premises in which it subsists.
- (3) If the immediate landlord of any such qualifying tenant is not the owner of the freehold interest in the flat, the tenant may also—
- (a) give to the person who is the owner of that interest a notice requiring him to give the tenant such information as is mentioned in paragraph (c) of subsection (2) (so far as known to that person);
 - (b) give to any person falling within that paragraph a notice requiring him to give the tenant—
 - (i) particulars of the duration of his leasehold interest in the flat and the extent of the premises in which it subsists, and
 - (ii) (so far as known to him) such information as is mentioned in paragraph (a) of that subsection and, as regards any other person falling within paragraph (c) of that subsection, such information as is mentioned in that paragraph.
- (4) Any notice given by a qualifying tenant under this section shall, in addition to any other requirement imposed in accordance with subsections (1) to (3), require the recipient to state—
- (a) whether he has received in respect of any premises containing the tenant's flat—
 - (i) a notice under section 13 in the case of which the relevant claim under Chapter I is still current, or
 - (ii) a copy of such a notice; and
 - (b) if so, the date on which the notice under section 13 was given and the name and address of the nominee purchaser for the time being appointed for the purposes of section 15 in relation to that claim.
- (5) For the purposes of subsection (4)—
- (a) “the relevant claim under Chapter I”, in relation to a notice under section 13, means the claim in respect of which that notice is given; and
 - (b) any such claim is current if—
 - (i) that notice continues in force in accordance with section 13(11), or
 - (ii) a binding contract entered into in pursuance of that notice remains in force, or
 - (iii) where an order has been made under section 24(4)(a) or (b) or 25(6) (a) or (b) with respect to any such premises as are referred to in subsection (4)(a) above, any interests which by virtue of the order fall to be vested in the nominee purchaser for the purposes of Chapter I have yet to be so vested.

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- (6) Any person who is required to give any information by virtue of a notice under this section shall give that information to the qualifying tenant within the period of 28 days beginning with the date of the giving of the notice.

The tenant’s notice

42 Notice by qualifying tenant of claim to exercise right.

- (1) A claim by a qualifying tenant of a flat to exercise the right to acquire a new lease of the flat is made by the giving of notice of the claim under this section.
- (2) A notice given by a tenant under this section (“the tenant’s notice”) must be given—
 - (a) to the landlord, and
 - (b) to any third party to the tenant’s lease.
- (3) The tenant’s notice must—
 - (a) state the full name of the tenant and the address of the flat in respect of which he claims a new lease under this Chapter;
 - (b) contain the following particulars, namely—
 - (i) sufficient particulars of that flat to identify the property to which the claim extends,
 - (ii) such particulars of the tenant’s lease as are sufficient to identify it, including the date on which the lease was entered into, the term for which it was granted and the date of the commencement of the term,
 - (iii) ^{F11}
 - (iv) ^{F12}
 - (c) specify the premium which the tenant proposes to pay in respect of the grant of a new lease under this Chapter and, where any other amount will be payable by him in accordance with any provision of Schedule 13, the amount which he proposes to pay in accordance with that provision;
 - (d) specify the terms which the tenant proposes should be contained in any such lease;
 - (e) state the name of the person (if any) appointed by the tenant to act for him in connection with his claim, and an address in England and Wales at which notices may be given to any such person under this Chapter; and
 - (f) specify the date by which the landlord must respond to the notice by giving a counter-notice under section 45.

(4) ^{F13}

[^{F14}(4A) A notice under this section may not be given by the personal representatives of a tenant later than two years after the grant of probate or letters of administration.]

- (5) The date specified in the tenant’s notice in pursuance of subsection (3)(f) must be a date falling not less than two months after the date of the giving of the notice.
- (6) Where a notice under this section has been given with respect to any flat, no subsequent notice may be given under this section with respect to the flat so long as the earlier notice continues in force.
- (7) Where a notice under this section has been given with respect to a flat and—

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- (a) that notice has been withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter, or
- (b) in response to that notice, an order has been applied for and obtained under section 47(1),

no subsequent notice may be given under this section with respect to the flat within the period of twelve months beginning with the date of the withdrawal or deemed withdrawal of the earlier notice or with the time when the order under section 47(1) becomes final (as the case may be).

- (8) Where a notice is given in accordance with this section, then for the purposes of this Chapter the notice continues in force as from the relevant date—
 - (a) until a new lease is granted in pursuance of the notice;
 - (b) if the notice is withdrawn, or is deemed to have been withdrawn, under or by virtue of any provision of this Chapter, until the date of the withdrawal or deemed withdrawal; or
 - (c) until such other time as the notice ceases to have effect by virtue of any provision of this Chapter;

but this subsection has effect subject to section 54.

- (9) Schedule 12 (which contains restrictions on terminating a tenant's lease where he has given a notice under this section and makes other provision in connection with the giving of notices under this section) shall have effect.

Textual Amendments

- F11** S. 42(3)(b)(iii) repealed (26.7.2002 for E. and 1.1.2003 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 180, [Sch. 14](#); S.I. 2002/1912, [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to [Sch. 2](#)); S. I. 2002/3012, [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to [Sch. 2](#))
- F12** S. 42(3)(b)(iv) repealed (26.7.2002 for E. and 1.1.2003 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 180, [Sch. 14](#); S.I. 2002/1912, [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to [Sch. 2](#)); S. I. 2002/3012, [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to [Sch. 2](#))
- F13** S. 42(4) repealed (26.7.2002 for E. and 1.1.2003 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 180, [Sch. 14](#); S.I. 2002/1912, [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to [Sch. 2](#)); S. I. 2002/3012, [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to [Sch. 2](#))
- F14** S. 42(4A) inserted (26.7.2002 for E. and 1.1.2003 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 132(2); S.I. 2002/1912, [art. 2\(a\)](#); S. I. 2002/3012, [art. 2\(a\)](#)

43 General provisions as respects effect of tenant's notice.

- (1) Where a notice has been given under section 42 with respect to any flat, the rights and obligations of the landlord and the tenant arising from the notice shall enure for the benefit of and be enforceable against them, their personal representatives and assigns to the like extent (but no further) as rights and obligations arising under a contract for leasing freely entered into between the landlord and the tenant.
- (2) Accordingly, in relation to matters arising out of any such notice, references in this Chapter to the landlord and the tenant shall, in so far as the context permits, include their respective personal representatives and assigns.
- (3) Notwithstanding anything in subsection (1), the rights and obligations of the tenant shall be assignable with, but shall not be capable of subsisting apart from, the lease of the entire flat; and, if the tenant's lease is assigned without the benefit of the notice,

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the notice shall accordingly be deemed to have been withdrawn by the tenant as at the date of the assignment.

