



# Landlord and Tenant (Covenants) Act 1995

## 1995 CHAPTER 30

### *Supplemental*

- 23 Effects of becoming subject to liability under, or entitled to benefit of, covenant etc**
- (1) Where as a result of an assignment a person becomes, by virtue of this Act, bound by or entitled to the benefit of a covenant, he shall not by virtue of this Act have any liability or rights under the covenant in relation to any time falling before the assignment.
  - (2) Subsection (1) does not preclude any such rights being expressly assigned to the person in question.
  - (3) Where as a result of an assignment a person becomes, by virtue of this Act, entitled to a right of re-entry contained in a tenancy, that right shall be exercisable in relation to any breach of a covenant of the tenancy occurring before the assignment as in relation to one occurring thereafter, unless by reason of any waiver or release it was not so exercisable immediately before the assignment.
- 24 Effects of release from liability under, or loss of benefit of, covenant**
- (1) Any release of a person from a covenant by virtue of this Act does not affect any liability of his arising from a breach of the covenant occurring before the release.
  - (2) Where—
    - (a) by virtue of this Act a tenant is released from a tenant covenant of a tenancy, and
    - (b) immediately before the release another person is bound by a covenant of the tenancy imposing any liability or penalty in the event of a failure to comply with that tenant covenant,

then, as from the release of the tenant, that other person is released from the covenant mentioned in paragraph (b) to the same extent as the tenant is released from that tenant covenant.

- (3) Where a person bound by a landlord or tenant covenant of a tenancy—
- (a) assigns the whole or part of his interest in the premises demised by the tenancy, but
  - (b) is not released by virtue of this Act from the covenant (with the result that subsection (1) does not apply),
- the assignment does not affect any liability of his arising from a breach of the covenant occurring before the assignment.
- (4) Where by virtue of this Act a person ceases to be entitled to the benefit of a covenant, this does not affect any rights of his arising from a breach of the covenant occurring before he ceases to be so entitled.

## **25 Agreement void if it restricts operation of the Act**

- (1) Any agreement relating to a tenancy is void to the extent that—
- (a) it would apart from this section have effect to exclude, modify or otherwise frustrate the operation of any provision of this Act, or
  - (b) it provides for—
    - (i) the termination or surrender of the tenancy, or
    - (ii) the imposition on the tenant of any penalty, disability or liability, in the event of the operation of any provision of this Act, or
  - (c) it provides for any of the matters referred to in paragraph (b)(i) or (ii) and does so (whether expressly or otherwise) in connection with, or in consequence of, the operation of any provision of this Act.
- (2) To the extent that an agreement relating to a tenancy constitutes a covenant (whether absolute or qualified) against the assignment, or parting with the possession, of the premises demised by the tenancy or any part of them—
- (a) the agreement is not void by virtue of subsection (1) by reason only of the fact that as such the covenant prohibits or restricts any such assignment or parting with possession; but
  - (b) paragraph (a) above does not otherwise affect the operation of that subsection in relation to the agreement (and in particular does not preclude its application to the agreement to the extent that it purports to regulate the giving of, or the making of any application for, consent to any such assignment or parting with possession).
- (3) In accordance with section 16(1) nothing in this section applies to any agreement to the extent that it is an authorised guarantee agreement; but (without prejudice to the generality of subsection (1) above) an agreement is void to the extent that it is one falling within section 16(4)(a) or (b).
- (4) This section applies to an agreement relating to a tenancy whether or not the agreement is—
- (a) contained in the instrument creating the tenancy; or
  - (b) made before the creation of the tenancy.

## 26 Miscellaneous savings etc

- (1) Nothing in this Act is to be read as preventing—
  - (a) a party to a tenancy from releasing a person from a landlord covenant or a tenant covenant of the tenancy; or
  - (b) the parties to a tenancy from agreeing to an apportionment of liability under such a covenant.
- (2) Nothing in this Act affects the operation of section 3(3A) of the Landlord and Tenant Act 1985 (preservation of former landlord's liability until tenant notified of new landlord).
- (3) No apportionment which has become binding in accordance with section 10 shall be affected by any order or decision made under or by virtue of any enactment not contained in this Act which relates to apportionment.

## 27 Notices for the purposes of the Act

- (1) The form of any notice to be served for the purposes of section 8, 10 or 17 shall be prescribed by regulations made by the Lord Chancellor by statutory instrument.
- (2) The regulations shall require any notice served for the purposes of section 8(1) or 10(1) ("the initial notice") to include—
  - (a) an explanation of the significance of the notice and the options available to the person on whom it is served;
  - (b) a statement that any objections to the proposed release, or (as the case may be) to the proposed binding effect of the apportionment, must be made by notice in writing served on the person or persons by whom the initial notice is served within the period of four weeks beginning with the day on which the initial notice is served; and
  - (c) an address in England and Wales to which any such objections may be sent.
- (3) The regulations shall require any notice served for the purposes of section 17 to include an explanation of the significance of the notice.
- (4) If any notice purporting to be served for the purposes of section 8(1), 10(1) or 17 is not in the prescribed form, or in a form substantially to the same effect, the notice shall not be effective for the purposes of section 8, section 10 or section 17 (as the case may be).
- (5) Section 23 of the Landlord and Tenant Act 1927 shall apply in relation to the service of notices for the purposes of section 8, 10 or 17.
- (6) Any statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 28 Interpretation

