



Landlord and Tenant (Covenants) Act 1995

1995 CHAPTER 30

Preliminary

1 Tenancies to which the Act applies

- (1) Sections 3 to 16 and 21 apply only to new tenancies.
- (2) Sections 17 to 20 apply to both new and other tenancies.
- (3) For the purposes of this section a tenancy is a new tenancy if it is granted on or after the date on which this Act comes into force otherwise than in pursuance of—
 - (a) an agreement entered into before that date, or
 - (b) an order of a court made before that date.
- (4) Subsection (3) has effect subject to section 20(1) in the case of overriding leases granted under section 19.
- (5) Without prejudice to the generality of subsection (3), that subsection applies to the grant of a tenancy where by virtue of any variation of a tenancy there is a deemed surrender and regrant as it applies to any other grant of a tenancy.
- (6) Where a tenancy granted on or after the date on which this Act comes into force is so granted in pursuance of an option granted before that date, the tenancy shall be regarded for the purposes of subsection (3) as granted in pursuance of an agreement entered into before that date (and accordingly is not a new tenancy), whether or not the option was exercised before that date.
- (7) In subsection (6) “option” includes right of first refusal.

2 Covenants to which the Act applies

- (1) This Act applies to a landlord covenant or a tenant covenant of a tenancy—

- (a) whether or not the covenant has reference to the subject matter of the tenancy, and
 - (b) whether the covenant is express, implied or imposed by law, but does not apply to a covenant falling within subsection (2).
- (2) Nothing in this Act affects any covenant imposed in pursuance of—
- (a) section 35 or 155 of the Housing Act 1985 (covenants for repayment of discount on early disposals);
 - (b) paragraph 1 of Schedule 6A to that Act (covenants requiring redemption of landlord's share); or
 - (c) paragraph 1 or 3 of Schedule 2 to the Housing Associations Act 1985 (covenants for repayment of discount on early disposals or for restricting disposals).

Transmission of covenants

3 Transmission of benefit and burden of covenants

- (1) The benefit and burden of all landlord and tenant covenants of a tenancy—
- (a) shall be annexed and incident to the whole, and to each and every part, of the premises demised by the tenancy and of the reversion in them, and
 - (b) shall in accordance with this section pass on an assignment of the whole or any part of those premises or of the reversion in them.
- (2) Where the assignment is by the tenant under the tenancy, then as from the assignment the assignee—
- (a) becomes bound by the tenant covenants of the tenancy except to the extent that—
 - (i) immediately before the assignment they did not bind the assignor, or
 - (ii) they fall to be complied with in relation to any demised premises not comprised in the assignment; and
 - (b) becomes entitled to the benefit of the landlord covenants of the tenancy except to the extent that they fall to be complied with in relation to any such premises.
- (3) Where the assignment is by the landlord under the tenancy, then as from the assignment the assignee—
- (a) becomes bound by the landlord covenants of the tenancy except to the extent that—
 - (i) immediately before the assignment they did not bind the assignor, or
 - (ii) they fall to be complied with in relation to any demised premises not comprised in the assignment; and
 - (b) becomes entitled to the benefit of the tenant covenants of the tenancy except to the extent that they fall to be complied with in relation to any such premises.
- (4) In determining for the purposes of subsection (2) or (3) whether any covenant bound the assignor immediately before the assignment, any waiver or release of the covenant which (in whatever terms) is expressed to be personal to the assignor shall be disregarded.
- (5) Any landlord or tenant covenant of a tenancy which is restrictive of the user of land shall, as well as being capable of enforcement against an assignee, be capable of

being enforced against any other person who is the owner or occupier of any demised premises to which the covenant relates, even though there is no express provision in the tenancy to that effect.

- (6) Nothing in this section shall operate—
- (a) in the case of a covenant which (in whatever terms) is expressed to be personal to any person, to make the covenant enforceable by or (as the case may be) against any other person; or
 - (b) to make a covenant enforceable against any person if, apart from this section, it would not be enforceable against him by reason of its not having been registered under the Land Registration Act 1925 or the Land Charges Act 1972.
- (7) To the extent that there remains in force any rule of law by virtue of which the burden of a covenant whose subject matter is not in existence at the time when it is made does not run with the land affected unless the covenantor covenants on behalf of himself and his assigns, that rule of law is hereby abolished in relation to tenancies.