- (4) In the event of any default by the landlord or the tenant in carrying out the obligations arising from the tenant's notice, the other of them shall have the like rights and remedies as in the case of a contract freely entered into.
- (5) In a case to which section 40(2) applies, the rights and obligations of the landlord arising out of the tenant's notice shall, so far as their interests are affected, be rights and obligations respectively of the competent landlord and of each of the other landlords, and references to the landlord in subsections (1) and (2) above shall apply accordingly.
- (6) In subsection (5) "competent landlord" and "other landlord" have the meaning given by section 40(4); and subsection (5) has effect without prejudice to the operation of section 40(2) or Schedule 11.

Procedure following giving of tenant's notice

44 Access by landlords for valuation purposes.

- (1) Once the tenant's notice or a copy of it has been given in accordance with section 42 or Part I of Schedule 11—
 - (a) to the landlord for the purposes of this Chapter, or
 - (b) to any other landlord (as defined by section 40(4)),that landlord and any person authorised to act on his behalf shall have a right of access to the flat to which the notice relates for the purpose of enabling that landlord to obtain, in connection with the notice, a valuation of his interest in the flat.
- (2) That right shall be exercisable at any reasonable time and on giving not less than 3 days' notice to the tenant.

45 Landlord's counter-notice.

- (1) The landlord shall give a counter-notice under this section to the tenant by the date specified in the tenant's notice in pursuance of section 42(3)(f).
- (2) The counter-notice must comply with one of the following requirements—
 - (a) state that the landlord admits that the tenant had on the relevant date the right to acquire a new lease of his flat;
 - (b) state that, for such reasons as are specified in the counter-notice, the landlord does not admit that the tenant had such a right on that date;
 - (c) contain such a statement as is mentioned in paragraph (a) or (b) above but state that the landlord intends to make an application for an order under section 47(1) on the grounds that he intends to redevelop any premises in which the flat is contained.
- (3) If the counter-notice complies with the requirement set out in subsection (2)(a), it must in addition—
 - (a) state which (if any) of the proposals contained in the tenant's notice are accepted by the landlord and which (if any) of those proposals are not so accepted; and
 - (b) specify, in relation to each proposal which is not accepted, the landlord's counter-proposal.

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- (4) The counter-notice must specify an address in England and Wales at which notices may be given to the landlord under this Chapter.
- (5) Where the counter-notice admits the tenant's right to acquire a new lease of his flat, the admission shall be binding on the landlord as to the matters mentioned in section 39(2) (a) ^{F15} . . . , unless the landlord shows that he was induced to make the admission by misrepresentation or the concealment of material facts; but the admission shall not conclude any question whether the particulars of the flat stated in the tenant's notice in pursuance of section 42(3)(b)(i) are correct.

Textual Amendments

F15 Words in s. 45(5) repealed (26.7.2002 for E. and 1.1.2003 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 180, [Sch. 14](#); [S.I. 2002/1912](#), [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to [Sch. 2](#)); [S. I. 2002/3012](#), [art. 2\(b\)\(ii\)](#), Sch. 1 Pt. 1 (subject to [Sch. 2](#))

Applications to court or leasehold valuation tribunal

46 Proceedings relating to validity of tenant's notice.

- (1) Where—
 - (a) the landlord has given the tenant a counter-notice under section 45 which (whether it complies with the requirement set out in subsection (2)(b) or (c) of that section) contains such a statement as is mentioned in subsection (2) (b) of that section, and
 - (b) the court is satisfied, on an application made by the landlord, that on the relevant date the tenant had no right under this Chapter to acquire a new lease of his flat,
 the court shall by order make a declaration to that effect.
- (2) Any application for an order under subsection (1) must be made not later than the end of the period of two months beginning with the date of the giving of the counter-notice to the tenant; and if, in a case falling within paragraph (a) of that subsection, either—
 - (a) no application for such an order is made by the landlord within that period, or
 - (b) such an application is so made but is subsequently withdrawn,
 section 49 shall apply as if the landlord had not given the counter-notice.
- (3) If on any such application the court makes such a declaration as is mentioned in subsection (1), the tenant's notice shall cease to have effect on the order becoming final.
- (4) If, however, any such application is dismissed by the court, then (subject to subsection (5)) the court shall make an order—
 - (a) declaring that the landlord's counter-notice shall be of no effect, and
 - (b) requiring the landlord to give a further counter-notice to the tenant by such date as is specified in the order.
- (5) Subsection (4) shall not apply if—
 - (a) the counter-notice complies with the requirement set out in section 45(2)(c), and

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- (b) either—
 - (i) an application for an order under section 47(1) is pending, or
 - (ii) the period specified in section 47(3) as the period for the making of such an application has not expired.
- (6) Subsection (3) of section 45 shall apply to any further counter-notice required to be given by the landlord under subsection (4) above as if it were a counter-notice under that section complying with the requirement set out in subsection (2)(a) of that section.

