

Status: Point in time view as at 01/12/1993.

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SCHEDULES

SCHEDULE 3

THE INITIAL NOTICE: SUPPLEMENTARY PROVISIONS

Commencement Information

II Sch. 3 wholly in force at 1.11.1993 see s. 188(2) and S.I. 1993/2134, art. 5

PART I

RESTRICTIONS ON PARTICIPATION BY INDIVIDUAL TENANTS, EFFECT OF CLAIMS ON OTHER NOTICES, FORFEITURES ETC.

Prior notice by tenant terminating lease

- 1 A qualifying tenant of a flat shall not participate in the giving of a relevant notice of claim if the notice is given—
- (a) after the tenant has given notice terminating the lease of the flat (other than a notice that has been superseded by the grant, express or implied, of a new tenancy); or
 - (b) during the subsistence of an agreement for the grant to the tenant of a future tenancy of the flat, where the agreement is one to which paragraph 17 of Schedule 10 to the ^{M1}Local Government and Housing Act 1989 applies.

Marginal Citations

M1 1989 c. 42.

Prior notice by landlord terminating lease

- 2 (1) A qualifying tenant of a flat shall not participate in the giving of a relevant notice of claim if the notice is given more than four months after a landlord's notice terminating the tenant's lease of the flat has been given under section 4 of the ^{M2}Landlord and Tenant Act 1954 or served under paragraph 4(1) of Schedule 10 to the ^{M3}Local Government and Housing Act 1989 (whether or not the notice has effect to terminate the lease).
- (2) Where in the case of any qualifying tenant of a flat—
- (a) any such landlord's notice is given or served as mentioned in subparagraph (1), but
 - (b) that notice was not given or served more than four months before the date when a relevant notice of claim is given,

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the landlord's notice shall cease to have effect on that date.

- (3) If—
- (a) any such landlord's notice ceases to have effect by virtue of sub-paragraph (2), but
 - (b) the claim made in pursuance of the relevant notice of claim is not effective, then sub-paragraph (4) shall apply to any landlord's notice terminating the tenant's lease of the flat which—
 - (i) is given under section 4 of the Landlord and Tenant Act 1954 or served under paragraph 4(1) of Schedule 10 to the Local Government and Housing Act 1989, and
 - (ii) is so given or served within one month after the expiry of the period of currency of that claim.
- (4) Where this sub-paragraph applies to a landlord's notice, the earliest date which may be specified in the notice as the date of termination shall be—
- (a) in the case of a notice given under section 4 of that Act of 1954—
 - (i) the date of termination specified in the previous notice, or
 - (ii) the date of expiry of the period of three months beginning with the date of the giving of the new notice,
 whichever is the later; or
 - (b) in the case of a notice served under paragraph 4(1) of Schedule 10 to that Act of 1989—
 - (i) the date of termination specified in the previous notice, or
 - (ii) the date of expiry of the period of four months beginning with the date of service of the new notice,
 whichever is the later.
- (5) Where—
- (a) by virtue of sub-paragraph (4) a landlord's notice specifies as the date of termination of a lease a date earlier than six months after the date of the giving of the notice, and
 - (b) the notice proposes a statutory tenancy,
- section 7(2) of the ^{M4}Landlord and Tenant Act 1954 shall apply in relation to the notice with the substitution, for references to the period of two months ending with the date of termination specified in the notice and the beginning of that period, of references to the period of three months beginning with the date of the giving of the notice and the end of that period.

Marginal Citations

M2 1954 c. 56.
M3 1989 c. 42.
M4 1954 c. 56.

Orders for possession and pending proceedings for forfeiture etc.

- 3 (1) A qualifying tenant of a flat shall not participate in the giving of a relevant notice of claim if at the time when it is given he is obliged to give up possession of his

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flat in pursuance of an order of a court or will be so obliged at a date specified in such an order.