4 Transmission of rights of re-entry

The benefit of a landlord's right of re-entry under a tenancy—

- (a) shall be annexed and incident to the whole, and to each and every part, of the reversion in the premises demised by the tenancy, and
- (b) shall pass on an assignment of the whole or any part of the reversion in those premises.

Release of covenants on assignment

5 Tenant released from covenants on assignment of tenancy

- (1) This section applies where a tenant assigns premises demised to him under a tenancy.
- (2) If the tenant assigns the whole of the premises demised to him, he—
- (a) is released from the tenant covenants of the tenancy, and
 - (b) ceases to be entitled to the benefit of the landlord covenants of the tenancy, as from the assignment.
- (3) If the tenant assigns part only of the premises demised to him, then as from the assignment he—
- (a) is released from the tenant covenants of the tenancy, and
 - (b) ceases to be entitled to the benefit of the landlord covenants of the tenancy, only to the extent that those covenants fall to be complied with in relation to that part of the demised premises.
- (4) This section applies as mentioned in subsection (1) whether or not the tenant is tenant of the whole of the premises comprised in the tenancy.

6 Landlord may be released from covenants on assignment of reversion

- (1) This section applies where a landlord assigns the reversion in premises of which he is the landlord under a tenancy.

- (2) If the landlord assigns the reversion in the whole of the premises of which he is the landlord—
 - (a) he may apply to be released from the landlord covenants of the tenancy in accordance with section 8; and
 - (b) if he is so released from all of those covenants, he ceases to be entitled to the benefit of the tenant covenants of the tenancy as from the assignment.
- (3) If the landlord assigns the reversion in part only of the premises of which he is the landlord—
 - (a) he may apply to be so released from the landlord covenants of the tenancy to the extent that they fall to be complied with in relation to that part of those premises; and
 - (b) if he is, to that extent, so released from all of those covenants, then as from the assignment he ceases to be entitled to the benefit of the tenant covenants only to the extent that they fall to be complied with in relation to that part of those premises.
- (4) This section applies as mentioned in subsection (1) whether or not the landlord is landlord of the whole of the premises comprised in the tenancy.

7 Former landlord may be released from covenants on assignment of reversion

- (1) This section applies where—
 - (a) a landlord assigns the reversion in premises of which he is the landlord under a tenancy, and
 - (b) immediately before the assignment a former landlord of the premises remains bound by a landlord covenant of the tenancy (“the relevant covenant”).
- (2) If immediately before the assignment the former landlord does not remain the landlord of any other premises demised by the tenancy, he may apply to be released from the relevant covenant in accordance with section 8.
- (3) In any other case the former landlord may apply to be so released from the relevant covenant to the extent that it falls to be complied with in relation to any premises comprised in the assignment.
- (4) If the former landlord is so released from every landlord covenant by which he remained bound immediately before the assignment, he ceases to be entitled to the benefit of the tenant covenants of the tenancy.
- (5) If the former landlord is so released from every such landlord covenant to the extent that it falls to be complied with in relation to any premises comprised in the assignment, he ceases to be entitled to the benefit of the tenant covenants of the tenancy to the extent that they fall to be so complied with.
- (6) This section applies as mentioned in subsection (1)—
 - (a) whether or not the landlord making the assignment is landlord of the whole of the premises comprised in the tenancy; and
 - (b) whether or not the former landlord has previously applied (whether under section 6 or this section) to be released from the relevant covenant.

8 Procedure for seeking release from a covenant under section 6 or 7

- (1) For the purposes of section 6 or 7 an application for the release of a covenant to any extent is made by serving on the tenant, either before or within the period of four weeks beginning with the date of the assignment in question, a notice informing him of—
 - (a) the proposed assignment or (as the case may be) the fact that the assignment has taken place, and
 - (b) the request for the covenant to be released to that extent.
- (2) Where an application for the release of a covenant is made in accordance with subsection (1), the covenant is released to the extent mentioned in the notice if—
 - (a) the tenant does not, within the period of four weeks beginning with the day on which the notice is served, serve on the landlord or former landlord a notice in writing objecting to the release, or
 - (b) the tenant does so serve such a notice but the court, on the application of the landlord or former landlord, makes a declaration that it is reasonable for the covenant to be so released, or
 - (c) the tenant serves on the landlord or former landlord a notice in writing consenting to the release and, if he has previously served a notice objecting to it, stating that that notice is withdrawn.
- (3) Any release from a covenant in accordance with this section shall be regarded as occurring at the time when the assignment in question takes place.
- (4) In this section—
 - (a) “the tenant” means the tenant of the premises comprised in the assignment in question (or, if different parts of those premises are held under the tenancy by different tenants, each of those tenants);
 - (b) any reference to the landlord or the former landlord is a reference to the landlord referred to in section 6 or the former landlord referred to in section 7, as the case may be; and
 - (c) “the court” means a county court.