- (1) In this Act (unless the context otherwise requires)—
  - "assignment" includes equitable assignment and in addition (subject to section 11) assignment in breach of a covenant of a tenancy or by operation of law;
  - "authorised guarantee agreement" means an agreement which is an authorised guarantee agreement for the purposes of section 16;

“collateral agreement”, in relation to a tenancy, means any agreement collateral to the tenancy, whether made before or after its creation;

“consent” includes licence;

“covenant” includes term, condition and obligation, and references to a covenant (or any description of covenant) of a tenancy include a covenant (or a covenant of that description) contained in a collateral agreement;

“landlord” and “tenant”, in relation to a tenancy, mean the person for the time being entitled to the reversion expectant on the term of the tenancy and the person so entitled to that term respectively;

“landlord covenant”, in relation to a tenancy, means a covenant falling to be complied with by the landlord of premises demised by the tenancy;

“new tenancy” means a tenancy which is a new tenancy for the purposes of section 1;

“reversion” means the interest expectant on the termination of a tenancy;

“tenancy” means any lease or other tenancy and includes—

- (a) a sub-tenancy, and
- (b) an agreement for a tenancy,

but does not include a mortgage term;

“tenant covenant”, in relation to a tenancy, means a covenant falling to be complied with by the tenant of premises demised by the tenancy.

- (2) For the purposes of any reference in this Act to a covenant falling to be complied with in relation to a particular part of the premises demised by a tenancy, a covenant falls to be so complied with if—
  - (a) it in terms applies to that part of the premises, or
  - (b) in its practical application it can be attributed to that part of the premises (whether or not it can also be so attributed to other individual parts of those premises).
- (3) Subsection (2) does not apply in relation to covenants to pay money; and, for the purposes of any reference in this Act to a covenant falling to be complied with in relation to a particular part of the premises demised by a tenancy, a covenant of a tenancy which is a covenant to pay money falls to be so complied with if—
  - (a) the covenant in terms applies to that part; or
  - (b) the amount of the payment is determinable specifically by reference—
    - (i) to that part, or
    - (ii) to anything falling to be done by or for a person as tenant or occupier of that part (if it is a tenant covenant), or
    - (iii) to anything falling to be done by or for a person as landlord of that part (if it is a landlord covenant).
- (4) Where two or more persons jointly constitute either the landlord or the tenant in relation to a tenancy, any reference in this Act to the landlord or the tenant is a reference to both or all of the persons who jointly constitute the landlord or the tenant, as the case may be (and accordingly nothing in section 13 applies in relation to the rights and liabilities of such persons between themselves).
- (5) References in this Act to the assignment by a landlord of the reversion in the whole or part of the premises demised by a tenancy are to the assignment by him of the whole of his interest (as owner of the reversion) in the whole or part of those premises.

- (6) For the purposes of this Act—
- (a) any assignment (however effected) consisting in the transfer of the whole of the landlord's interest (as owner of the reversion) in any premises demised by a tenancy shall be treated as an assignment by the landlord of the reversion in those premises even if it is not effected by him; and
  - (b) any assignment (however effected) consisting in the transfer of the whole of the tenant's interest in any premises demised by a tenancy shall be treated as an assignment by the tenant of those premises even if it is not effected by him.

## **29 Crown application**

This Act binds the Crown.

## **30 Consequential amendments and repeals**

- (1) The enactments specified in Schedule 1 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 2 are repealed to the extent specified.
- (3) Subsections (1) and (2) do not affect the operation of—
  - (a) section 77 of, or Part IX or X of Schedule 2 to, the Law of Property Act 1925, or
  - (b) section 24(1)(b) or (2) of the Land Registration Act 1925,in relation to tenancies which are not new tenancies.
- (4) In consequence of this Act nothing in the following provisions, namely—
  - (a) sections 78 and 79 of the Law of Property Act 1925 (benefit and burden of covenants relating to land), and
  - (b) sections 141 and 142 of that Act (running of benefit and burden of covenants with reversion),shall apply in relation to new tenancies.
- (5) The Lord Chancellor may by order made by statutory instrument make, in the case of such enactments as may be specified in the order, such amendments or repeals in, or such modifications of, those enactments as appear to him to be necessary or expedient in consequence of any provision of this Act.
- (6) Any statutory instrument made under subsection (5) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **31 Commencement**

- (1) The provisions of this Act come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.
- (2) An order under this section may contain such transitional provisions and savings (whether or not involving the modification of any enactment) as appear to the Lord Chancellor necessary or expedient in connection with the provisions brought into force by the order.

**32 Short title and extent**

- (1) This Act may be cited as the Landlord and Tenant (Covenants) Act 1995.
- (2) This Act extends to England and Wales only.