- (2) Except with the leave of the court, a qualifying tenant of a flat shall not participate in the giving of a relevant notice of claim at a time when any proceedings are pending to enforce a right of re-entry or forfeiture terminating his lease of the flat.
- (3) Leave shall only be granted under sub-paragraph (2) if the court is satisfied that the tenant does not wish to participate in the giving of such a notice of claim solely or mainly for the purpose of avoiding the consequences of the breach of the terms of his lease in respect of which proceedings are pending.
- (4) If—
 - (a) leave is so granted, and
 - (b) a relevant notice of claim is given,the tenant's lease shall be deemed for the purposes of the claim to be a subsisting lease despite the existence of those proceedings and any order made afterwards in those proceedings; and, if the claim is effective, the court in which those proceedings were brought may set aside or vary any such order to such extent and on such terms as appear to that court to be appropriate.

Institution of compulsory purchase procedures

- 4 (1) A qualifying tenant of a flat shall not participate in the giving of a relevant notice of claim if on the date when the notice is given—
 - (a) any person or body of persons who has or have been, or could be, authorised to acquire the whole or part of the flat compulsorily for any purpose has or have, with a view to its acquisition for that purpose—
 - (i) served a notice to treat on that tenant, or
 - (ii) entered into a contract for the purchase of his interest in the whole or part of the flat; and
 - (b) the notice to treat or contract remains in force.
- (2) Where—
 - (a) a relevant notice of claim is given, and
 - (b) during the currency of the claim any such person or body of persons as is mentioned in sub-paragraph (1)(a) serves or serve, in relation to the flat held by a participating tenant, notice to treat as mentioned in that provision,the tenant shall cease to be entitled to participate in the making of the claim by virtue of being a qualifying tenant of the flat, and shall accordingly cease to be a participating tenant in respect of the flat.

Notice terminating lease given by tenant or landlord during currency of claim

- 5 Where a relevant notice of claim is given, any notice terminating the lease of any flat held by a participating tenant, whether it is—
 - (a) a notice given by the tenant, or
 - (b) a landlord's notice given under section 4 of the ^{M5}Landlord and Tenant Act 1954 or served under paragraph 4(1) of Schedule 10 to the ^{M6}Local Government and Housing Act 1989,shall be of no effect if it is given or served during the currency of the claim.

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Marginal Citations

M5 1954 c. 56.

M6 1989 c. 42.

Initial notice operates to prevent termination of tenant's lease by other means

- 6 (1) Where a relevant notice of claim is given, then during the currency of the claim and for three months thereafter the lease of any flat held by a participating tenant shall not terminate—
- (a) by effluxion of time, or
 - (b) in pursuance of a notice to quit given by the landlord, or
 - (c) by the termination of a superior lease;
- but if the claim is not effective, and but for this sub-paragraph the lease would have so terminated before the end of those three months, the lease shall so terminate at the end of those three months.
- (2) Sub-paragraph (1) shall not be taken to prevent an earlier termination of the lease in any manner not mentioned in that sub-paragraph, and shall not affect—
- (a) the power under section 146(4) of the ^{M7}Law of Property Act 1925 (relief against forfeiture of leases) to grant a tenant relief against the termination of a superior lease, or
 - (b) any right of the tenant to relief under section 16(2) of the ^{M8}Landlord and Tenant Act 1954 (relief where landlord proceeding to enforce covenants) or under paragraph 9 of Schedule 5 to that Act (relief in proceedings brought by superior landlord).
- (3) The reference in sub-paragraph (2) to section 16(2) of, and paragraph 9 of Schedule 5 to, the Landlord and Tenant Act 1954 includes a reference to those provisions as they apply in relation to Schedule 10 to the Local Government and Housing Act 1989.

Marginal Citations

M7 1925 c. 20.

M8 1954 c. 56.

Restriction on proceedings against participating tenant to enforce right of re-entry or forfeiture

- 7 (1) Where a relevant notice of claim is given, then during the currency of the claim—
- (a) no proceedings to enforce any right of re-entry or forfeiture terminating the lease of any flat held by a participating tenant shall be brought in any court without the leave of that court; and
 - (b) leave shall only be granted if the court is satisfied that the tenant is participating in the making of the claim solely or mainly for the purpose of avoiding the consequences of the breach of the terms of his lease in respect of which proceedings are proposed to be brought.
- (2) If leave is granted under sub-paragraph (1), the tenant shall cease to be entitled to participate in the making of the claim by virtue of being a qualifying tenant of the flat

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referred to in that sub-paragraph, and shall accordingly cease to be a participating tenant in respect of the flat.