Apportionment of liability between assignor and assignee

9 Apportionment of liability under covenants binding both assignor and assignee of tenancy or reversion

- (1) This section applies where—
 - (a) a tenant assigns part only of the premises demised to him by a tenancy;
 - (b) after the assignment both the tenant and his assignee are to be bound by a non-attributable tenant covenant of the tenancy; and
 - (c) the tenant and his assignee agree that as from the assignment liability under the covenant is to be apportioned between them in such manner as is specified in the agreement.
- (2) This section also applies where—
 - (a) a landlord assigns the reversion in part only of the premises of which he is the landlord under a tenancy;
 - (b) after the assignment both the landlord and his assignee are to be bound by a non-attributable landlord covenant of the tenancy; and

- (c) the landlord and his assignee agree that as from the assignment liability under the covenant is to be apportioned between them in such manner as is specified in the agreement.
- (3) Any such agreement as is mentioned in subsection (1) or (2) may apportion liability in such a way that a party to the agreement is exonerated from all liability under a covenant.
- (4) In any case falling within subsection (1) or (2) the parties to the agreement may apply for the apportionment to become binding on the appropriate person in accordance with section 10.
- (5) In any such case the parties to the agreement may also apply for the apportionment to become binding on any person (other than the appropriate person) who is for the time being entitled to enforce the covenant in question; and section 10 shall apply in relation to such an application as it applies in relation to an application made with respect to the appropriate person.
- (6) For the purposes of this section a covenant is, in relation to an assignment, a “non-attributable” covenant if it does not fall to be complied with in relation to any premises comprised in the assignment.
- (7) In this section “the appropriate person” means either—
 - (a) the landlord of the entire premises referred to in subsection (1)(a) (or, if different parts of those premises are held under the tenancy by different landlords, each of those landlords), or
 - (b) the tenant of the entire premises referred to in subsection (2)(a) (or, if different parts of those premises are held under the tenancy by different tenants, each of those tenants),
 depending on whether the agreement in question falls within subsection (1) or subsection (2).

10 Procedure for making apportionment bind other party to lease

- (1) For the purposes of section 9 the parties to an agreement falling within subsection (1) or (2) of that section apply for an apportionment to become binding on the appropriate person if, either before or within the period of four weeks beginning with the date of the assignment in question, they serve on that person a notice informing him of—
 - (a) the proposed assignment or (as the case may be) the fact that the assignment has taken place;
 - (b) the prescribed particulars of the agreement; and
 - (c) their request that the apportionment should become binding on him.
- (2) Where an application for an apportionment to become binding has been made in accordance with subsection (1), the apportionment becomes binding on the appropriate person if—
 - (a) he does not, within the period of four weeks beginning with the day on which the notice is served under subsection (1), serve on the parties to the agreement a notice in writing objecting to the apportionment becoming binding on him, or
 - (b) he does so serve such a notice but the court, on the application of the parties to the agreement, makes a declaration that it is reasonable for the apportionment to become binding on him, or

- (c) he serves on the parties to the agreement a notice in writing consenting to the apportionment becoming binding on him and, if he has previously served a notice objecting thereto, stating that that notice is withdrawn.
- (3) Where any apportionment becomes binding in accordance with this section, this shall be regarded as occurring at the time when the assignment in question takes place.
- (4) In this section—
- “the appropriate person” has the same meaning as in section 9;
 - “the court” means a county court;
 - “prescribed” means prescribed by virtue of section 27.