47 Application to defeat tenant’s claim where landlord intends to redevelop.

- (1) Where the landlord has given the tenant a counter-notice under section 45 which complies with the requirement set out in subsection (2)(c) of that section, the court may, on the application of the landlord, by order declare that the right to acquire a new lease shall not be exercisable by the tenant by reason of the landlord’s intention to redevelop any premises in which the tenant’s flat is contained; and on such an order becoming final the tenant’s notice shall cease to have effect.
- (2) The court shall not make an order under subsection (1) unless it is satisfied—
 - (a) that the tenant’s lease of his flat is due to terminate within the period of five years beginning with the relevant date; and
 - (b) that for the purposes of redevelopment the landlord intends, once the lease has so terminated—
 - (i) to demolish or reconstruct, or
 - (ii) to carry out substantial works of construction on, the whole or a substantial part of any premises in which the flat is contained; and
 - (c) that he could not reasonably do so without obtaining possession of the flat.
- (3) Any application for an order under subsection (1) must be made within the period of two months beginning with the date of the giving of the counter-notice to the tenant; but, where the counter-notice is one falling within section 46(1)(a), such an application shall not be proceeded with until such time (if any) as any order dismissing an application under section 46(1) becomes final.
- (4) Where an application for an order under subsection (1) is dismissed by the court, the court shall make an order—
 - (a) declaring that the landlord’s counter-notice shall be of no effect, and
 - (b) requiring the landlord to give a further counter-notice to the tenant by such date as is specified in the order.
- (5) Where—
 - (a) the landlord has given such a counter-notice as is mentioned in subsection (1), but
 - (b) either—
 - (i) no application for an order under that subsection is made within the period referred to in subsection (3), or
 - (ii) such an application is so made but is subsequently withdrawn,
 then (subject to subsection (7)), the landlord shall give a further counter-notice to the tenant within the period of two months beginning with the appropriate date.
- (6) In subsection (5) “the appropriate date” means—

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- (a) if subsection (5)(b)(i) applies, the date immediately following the end of the period referred to in subsection (3); and
 - (b) if subsection (5)(b)(ii) applies, the date of withdrawal of the application.
- (7) Subsection (5) shall not apply if any application has been made by the landlord for an order under section 46(1).
- (8) Subsection (3) of section 45 shall apply to any further counter-notice required to be given by the landlord under subsection (4) or (5) above as if it were a counter-notice under that section complying with the requirement set out in subsection (2)(a) of that section.

48 Applications where terms in dispute or failure to enter into new lease.

- (1) Where the landlord has given the tenant—
- (a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or
 - (b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),
- but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.
- (2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.
- (3) Where—
- (a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and
 - (b) all the terms of acquisition have been either agreed between those persons or determined by a leasehold valuation tribunal under subsection (1),
- but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.
- (4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).
- (5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).
- (6) For the purposes of this section the appropriate period is—
- (a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or
 - (b) where all or any of those terms have been determined by a leasehold valuation tribunal under subsection (1)—
 - (i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

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(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter “the terms of acquisition”, in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

49 Applications where landlord fails to give counter-notice or further counter-notice.

- (1) Where the tenant’s notice has been given in accordance with section 42 but—
- (a) the landlord has failed to give the tenant a counter-notice in accordance with section 45(1), or
 - (b) if required to give a further counter-notice to the tenant by or by virtue of section 46(4) or section 47(4) or (5), the landlord has failed to comply with that requirement,

the court may, on the application of the tenant, make an order determining, in accordance with the proposals contained in the tenant’s notice, the terms of acquisition.

- (2) The court shall not make such an order on an application made by virtue of paragraph (a) of subsection (1) unless it is satisfied—
- (a) that on the relevant date the tenant had the right to acquire a new lease of his flat; and
 - (b) if applicable, that the requirements of Part I of Schedule 11 were complied with as respects the giving of copies of the tenant’s notice.

(3) Any application for an order under subsection (1) must be made not later than the end of the period of six months beginning with the date by which the counter-notice or further counter-notice referred to in that subsection was required to be given.

- (4) Where—
- (a) the terms of acquisition have been determined by an order of the court under this section, but
 - (b) a new lease has not been entered into in pursuance of the tenant’s notice by the end of the appropriate period specified in subsection (7),

the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(5) Any such order may provide for the tenant’s notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (7).

(6) Any application for an order under subsection (4) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (7).

- (7) For the purposes of this section the appropriate period is—
- (a) the period of two months beginning with the date when the order of the court under subsection (1) becomes final, or
 - (b) such other period as may have been fixed by the court when making that order.

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50 Applications where landlord cannot be found.

(1) Where—

- (a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but
- (b) the landlord cannot be found or his identity cannot be ascertained,

the court may, on the application of the tenant, make a vesting order under this subsection.

(2) Where—

- (a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and
- (b) paragraph (b) of that subsection does not apply, but
- (c) a copy of a notice of that claim cannot be given in accordance with Part I of Schedule 11 to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained,

the court may, on the application of the tenant, make an order dispensing with the need to give a copy of such a notice to that person.

(3) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied—

- (a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and
- (b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

(4) Before making any such order the court may require the tenant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the person in question; and if, after an application is made for a vesting order under subsection (1) and before any lease is executed in pursuance of the application, the landlord is traced, then no further proceedings shall be taken with a view to a lease being so executed, but (subject to subsection (5))—

- (a) the rights and obligations of all parties shall be determined as if the tenant had, at the date of the application, duly given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat; and
- (b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Chapter or of regulations made under this Part.

(5) An application for a vesting order under subsection (1) may be withdrawn at any time before execution of a lease under section 51(3) and, after it is withdrawn, subsection (4)(a) above shall not apply; but where any step is taken (whether by the landlord or the tenant) for the purpose of giving effect to subsection (4)(a) in the case of any application, the application shall not afterwards be withdrawn except—

- (a) with the consent of the landlord, or
- (b) by leave of the court,

and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the tenant in consequence of the tracing of the landlord.

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- (6) Where an order has been made under subsection (2) dispensing with the need to give a copy of a notice under section 42 to a particular person with respect to any flat, then if—
 - (a) a notice is subsequently given under that section with respect to that flat, and
 - (b) in reliance on the order, a copy of the notice is not to be given to that person, the notice must contain a statement of the effect of the order.
- (7) Where a notice under section 42 contains such a statement in accordance with subsection (6) above, then in determining for the purposes of any provision of this Chapter whether the requirements of Part I of Schedule 11 have been complied with in relation to the notice, those requirements shall be deemed to have been complied with so far as relating to the giving of a copy of the notice to the person referred to in subsection (6) above.