Restrictions for purposes of s. 14(3) on tenant electing to become participating tenant during currency of claim

- 8 (1) Where a relevant notice of claim is given, a qualifying tenant of a flat may not subsequently make an election under section 14(3)—
- (a) if he was prohibited from participating in the giving of the notice by virtue of paragraph 1, 2(1), 3(1) or 4(1) above; or
 - (b) at a time when he would be so prohibited from participating in the giving of a relevant notice of claim, if such a notice were to be given then.
- (2) Where a relevant notice of claim is given, then except with the leave of the court, a qualifying tenant of a flat may not subsequently make an election under section 14(3) at a time when any proceedings are pending to enforce a right of re-entry or forfeiture terminating his lease of the flat.
- (3) Leave shall only be granted under sub-paragraph (2) if the court is satisfied that the tenant does not wish to make such an election solely or mainly for the purpose of avoiding the consequences of the breach of the terms of his lease in respect of which proceedings are pending.
- (4) If—
- (a) leave is so granted, and
 - (b) the tenant makes such an election,
- the tenant's lease shall be deemed for the purposes of the claim to be a subsisting lease despite the existence of those proceedings and any order made afterwards in those proceedings; and, if the claim is effective, the court in which those proceedings were brought may set aside or vary any such order to such extent and on such terms as appear to that court to be appropriate.
- (5) References in this paragraph and paragraph 9 below to making an election under section 14(3) are references to making such an election to participate in the making of the claim in respect of which the relevant notice of claim is given.

Effect of tenant's election on certain notices given by landlord

- 9 (1) This paragraph applies to a qualifying tenant of a flat who, following the giving of a relevant notice of claim, makes an election under section 14(3).
- (2) Where in the case of any such tenant—
- (a) a landlord's notice terminating the tenant's lease of the flat has been given or served as mentioned in paragraph 2(1) above (whether or not the notice has effect to terminate the lease), but
 - (b) that notice was not given or served more than four months before the date when the tenant makes his election under section 14(3),
- the landlord's notice shall cease to have effect on that date.
- (3) If—
- (a) any such landlord's notice ceases to have effect by virtue of sub-paragraph (2) above, but
 - (b) the claim made in pursuance of the relevant notice of claim is not effective,

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then paragraph 2(4) above shall apply to any landlord's notice terminating the tenant's lease of the flat which—

(i) is given under section 4 of the ^{M9}Landlord and Tenant Act 1954 or served under paragraph 4(1) of Schedule 10 to the ^{M10}Local Government and Housing Act 1989, and

(ii) is so given or served within one month after the expiry of the period of currency of that claim;

and paragraph 2(5) above shall apply accordingly.

(4) Paragraph 8(5) above applies for the purposes of this paragraph.

Marginal Citations

M9 1954 c. 56.

M10 1989 c. 42.

Interpretation

10 (1) For the purposes of this Part of this Schedule—

(a) “relevant notice of claim”, in relation to any flat, means a notice under section 13 in the case of which the specified premises contain that flat, and references to participating in the giving of such a notice are references to being one of the persons by whom the notice is given;

(b) references to a notice under section 13 include, in so far as the context permits, references to a notice purporting to be given under that section (whether by persons who are qualifying tenants or not);

(c) references to a claim being effective are references to a binding contract being entered into for the acquisition of the freehold and other interests falling to be acquired in pursuance of the claim or to the making of an order under section 24(4)(a) or (b) or 25(6)(a) or (b) which provides for the vesting of those interests; and

(d) references to the currency of a claim are—

(i) where the claim is made by a valid notice under section 13, references to the period during which the notice continues in force in accordance with subsection (11) of that section, or

(ii) where the claim is made by a notice which is not a valid notice under section 13, references to the period beginning with the giving of the notice and ending with the time when the notice is set aside by the court or is withdrawn or when it would (if valid) cease to have effect or be deemed to have been withdrawn.

(2) For the purposes of sub-paragraph (1)(d) the date when a notice is set aside, or would (if valid) cease to have effect, in consequence of an order of a court shall be taken to be the date when the order becomes final.

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