Excluded assignments

11 Assignments in breach of covenant or by operation of law

- (1) This section provides for the operation of sections 5 to 10 in relation to assignments in breach of a covenant of a tenancy or assignments by operation of law (“excluded assignments”).
- (2) In the case of an excluded assignment subsection (2) or (3) of section 5—
- (a) shall not have the effect mentioned in that subsection in relation to the tenant as from that assignment, but
 - (b) shall have that effect as from the next assignment (if any) of the premises assigned by him which is not an excluded assignment.
- (3) In the case of an excluded assignment subsection (2) or (3) of section 6 or 7—
- (a) shall not enable the landlord or former landlord to apply for such a release as is mentioned in that subsection as from that assignment, but
 - (b) shall apply on the next assignment (if any) of the reversion assigned by the landlord which is not an excluded assignment so as to enable the landlord or former landlord to apply for any such release as from that subsequent assignment.
- (4) Where subsection (2) or (3) of section 6 or 7 does so apply—
- (a) any reference in that section to the assignment (except where it relates to the time as from which the release takes effect) is a reference to the excluded assignment; but
 - (b) in that excepted case and in section 8 as it applies in relation to any application under that section made by virtue of subsection (3) above, any reference to the assignment or proposed assignment is a reference to any such subsequent assignment as is mentioned in that subsection.
- (5) In the case of an excluded assignment section 9—
- (a) shall not enable the tenant or landlord and his assignee to apply for an agreed apportionment to become binding in accordance with section 10 as from that assignment, but
 - (b) shall apply on the next assignment (if any) of the premises or reversion assigned by the tenant or landlord which is not an excluded assignment so as to enable him and his assignee to apply for such an apportionment to become binding in accordance with section 10 as from that subsequent assignment.

- (6) Where section 9 does so apply—
- (a) any reference in that section to the assignment or the assignee under it is a reference to the excluded assignment and the assignee under that assignment; but
 - (b) in section 10 as it applies in relation to any application under section 9 made by virtue of subsection (5) above, any reference to the assignment or proposed assignment is a reference to any such subsequent assignment as is mentioned in that subsection.
- (7) If any such subsequent assignment as is mentioned in subsection (2), (3) or (5) above comprises only part of the premises assigned by the tenant or (as the case may be) only part of the premises the reversion in which was assigned by the landlord on the excluded assignment—
- (a) the relevant provision or provisions of section 5, 6, 7 or 9 shall only have the effect mentioned in that subsection to the extent that the covenants or covenant in question fall or falls to be complied with in relation to that part of those premises; and
 - (b) that subsection may accordingly apply on different occasions in relation to different parts of those premises.

Third party covenants

12 Covenants with management companies etc

- (1) This section applies where—
- (a) a person other than the landlord or tenant (“the third party”) is under a covenant of a tenancy liable (as principal) to discharge any function with respect to all or any of the demised premises (“the relevant function”); and
 - (b) that liability is not the liability of a guarantor or any other financial liability referable to the performance or otherwise of a covenant of the tenancy by another party to it.
- (2) To the extent that any covenant of the tenancy confers any rights against the third party with respect to the relevant function, then for the purposes of the transmission of the benefit of the covenant in accordance with this Act it shall be treated as if it were—
- (a) a tenant covenant of the tenancy to the extent that those rights are exercisable by the landlord; and
 - (b) a landlord covenant of the tenancy to the extent that those rights are exercisable by the tenant.
- (3) To the extent that any covenant of the tenancy confers any rights exercisable by the third party with respect to the relevant function, then for the purposes mentioned in subsection (4), it shall be treated as if it were—
- (a) a tenant covenant of the tenancy to the extent that those rights are exercisable against the tenant; and
 - (b) a landlord covenant of the tenancy to the extent that those rights are exercisable against the landlord.
- (4) The purposes mentioned in subsection (3) are—
- (a) the transmission of the burden of the covenant in accordance with this Act; and

- (b) any release from, or apportionment of liability in respect of, the covenant in accordance with this Act.
- (5) In relation to the release of the landlord from any covenant which is to be treated as a landlord covenant by virtue of subsection (3), section 8 shall apply as if any reference to the tenant were a reference to the third party.

Joint liability under covenants

13 Covenants binding two or more persons

- (1) Where in consequence of this Act two or more persons are bound by the same covenant, they are so bound both jointly and severally.
- (2) Subject to section 24(2), where by virtue of this Act—
 - (a) two or more persons are bound jointly and severally by the same covenant, and
 - (b) any of the persons so bound is released from the covenant,the release does not extend to any other of those persons.
- (3) For the purpose of providing for contribution between persons who, by virtue of this Act, are bound jointly and severally by a covenant, the Civil Liability (Contribution) Act 1978 shall have effect as if—
 - (a) liability to a person under a covenant were liability in respect of damage suffered by that person;
 - (b) references to damage accordingly included a breach of a covenant of a tenancy; and
 - (c) section 7(2) of that Act were omitted.