51 Supplementary provisions relating to vesting orders under section 50(1).

- (1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.
- (2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.
- (3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which—
 - (a) is in a form approved by a leasehold valuation tribunal, and
 - (b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below);and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.
- (4) In connection with the determination by a leasehold valuation tribunal of any question as to the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.
- (5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of—
 - (a) such amount as may be determined by a leasehold valuation tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;
 - (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and

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- (c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).
- (6) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).
- (7) Subject to subsection (8), the following provisions, namely—
 - (a) sections 57 to 59, and
 - (b) section 61 and Schedule 14,
 shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56; and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.
- (8) In its application to a lease granted in accordance with this section—
 - (a) section 57 shall have effect as if—
 - (i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and
 - (ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and
 - (b) section 58 shall have effect as if—
 - (i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and
 - (ii) subsections (6)(a) and (7) were omitted.

Termination or suspension of acquisition procedures

52 Withdrawal by tenant from acquisition of new lease.

- (1) At any time before a new lease is entered into in pursuance of the tenant's notice, the tenant may withdraw that notice by the giving of a notice to that effect under this section ("a notice of withdrawal").
- (2) A notice of withdrawal must be given—
 - (a) to the landlord for the purposes of this Chapter;
 - (b) to every other landlord (as defined by section 40(4)); and
 - (c) to any third party to the tenant's lease.
- (3) Where a notice of withdrawal is given by the tenant to any person in accordance with subsection (2), the tenant's liability under section 60 for costs incurred by that person shall be a liability for costs incurred by him down to the time when the notice is given to him.

53 Deemed withdrawal of tenant's notice.

- (1) Where—

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- (a) in a case to which subsection (1) of section 48 applies, no application under that subsection is made within the period specified in subsection (2) of that section, or
- (b) in a case to which subsection (3) of that section applies, no application for an order under that subsection is made within the period specified in subsection (5) of that section,

the tenant's notice shall be deemed to have been withdrawn at the end of the period referred to in paragraph (a) or (b) above (as the case may be).

- (2) Where, in a case falling within paragraph (a) or (b) of subsection (1) of section 49, no application for an order under that subsection is made within the period specified in subsection (3) of that section, the tenant's notice shall be deemed to have been withdrawn at the end of that period.
- (3) Where, in a case to which subsection (4) of section 49 applies, no application for an order under that subsection is made within the period specified in subsection (6) of that section, the tenant's notice shall be deemed to have been withdrawn at the end of that period.
- (4) The following provisions, namely—
 - (a) section 43(3),
 - (b) section 48(4), and
 - (c) section 49(5),

also make provision for a notice under section 42 to be deemed to have been withdrawn at a particular time.

54 Suspension of tenant's notice during currency of claim under Chapter I.

- (1) If, at the time when the tenant's notice is given—
 - (a) a notice has been given under section 13 with respect to any premises containing the tenant's flat, and
 - (b) the relevant claim under Chapter I is still current,
 the operation of the tenant's notice shall be suspended during the currency of that claim; and so long as it is so suspended no further notice shall be given, and no application shall be made, under this Chapter with a view to resisting or giving effect to the tenant's claim.
- (2) If, at any time when the tenant's notice continues in force, a notice is given under section 13 with respect to any premises containing the tenant's flat, then, as from the date which is the relevant date for the purposes of Chapter I in relation to that notice under section 13, the operation of the tenant's notice shall be suspended during the currency of the relevant claim under Chapter I; and so long as it is so suspended no further notice shall be given, and no application shall be made or proceeded with, under this Chapter with a view to resisting or giving effect to the tenant's claim.
- (3) Where the operation of the tenant's notice is suspended by virtue of subsection (1) or (2), the landlord shall give the tenant a notice informing him of its suspension—
 - (a) (if it is suspended by virtue of subsection (1)) not later than the date specified in the tenant's notice in pursuance of section 42(3)(f); or
 - (b) (if it is suspended by virtue of subsection (2)) as soon as possible after the date referred to in that subsection;

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and any such notice shall in addition inform the tenant of the date on which the notice under section 13 was given and of the name and address of the nominee purchaser for the time being appointed for the purposes of section 15 in relation to the relevant claim under Chapter I.

(4) Where—

- (a) the operation of the tenant’s notice is suspended by virtue of subsection (1), and
- (b) as a result of the relevant claim under Chapter I ceasing to be current, the operation of the tenant’s notice subsequently ceases to be so suspended and the tenant’s notice thereupon continues in force in accordance with section 42(8), then, as from the date when that claim ceases to be current (“the termination date”), this Chapter shall apply as if there were substituted for the date specified in the tenant’s notice in pursuance of section 42(3)(f) such date as results in the period of time intervening between the termination date and that date being equal to the period of time intervening between the relevant date and the date originally so specified.

(5) Where—

- (a) the operation of the tenant’s notice is suspended by virtue of subsection (2), and
- (b) its suspension began in circumstances falling within subsection (6), and
- (c) as a result of the relevant claim under Chapter I ceasing to be current, the operation of the tenant’s notice subsequently ceases to be so suspended and the tenant’s notice thereupon continues in force in accordance with section 42(8), any relevant period shall be deemed to have begun on the date when that claim ceases to be current.

(6) The circumstances referred to in subsection (5)(b) are that the suspension of the operation of the tenant’s notice began—

- (a) before the date specified in the tenant’s notice in pursuance of section 42(3)(f) and before the landlord had given the tenant a counter-notice under section 45; or
- (b) after the landlord had given the tenant a counter-notice under section 45 complying with the requirement set out in subsection (2)(b) or (c) of that section but—
 - (i) before any application had been made for an order under section 46(1) or 47(1), and
 - (ii) before the period for making any such application had expired; or
- (c) after an order had been made under section 46(4) or 47(4) but—
 - (i) before the landlord had given the tenant a further counter-notice in accordance with the order, and
 - (ii) before the period for giving any such counter-notice had expired.

(7) Where—

- (a) the operation of the tenant’s notice is suspended by virtue of subsection (2), and
- (b) its suspension began otherwise than in circumstances falling within subsection (6), and
- (c) as a result of the relevant claim under Chapter I ceasing to be current, the operation of the tenant’s notice subsequently ceases to be so suspended and the tenant’s notice thereupon continues in force in accordance with section 42(8),

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any relevant period shall be deemed to have begun on the date on which the tenant is given a notice under subsection (8) below or, if earlier, the date on which the tenant gives the landlord a notice informing him of the circumstances by virtue of which the operation of the tenant's notice has ceased to be suspended.