14 Abolition of indemnity covenants implied by statute

The following provisions (by virtue of which indemnity covenants are implied on the assignment of a tenancy) shall cease to have effect—

- (a) subsections (1)(C) and (D) of section 77 of the Law of Property Act 1925; and
- (b) subsections (1)(b) and (2) of section 24 of the Land Registration Act 1925.

Enforcement of covenants

15 Enforcement of covenants

- (1) Where any tenant covenant of a tenancy, or any right of re-entry contained in a tenancy, is enforceable by the reversioner in respect of any premises demised by the tenancy, it shall also be so enforceable by—
 - (a) any person (other than the reversioner) who, as the holder of the immediate reversion in those premises, is for the time being entitled to the rents and profits under the tenancy in respect of those premises, or
 - (b) any mortgagee in possession of the reversion in those premises who is so entitled.
- (2) Where any landlord covenant of a tenancy is enforceable against the reversioner in respect of any premises demised by the tenancy, it shall also be so enforceable against any person falling within subsection (1)(a) or (b).

- (3) Where any landlord covenant of a tenancy is enforceable by the tenant in respect of any premises demised by the tenancy, it shall also be so enforceable by any mortgagee in possession of those premises under a mortgage granted by the tenant.
- (4) Where any tenant covenant of a tenancy, or any right of re-entry contained in a tenancy, is enforceable against the tenant in respect of any premises demised by the tenancy, it shall also be so enforceable against any such mortgagee.
- (5) Nothing in this section shall operate—
- (a) in the case of a covenant which (in whatever terms) is expressed to be personal to any person, to make the covenant enforceable by or (as the case may be) against any other person; or
 - (b) to make a covenant enforceable against any person if, apart from this section, it would not be enforceable against him by reason of its not having been registered under the Land Registration Act 1925 or the Land Charges Act 1972.
- (6) In this section—
- “mortgagee” and “mortgage” include “chargee” and “charge” respectively;
- “the reversioner”, in relation to a tenancy, means the holder for the time being of the interest of the landlord under the tenancy.

Liability of former tenant etc. in respect of covenants

16 Tenant guaranteeing performance of covenant by assignee

- (1) Where on an assignment a tenant is to any extent released from a tenant covenant of a tenancy by virtue of this Act (“the relevant covenant”), nothing in this Act (and in particular section 25) shall preclude him from entering into an authorised guarantee agreement with respect to the performance of that covenant by the assignee.
- (2) For the purposes of this section an agreement is an authorised guarantee agreement if—
- (a) under it the tenant guarantees the performance of the relevant covenant to any extent by the assignee; and
 - (b) it is entered into in the circumstances set out in subsection (3); and
 - (c) its provisions conform with subsections (4) and (5).
- (3) Those circumstances are as follows—
- (a) by virtue of a covenant against assignment (whether absolute or qualified) the assignment cannot be effected without the consent of the landlord under the tenancy or some other person;
 - (b) any such consent is given subject to a condition (lawfully imposed) that the tenant is to enter into an agreement guaranteeing the performance of the covenant by the assignee; and
 - (c) the agreement is entered into by the tenant in pursuance of that condition.
- (4) An agreement is not an authorised guarantee agreement to the extent that it purports—
- (a) to impose on the tenant any requirement to guarantee in any way the performance of the relevant covenant by any person other than the assignee; or