- (8) Where subsection (4), (5) or (7) applies, the landlord shall, as soon as possible after becoming aware of the circumstances by virtue of which the operation of the tenant's notice has ceased to be suspended as mentioned in that subsection, give the tenant a notice informing him that, as from the date when the relevant claim under Chapter I ceased to be current, the operation of his notice is no longer suspended.
- (9) Subsection (8) shall not, however, require the landlord to give any such notice if he has received a notice from the tenant under subsection (7).
- (10) In subsections (5) and (7) "relevant period" means any period which—
- (a) is prescribed by or under this Part for the giving of any notice, or the making of any application, in connection with the tenant's notice; and
 - (b) was current at the time when the suspension of the operation of the tenant's notice began.
- (11) For the purposes of this section—
- (a) "the relevant claim under Chapter I", in relation to a notice under section 13, means the claim in respect of which that notice is given; and
 - (b) any such claim is current if—
 - (i) that notice continues in force in accordance with section 13(11), or
 - (ii) a binding contract entered into in pursuance of that notice remains in force, or
 - (iii) where an order has been made under section 24(4)(a) or (b) or 25(6) (a) or (b) with respect to any such premises as are referred to in subsection (1) or (2) above (as the case may be), any interests which by virtue of the order fall to be vested in the nominee purchaser for the purposes of Chapter I have yet to be so vested.

55 Effect on tenant's notice of institution of compulsory acquisition procedures.

- (1) A notice given by a tenant under section 42 shall be of no effect if on the relevant date—
- (a) any person or body of persons who has or have been, or could be, authorised to acquire the whole or part of the tenant's flat compulsorily for any purpose has or have, with a view to its acquisition for that purpose—
 - (i) served notice to treat on the landlord or the tenant, or
 - (ii) entered into a contract for the purchase of the interest of either of them in the flat or part of it, and
 - (b) the notice to treat or contract remains in force.
- (2) A notice given by a tenant under section 42 shall cease to have effect if, before a new lease is entered into in pursuance of it, any such person or body of persons as is mentioned in subsection (1) serves or serve notice to treat as mentioned in that subsection.
- (3) Where subsection (2) applies in relation to a notice given by a tenant under section 42, then on the occasion of the compulsory acquisition in question the compensation payable in respect of any interest in the tenant's flat (whether or not the one to which

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the relevant notice to treat relates) shall be determined on the basis of the value of the interest subject to and with the benefit of the rights and obligations arising from the tenant's notice and affecting that interest.

Grant of new lease

56 Obligation to grant new lease.

- (1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—
 - (a) in substitution for the existing lease, and
 - (b) on payment of the premium payable under Schedule 13 in respect of the grant, a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.
- (2) In addition to any such premium there shall be payable by the tenant in connection with the grant of any such new lease such amounts to the owners of any intermediate leasehold interests (within the meaning of Schedule 13) as are so payable by virtue of that Schedule.
- (3) A tenant shall not be entitled to require the execution of any such new lease otherwise than on tendering to the landlord, in addition to the amount of any such premium and any other amounts payable by virtue of Schedule 13, the amount so far as ascertained—
 - (a) of any sums payable by him by way of rent or recoverable from him as rent in respect of the flat up to the date of tender;
 - (b) of any sums for which at that date the tenant is liable under section 60 in respect of costs incurred by any relevant person (within the meaning of that section); and
 - (c) of any other sums due and payable by him to any such person under or in respect of the existing lease;

and, if the amount of any such sums is not or may not be fully ascertained, on offering reasonable security for the payment of such amount as may afterwards be found to be payable in respect of them.
- (4) To the extent that any amount tendered to the landlord in accordance with subsection (3) is an amount due to a person other than the landlord, that amount shall be payable to that person by the landlord; and that subsection has effect subject to paragraph 7(2) of Schedule 11.
- (5) No provision of any lease prohibiting, restricting or otherwise relating to a sub-demise by the tenant under the lease shall have effect with reference to the granting of any lease under this section.
- (6) It is hereby declared that nothing in any of the provisions specified in paragraph 1(2) of Schedule 10 (which impose requirements as to consent or consultation or other restrictions in relation to disposals falling within those provisions) applies to the granting of any lease under this section.

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- (7) For the purposes of subsection (6), paragraph 1(2) of Schedule 10 has effect as if the reference to section 79(2) of the ^{M1}Housing Act 1988 (which is not relevant in the context of subsection (6)) were omitted.

Marginal Citations

M1 1988 c.50.

57 Terms on which new lease is to be granted.

- (1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1)), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account—
- of the omission from the new lease of property included in the existing lease but not comprised in the flat;
 - of alterations made to the property demised since the grant of the existing lease; or
 - in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.
- (2) Where during the continuance of the new lease the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance—
- the new lease may require payments to be made by the tenant (whether as rent or otherwise) in consideration of those matters or in respect of the cost thereof to the landlord; and
 - (if the terms of the existing lease do not include any provision for the making of any such payments by the tenant or include provision only for the payment of a fixed amount) the terms of the new lease shall make, as from the term date of the existing lease, such provision as may be just—
 - for the making by the tenant of payments related to the cost from time to time to the landlord, and
 - for the tenant's liability to make those payments to be enforceable by distress, re-entry or otherwise in like manner as if it were a liability for payment of rent.
- (3) Subject to subsection (4), provision shall be made by the terms of the new lease or by an agreement collateral thereto for the continuance, with any suitable adaptations, of any agreement collateral to the existing lease.
- (4) For the purposes of subsections (1) and (3) there shall be excluded from the new lease any term of the existing lease or of any agreement collateral thereto in so far as that term—
- provides for or relates to the renewal of the lease,
 - confers any option to purchase or right of pre-emption in relation to the flat demised by the existing lease, or
 - provides for the termination of the existing lease before its term date otherwise than in the event of a breach of its terms;

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and there shall be made in the terms of the new lease or any agreement collateral thereto such modifications as may be required or appropriate to take account of the exclusion of any such term.

- (5) Where the new lease is granted after the term date of the existing lease, then on the grant of the new lease there shall be payable by the tenant to the landlord, as an addition to the rent payable under the existing lease, any amount by which, for the period since the term date or the relevant date (whichever is the later), the sums payable to the landlord in respect of the flat (after making any necessary apportionment) for the matters referred to in subsection (2) fall short in total of the sums that would have been payable for such matters under the new lease if it had been granted on that date; and section 56(3)(a) shall apply accordingly.
- (6) Subsections (1) to (5) shall have effect subject to any agreement between the landlord and tenant as to the terms of the new lease or any agreement collateral thereto; and either of them may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as—
- (a) it is necessary to do so in order to remedy a defect in the existing lease; or
 - (b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.
- (7) The terms of the new lease shall—
- (a) make provision in accordance with section 59(3); and
 - (b) reserve to the person who is for the time being the tenant's immediate landlord the right to obtain possession of the flat in question in accordance with section 61.
- [^{F16}(8) In granting the new lease the landlord shall not be bound to enter into any covenant for title beyond—
- (a) those implied from the grant, and
 - (b) those implied under Part I of the Law of Property (Miscellaneous Provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee, but not including (in the case of an underlease) the covenant in section 4(1)(b) of that Act (compliance with terms of lease);
- and in the absence of agreement to the contrary the landlord shall be entitled to be indemnified by the tenant in respect of any costs incurred by him in complying with the covenant implied by virtue of section 2(1)(b) of that Act (covenant for further assurance).
- (8A) A person entering into any covenant required of him as landlord (under subsection (8) or otherwise) shall be entitled to limit his personal liability to breaches of that covenant for which he is responsible.]
- (9) Where any person—
- (a) is a third party to the existing lease, or
 - (b) (not being the landlord or tenant) is a party to any agreement collateral thereto,
- then (subject to any agreement between him and the landlord and the tenant) he shall be made a party to the new lease or (as the case may be) to an agreement collateral thereto, and shall accordingly join in its execution; but nothing in this section has effect so as to require the new lease or (as the case may be) any such collateral agreement

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to provide for him to discharge any function at any time after the term date of the existing lease.

(10) Where—

- (a) any such person (“the third party”) is in accordance with subsection (9) to discharge any function down to the term date of the existing lease, but
- (b) it is necessary or expedient in connection with the proper enjoyment by the tenant of the property demised by the new lease for provision to be made for the continued discharge of that function after that date,

the new lease or an agreement collateral thereto shall make provision for that function to be discharged after that date (whether by the third party or by some other person).

(11) The new lease shall contain a statement that it is a lease granted under section 56; and any such statement shall comply with such requirements as may be prescribed by rules made in pursuance of section 144 of the ^{M2}Land Registration Act 1925 (power to make general rules).

Textual Amendments

F16 S. 57(8)(8A) substituted for s. 57(8) (1.7.1995) by 1994 c. 36, s. 21(1), **Sch. 1 para. 12(2)** (with s. 20); S.I. 1995/1317, **art.2**

Marginal Citations

M2 1925 c. 21.

58 Grant of new lease where interest of landlord or tenant is subject to a mortgage.

(1) Subject to subsection (2), a qualifying tenant shall be entitled to be granted a new lease under section 56 despite the fact that the grant of the existing lease was subsequent to the creation of a mortgage on the landlord’s interest and not authorised as against the persons interested in the mortgage; and a lease granted under that section—

- (a) shall be deemed to be authorised as against the persons interested in any mortgage on the landlord’s interest (however created or arising), and
- (b) shall be binding on those persons.

(2) A lease granted under section 56 shall not, by virtue of subsection (1) above, be binding on the persons interested in any such mortgage if the existing lease—

- (a) is granted after the commencement of this Chapter, and
- (b) being granted subsequent to the creation of the mortgage, would not, apart from that subsection, be binding on the persons interested in the mortgage.

(3) Where—

- (a) a lease is granted under section 56, and
- (b) any person having a mortgage on the landlord’s interest is thereby entitled to possession of the documents of title relating to that interest,

the landlord shall, within one month of the execution of the lease, deliver to that person a counterpart of it duly executed by the tenant.

(4) Where the existing lease is, immediately before its surrender on the grant of a lease under section 56, subject to any mortgage, the new lease shall take effect subject to the mortgage in substitution for the existing lease; and the terms of the mortgage, as

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set out in the instrument creating or evidencing it, shall accordingly apply in relation to the new lease in like manner as they applied in relation to the existing lease.

(5) Where—

- (a) a lease granted under section 56 takes effect subject to any such subsisting mortgage on the existing lease, and
- (b) at the time of execution of the new lease the person having the mortgage is thereby entitled to possession of the documents of title relating to the existing lease,

he shall be similarly entitled to possession of the documents of title relating to the new lease; and the tenant shall deliver the new lease to him within one month of the date on which the lease is received from Her Majesty's Land Registry following its registration.

(6) Where—

- (a) the landlord fails to deliver a counterpart of the new lease in accordance with subsection (3), or
- (b) the tenant fails to deliver the new lease in accordance with subsection (5),

the instrument creating or evidencing the mortgage in question shall apply as if the obligation to deliver a counterpart or (as the case may be) deliver the lease were included in the terms of the mortgage as set out in that instrument.

(7) A landlord granting a lease under section 56 shall be bound to take such steps as may be necessary to secure that the lease is not liable in accordance with subsection (2) to be defeated by persons interested in a mortgage on his interest; but a landlord is not obliged, in order to grant a lease for the purposes of that section, to acquire a better title than he has or could require to be vested in him.

[^{F17}58A Priority of interests on grant of new lease.

(1) Where a lease granted under section 56 takes effect subject to two or more interests to which the existing lease was subject immediately before its surrender, the interests shall have the same priority in relation to one another on the grant of the new lease as they had immediately before the surrender of the existing lease.

(2) Subsection (1) is subject to agreement to the contrary.

(3) Where a person who is entitled on the grant of a lease under section 56 to rights of occupation in relation to the flat comprised in that lease was entitled immediately before the surrender of the existing lease to rights of occupation in relation to the flat comprised in that lease, the rights to which he is entitled on the grant of the new lease shall be treated as a continuation of the rights to which he was entitled immediately before the surrender of the existing lease.

(4) In this section—

“the existing lease”, in relation to a lease granted under section 56, means the lease surrendered on the grant of the new lease, and

“rights of occupation” has the same meaning as in the ^{M3}Matrimonial Homes Act 1983.]