- (b) to impose on the tenant any liability, restriction or other requirement (of whatever nature) in relation to any time after the assignee is released from that covenant by virtue of this Act.
- (5) Subject to subsection (4), an authorised guarantee agreement may—
- (a) impose on the tenant any liability as sole or principal debtor in respect of any obligation owed by the assignee under the relevant covenant;
 - (b) impose on the tenant liabilities as guarantor in respect of the assignee’s performance of that covenant which are no more onerous than those to which he would be subject in the event of his being liable as sole or principal debtor in respect of any obligation owed by the assignee under that covenant;
 - (c) require the tenant, in the event of the tenancy assigned by him being disclaimed, to enter into a new tenancy of the premises comprised in the assignment—
 - (i) whose term expires not later than the term of the tenancy assigned by the tenant, and
 - (ii) whose tenant covenants are no more onerous than those of that tenancy;
 - (d) make provision incidental or supplementary to any provision made by virtue of any of paragraphs (a) to (c).
- (6) Where a person (“the former tenant”) is to any extent released from a covenant of a tenancy by virtue of section 11(2) as from an assignment and the assignor under the assignment enters into an authorised guarantee agreement with the landlord with respect to the performance of that covenant by the assignee under the assignment—
- (a) the landlord may require the former tenant to enter into an agreement under which he guarantees, on terms corresponding to those of that authorised guarantee agreement, the performance of that covenant by the assignee under the assignment; and
 - (b) if its provisions conform with subsections (4) and (5), any such agreement shall be an authorised guarantee agreement for the purposes of this section; and
 - (c) in the application of this section in relation to any such agreement—
 - (i) subsections (2)(b) and (c) and (3) shall be omitted, and
 - (ii) any reference to the tenant or to the assignee shall be read as a reference to the former tenant or to the assignee under the assignment.
- (7) For the purposes of subsection (1) it is immaterial that—
- (a) the tenant has already made an authorised guarantee agreement in respect of a previous assignment by him of the tenancy referred to in that subsection, it having been subsequently vested in him following a disclaimer on behalf of the previous assignee, or
 - (b) the tenancy referred to in that subsection is a new tenancy entered into by the tenant in pursuance of an authorised guarantee agreement;
- and in any such case subsections (2) to (5) shall apply accordingly.
- (8) It is hereby declared that the rules of law relating to guarantees (and in particular those relating to the release of sureties) are, subject to its terms, applicable in relation to any authorised guarantee agreement as in relation to any other guarantee agreement.

17 **Restriction on liability of former tenant or his guarantor for rent or service charge etc**

- (1) This section applies where a person (“the former tenant”) is as a result of an assignment no longer a tenant under a tenancy but—
 - (a) (in the case of a tenancy which is a new tenancy) he has under an authorised guarantee agreement guaranteed the performance by his assignee of a tenant covenant of the tenancy under which any fixed charge is payable; or
 - (b) (in the case of any tenancy) he remains bound by such a covenant.
- (2) The former tenant shall not be liable under that agreement or (as the case may be) the covenant to pay any amount in respect of any fixed charge payable under the covenant unless, within the period of six months beginning with the date when the charge becomes due, the landlord serves on the former tenant a notice informing him—
 - (a) that the charge is now due; and
 - (b) that in respect of the charge the landlord intends to recover from the former tenant such amount as is specified in the notice and (where payable) interest calculated on such basis as is so specified.
- (3) Where a person (“the guarantor”) has agreed to guarantee the performance by the former tenant of such a covenant as is mentioned in subsection (1), the guarantor shall not be liable under the agreement to pay any amount in respect of any fixed charge payable under the covenant unless, within the period of six months beginning with the date when the charge becomes due, the landlord serves on the guarantor a notice informing him—
 - (a) that the charge is now due; and
 - (b) that in respect of the charge the landlord intends to recover from the guarantor such amount as is specified in the notice and (where payable) interest calculated on such basis as is so specified.
- (4) Where the landlord has duly served a notice under subsection (2) or (3), the amount (exclusive of interest) which the former tenant or (as the case may be) the guarantor is liable to pay in respect of the fixed charge in question shall not exceed the amount specified in the notice unless—
 - (a) his liability in respect of the charge is subsequently determined to be for a greater amount,
 - (b) the notice informed him of the possibility that that liability would be so determined, and
 - (c) within the period of three months beginning with the date of the determination, the landlord serves on him a further notice informing him that the landlord intends to recover that greater amount from him (plus interest, where payable).
- (5) For the purposes of subsection (2) or (3) any fixed charge which has become due before the date on which this Act comes into force shall be treated as becoming due on that date; but neither of those subsections applies to any such charge if before that date proceedings have been instituted by the landlord for the recovery from the former tenant of any amount in respect of it.
- (6) In this section—
 - “fixed charge”, in relation to a tenancy, means—
 - (a) rent,

- (b) any service charge as defined by section 18 of the Landlord and Tenant Act 1985 (the words “of a dwelling” being disregarded for this purpose), and
 - (c) any amount payable under a tenant covenant of the tenancy providing for the payment of a liquidated sum in the event of a failure to comply with any such covenant;
- “landlord”, in relation to a fixed charge, includes any person who has a right to enforce payment of the charge.