Textual Amendments

F17 S. 58A inserted (1.10.1996) by 1996 c. 52, s.117; S.I. 1996/2212, art. 2(2)

Status: Point in time view as at 26/07/2002.

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Marginal Citations

M3 1983 c. 19.

59 Further renewal, but no security of tenure, after grant of new lease.

- (1) The right to acquire a new lease under this Chapter may be exercised in relation to a lease of a flat despite the fact that the lease is itself a lease granted under section 56; and the provisions of this Chapter shall, with any necessary modifications, apply for the purposes of or in connection with any claim to exercise that right in relation to a lease so granted as they apply for the purposes of or in connection with any claim to exercise that right in relation to a lease which has not been so granted.
- (2) Where a lease has been granted under section 56—
 - (a) none of the statutory provisions relating to security of tenure for tenants shall apply to the lease;
 - (b) after the term date of the lease none of the following provisions, namely—
 - (i) section 1 of the ^{M4}Landlord and Tenant Act 1954 or Schedule 10 to the ^{M5}Local Government and Housing Act 1989 (which make provision for security of tenure on the ending of long residential tenancies), or
 - (ii) Part II of that Act of 1954 (business tenancies),
 shall apply to any sub-lease directly or indirectly derived out of the lease; and
 - (c) after that date no person shall be entitled by virtue of any such sub-lease to retain possession under—
 - (i) Part VII of the ^{M6}Rent Act 1977 (security of tenure for protected tenancies etc.) or any enactment applying or extending that Part of that Act,
 - (ii) the ^{M7}Rent (Agriculture) Act 1976, or
 - (iii) Part I of the ^{M8}Housing Act 1988 (assured tenancies etc.).
- (3) Where a lease has been granted under section 56, no long lease created immediately or derivatively by way of sub-demise under the lease shall confer on the sub-tenant, as against the tenant's landlord, any right under this Chapter to acquire a new lease (and for this purpose "long lease" shall be construed in accordance with section 7).
- (4) Any person who—
 - (a) grants a sub-lease to which subsection (2)(b) and (c) will apply, or
 - (b) negotiates with a view to the grant of such a sub-lease by him or by a person for whom he is acting as agent,
 shall inform the other party that the sub-lease is to be derived out of a lease granted under section 56, unless either he knows that the other party is aware of it or he himself is unaware of it.
- (5) Where any lease contains a statement to the effect that it is a lease granted under section 56, the statement shall be conclusive for the purposes of subsections (2) to (4) in favour of any person who is not a party to the lease, unless the statement appears from the lease to be untrue.

Marginal Citations

M4 1954 c. 56.

Status: Point in time view as at 26/07/2002.

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M5	1989 c. 42.
M6	1977 c. 42.
M7	1976 c. 80.
M8	1988 c. 50.

Costs incurred in connection with new lease

60 Costs incurred in connection with new lease to be paid by tenant.

- (1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—
 - (a) any investigation reasonably undertaken of the tenant’s right to a new lease;
 - (b) any valuation of the tenant’s flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
 - (c) the grant of a new lease under that section;
 but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.
- (2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
- (3) Where by virtue of any provision of this Chapter the tenant’s notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant’s liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.
- (4) A tenant shall not be liable for any costs under this section if the tenant’s notice ceases to have effect by virtue of section 47(1) or 55(2).
- (5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.
- (6) In this section “relevant person”, in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant’s lease.

Landlord’s right to terminate new lease

61 Landlord’s right to terminate new lease on grounds of redevelopment.

- (1) Where a lease of a flat (“the new lease”) has been granted under section 56 but the court is satisfied, on an application made by the landlord—
 - (a) that for the purposes of redevelopment the landlord intends—
 - (i) to demolish or reconstruct, or

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- (ii) to carry out substantial works of construction on,
the whole or a substantial part of any premises in which the flat is contained,
and
- (b) that he could not reasonably do so without obtaining possession of the flat,
the court shall by order declare that the landlord is entitled as against the tenant to obtain possession of the flat and the tenant is entitled to be paid compensation by the landlord for the loss of the flat.
- (2) An application for an order under this section may be made—
- (a) at any time during the period of 12 months ending with the term date of the lease in relation to which the right to acquire a new lease was exercised; and
- (b) at any time during the period of five years ending with the term date of the new lease.
- (3) Where the new lease is not the first lease to be granted under section 56 in respect of a flat, subsection (2) shall apply as if paragraph (b) included a reference to the term date of any previous lease granted under that section in respect of the flat, but paragraph (a) shall be taken to be referring to the term date of the lease in relation to which the right to acquire a new lease was first exercised.
- (4) Where an order is made under this section, the new lease shall determine, and compensation shall become payable, in accordance with Schedule 14 to this Act; and the provisions of that Schedule shall have effect as regards the measure of compensation payable by virtue of any such order and the effects of any such order where there are sub-leases, and as regards other matters relating to orders and applications under this section.
- (5) Except in subsection (1)(a) or (b), any reference in this section to the flat held by the tenant under the new lease includes any premises let with the flat under that lease.

^{F18} *Landlord's right to compensation in relation to ineffective claims*

Textual Amendments

F18 Ss. 61A, 61B and cross heading inserted (1.10.1996) by 1996 c. 52, s. 116, Sch. 11 para. 3(1); S.I. 1996/2212, art. 2(2)

^{F19} **61A Compensation for postponement of termination in connection with ineffective claims.**

- (1) This section applies where, on or after 15th January 1999—
- (a) a tenant of a flat makes a claim to acquire a new lease of the flat, and
- (b) the claim is not made at least two years before the term date of the lease in respect of which the claim is made (“the existing lease”).
- (2) The tenant shall be liable to pay compensation if the claim is not effective and—
- (a) the making of the claim caused a notice served under paragraph 4(1) of Schedule 10 to the ^{M9}Local Government and Housing Act 1989 to cease to have effect and the date on which the claim ceases to have effect is later than four months before the termination date specified in the notice,

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- (b) the making of the claim prevented the service of an effective notice under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989 (but did not cause a notice served under that provision to cease to have effect) and the date on which the claim ceases to have effect is a date later than six months before the term date of the existing lease, or
 - (c) the existing lease is continued under paragraph 5(1) of Schedule 12 by virtue of the claim.
- (3) Compensation under subsection (2) shall become payable at the end of the appropriate period and be the right of the person who is the tenant's immediate landlord at that time.
- (4) The amount which the tenant is liable to pay under subsection (2) shall be equal to the difference between—
- (a) the rent for the appropriate period under the existing lease, and
 - (b) the rent which might reasonably be expected to be payable for that period were the property to which the existing lease relates let for a term equivalent to that period on the open market by a willing landlord on the following assumptions—
 - (i) that no premium is payable in connection with the letting,
 - (ii) that the letting confers no security of tenure, and
 - (iii) that, except as otherwise provided by this paragraph, the letting is on the same terms as the existing lease.
- (5) For the purposes of subsections (3) and (4), the appropriate period is—
- (a) in a case falling within paragraph (a) of subsection (2), the period—
 - (i) beginning with the termination date specified in the notice mentioned in that paragraph, and
 - (ii) ending with the earliest date of termination which could have been specified in a notice under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989 served immediately after the date on which the claim ceases to have effect, or, if the existing lease is terminated before then, with the date on which it is terminated;
 - (b) in a case falling within paragraph (b) of subsection (2), the period—
 - (i) beginning with the later of six months from the date on which the claim is made and the term date of the existing lease, and
 - (ii) ending six months after the date on which the claim ceases to have effect, or, if the existing lease is terminated before then, with the date of its termination; and
 - (c) in a case falling within paragraph (c) of subsection (2), the period for which the existing lease is continued under paragraph 5(1) of Schedule 12.
- (6) For the purposes of subsection (2), a claim to a new lease is not effective if it ceases to have effect for any reason other than—
- (a) the application of section 47(1) or 55(2), or
 - (b) the acquisition of the new lease in pursuance of the claim.
- (7) For the purposes of this section—
- (a) references to a claim to acquire a new lease shall be taken as references to a notice given, or purporting to be given (whether by a qualifying tenant or not), under section 42, and

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- (b) references to the date on which a claim ceases to have effect shall, in the case of a claim made by a notice which is not a valid notice under section 42, be taken as references to the date on which the notice is set aside by the court or is withdrawn or would, if valid, cease to have effect or be deemed to have been withdrawn, that date being taken, where the notice is set aside, or would, if valid, cease to have effect, in consequence of a court order, to be the date when the order becomes final.]

Textual Amendments

F19 Ss. 61A, 61B and cross heading inserted (1.10.1996) by 1996 c. 52, s. 116, **Sch. 11 para. 3(1)**; S.I. 1996/2212, **art. 2(2)**

Marginal Citations

M9 1989 c. 42.

[^{F20}61B Modification of section 61A where change in immediate reversion.

- (1) Where a tenant's liability to pay compensation under section 61A relates to a period during which there has been a change in the interest immediately expectant on the determination of his lease, that section shall have effect with the following modifications.
- (2) For subsections (3) and (4) there shall be substituted—
- (“ Compensation under subsection (2) shall become payable at the end of the appropriate period and there shall be a separate right to compensation in respect of each of the interests which, during that period, have been immediately expectant on the determination of the existing lease.
- (4) Compensation under subsection (2) above shall—
- (a) in the case of the interest which is immediately expectant on the determination of the existing lease at the end of the appropriate period, be the right of the person in whom that interest is vested at that time, and
- (b) in the case of an interest which ceases during the appropriate period to be immediately expectant on the determination of the existing lease, be the right of the person in whom the interest was vested immediately before it ceased to be so expectant.
- (4A) The amount which the tenant is liable to pay under subsection (2) above in respect of any interest shall be equal to the difference between—
- (a) the rent under the existing lease for the part of the appropriate period during which the interest was immediately expectant on the determination of that lease, and
- (b) the rent which might reasonably be expected to be payable for that part of that period were the property to which the existing lease relates let for a term equivalent to that part of that period on the open market by a willing landlord on the following assumptions—
- (i) that no premium is payable in connection with the letting,
- (ii) that the letting confers no security of tenure, and
- (iii) that, except as otherwise provided by this paragraph, the letting is on the same terms as the existing lease.“

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(3) In subsection (5), for “(3) and (4)” there shall be substituted “(3) to (4A)”.]

Textual Amendments

F20 Ss. 61A, 61B and cross heading inserted (1.10.1996) by 1996 c. 52, s. 116, **Sch. 11 para. 3(1)**; S.I. 1996/2212, **art. 2(2)**

Supplemental

62 Interpretation of Chapter II.

(1) In this Chapter—

“the existing lease”, in relation to a claim by a tenant under this Chapter, means the lease in relation to which the claim is made;

“the landlord”, in relation to such a claim, has the meaning given by section 40(1);

“mortgage” includes a charge or lien;

“qualifying tenant” shall be construed in accordance with section 39(3);

“the relevant date” (unless the context otherwise requires) has the meaning given by section 39(8);

“the tenant’s notice” means the notice given under section 42;

“the terms of acquisition” shall be construed in accordance with section 48(7);

“third party”, in relation to a lease, means any person who is a party to the lease apart from the tenant under the lease and his immediate landlord.

(2) Subject to subsection (3), references in this Chapter to a flat, in relation to a claim by a tenant under this Chapter, include any garage, outhouse, garden, yard and appurtenances belonging to, or usually enjoyed with, the flat and let to the tenant with the flat on the relevant date (or, in a case where an application is made under section 50(1), on the date of the making of the application).

(3) Subsection (2) does not apply—

(a) to any reference to a flat in section 47 or 55(1); or

(b) to any reference to a flat (not falling within paragraph (a) above) which occurs in the context of a reference to any premises containing the flat.

(4) ^{F21}

Textual Amendments

F21 S. 62(4) repealed (26.7.2002 for E. and 1.1.2003 for W.) by **Commonhold and Leasehold Reform Act 2002 (c. 15)**, s. 180, **Sch. 14**; S.I. 2002/1912, **art. 2(b)(ii)**, Sch. 1 Pt. 1 (subject to Sch. 2); S. I. 2002/3012, **art. 2(b)(ii)**, Sch. 1 Pt. 1 (subject to Sch. 2)

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