18 Restriction of liability of former tenant or his guarantor where tenancy subsequently varied

- (1) This section applies where a person (“the former tenant”) is as a result of an assignment no longer a tenant under a tenancy but—
 - (a) (in the case of a new tenancy) he has under an authorised guarantee agreement guaranteed the performance by his assignee of any tenant covenant of the tenancy; or
 - (b) (in the case of any tenancy) he remains bound by such a covenant.
- (2) The former tenant shall not be liable under the agreement or (as the case may be) the covenant to pay any amount in respect of the covenant to the extent that the amount is referable to any relevant variation of the tenant covenants of the tenancy effected after the assignment.
- (3) Where a person (“the guarantor”) has agreed to guarantee the performance by the former tenant of a tenant covenant of the tenancy, the guarantor (where his liability to do so is not wholly discharged by any such variation of the tenant covenants of the tenancy) shall not be liable under the agreement to pay any amount in respect of the covenant to the extent that the amount is referable to any such variation.
- (4) For the purposes of this section a variation of the tenant covenants of a tenancy is a “relevant variation” if either—
 - (a) the landlord has, at the time of the variation, an absolute right to refuse to allow it; or
 - (b) the landlord would have had such a right if the variation had been sought by the former tenant immediately before the assignment by him but, between the time of that assignment and the time of the variation, the tenant covenants of the tenancy have been so varied as to deprive the landlord of such a right.
- (5) In determining whether the landlord has or would have had such a right at any particular time regard shall be had to all the circumstances (including the effect of any provision made by or under any enactment).
- (6) Nothing in this section applies to any variation of the tenant covenants of a tenancy effected before the date on which this Act comes into force.
- (7) In this section “variation” means a variation whether effected by deed or otherwise.

Overriding leases

19 Right of former tenant or his guarantor to overriding lease

- (1) Where in respect of any tenancy (“the relevant tenancy”) any person (“the claimant”) makes full payment of an amount which he has been duly required to pay in accordance with section 17, together with any interest payable, he shall be entitled (subject to and in accordance with this section) to have the landlord under that tenancy grant him an overriding lease of the premises demised by the tenancy.
- (2) For the purposes of this section “overriding lease” means a tenancy of the reversion expectant on the relevant tenancy which—
 - (a) is granted for a term equal to the remainder of the term of the relevant tenancy plus three days or the longest period (less than three days) that will not wholly displace the landlord’s reversionary interest expectant on the relevant tenancy, as the case may require; and
 - (b) (subject to subsections (3) and (4) and to any modifications agreed to by the claimant and the landlord) otherwise contains the same covenants as the relevant tenancy, as they have effect immediately before the grant of the lease.
- (3) An overriding lease shall not be required to reproduce any covenant of the relevant tenancy to the extent that the covenant is (in whatever terms) expressed to be a personal covenant between the landlord and the tenant under that tenancy.
- (4) If any right, liability or other matter arising under a covenant of the relevant tenancy falls to be determined or otherwise operates (whether expressly or otherwise) by reference to the commencement of that tenancy—
 - (a) the corresponding covenant of the overriding lease shall be so framed that that right, liability or matter falls to be determined or otherwise operates by reference to the commencement of that tenancy; but
 - (b) the overriding lease shall not be required to reproduce any covenant of that tenancy to the extent that it has become spent by the time that that lease is granted.
- (5) A claim to exercise the right to an overriding lease under this section is made by the claimant making a request for such a lease to the landlord; and any such request—
 - (a) must be made to the landlord in writing and specify the payment by virtue of which the claimant claims to be entitled to the lease (“the qualifying payment”); and
 - (b) must be so made at the time of making the qualifying payment or within the period of 12 months beginning with the date of that payment.
- (6) Where the claimant duly makes such a request—
 - (a) the landlord shall (subject to subsection (7)) grant and deliver to the claimant an overriding lease of the demised premises within a reasonable time of the request being received by the landlord; and
 - (b) the claimant—
 - (i) shall thereupon deliver to the landlord a counterpart of the lease duly executed by the claimant, and
 - (ii) shall be liable for the landlord’s reasonable costs of and incidental to the grant of the lease.

- (7) The landlord shall not be under any obligation to grant an overriding lease of the demised premises under this section at a time when the relevant tenancy has been determined; and a claimant shall not be entitled to the grant of such a lease if at the time when he makes his request—
- (a) the landlord has already granted such a lease and that lease remains in force; or
 - (b) another person has already duly made a request for such a lease to the landlord and that request has been neither withdrawn nor abandoned by that person.
- (8) Where two or more requests are duly made on the same day, then for the purposes of subsection (7)—
- (a) a request made by a person who was liable for the qualifying payment as a former tenant shall be treated as made before a request made by a person who was so liable as a guarantor; and
 - (b) a request made by a person whose liability in respect of the covenant in question commenced earlier than any such liability of another person shall be treated as made before a request made by that other person.
- (9) Where a claimant who has duly made a request for an overriding lease under this section subsequently withdraws or abandons the request before he is granted such a lease by the landlord, the claimant shall be liable for the landlord's reasonable costs incurred in pursuance of the request down to the time of its withdrawal or abandonment; and for the purposes of this section—
- (a) a claimant's request is withdrawn by the claimant notifying the landlord in writing that he is withdrawing his request; and
 - (b) a claimant is to be regarded as having abandoned his request if—
 - (i) the landlord has requested the claimant in writing to take, within such reasonable period as is specified in the landlord's request, all or any of the remaining steps required to be taken by the claimant before the lease can be granted, and
 - (ii) the claimant fails to comply with the landlord's request, and is accordingly to be regarded as having abandoned it at the time when that period expires.
- (10) Any request or notification under this section may be sent by post.
- (11) The preceding provisions of this section shall apply where the landlord is the tenant under an overriding lease granted under this section as they apply where no such lease has been granted; and accordingly there may be two or more such leases interposed between the first such lease and the relevant tenancy.

20 Overriding leases: supplementary provisions

- (1) For the purposes of section 1 an overriding lease shall be a new tenancy only if the relevant tenancy is a new tenancy.
- (2) Every overriding lease shall state—
- (a) that it is a lease granted under section 19, and
 - (b) whether it is or is not a new tenancy for the purposes of section 1;
- and any such statement shall comply with such requirements as may be prescribed by rules made in pursuance of section 144 of the Land Registration Act 1925 (power to make general rules).

- (3) A claim that the landlord has failed to comply with subsection (6)(a) of section 19 may be made the subject of civil proceedings in like manner as any other claim in tort for breach of statutory duty; and if the claimant under that section fails to comply with subsection (6)(b)(i) of that section he shall not be entitled to exercise any of the rights otherwise exercisable by him under the overriding lease.
- (4) An overriding lease—
- (a) shall be deemed to be authorised as against the persons interested in any mortgage of the landlord's interest (however created or arising); and
 - (b) shall be binding on any such persons;
- and if any such person is by virtue of such a mortgage entitled to possession of the documents of title relating to the landlord's interest—
- (i) the landlord shall within one month of the execution of the lease deliver to that person the counterpart executed in pursuance of section 19(6)(b)(i); and
 - (ii) if he fails to do so, the instrument creating or evidencing the mortgage shall apply as if the obligation to deliver a counterpart were included in the terms of the mortgage as set out in that instrument.
- (5) It is hereby declared—
- (a) that the fact that an overriding lease takes effect subject to the relevant tenancy shall not constitute a breach of any covenant of the lease against subletting or parting with possession of the premises demised by the lease or any part of them; and
 - (b) that each of sections 16, 17 and 18 applies where the tenancy referred to in subsection (1) of that section is an overriding lease as it applies in other cases falling within that subsection.
- (6) No tenancy shall be registrable under the Land Charges Act 1972 or be taken to be an estate contract within the meaning of that Act by reason of any right or obligation that may arise under section 19, and any right arising from a request made under that section shall not be an overriding interest within the meaning of the Land Registration Act 1925; but any such request shall be registrable under the Land Charges Act 1972, or may be the subject of a notice or caution under the Land Registration Act 1925, as if it were an estate contract.
- (7) In this section—
- (a) “mortgage” includes “charge”; and
 - (b) any expression which is also used in section 19 has the same meaning as in that section.

Forfeiture and disclaimer

21 Forfeiture or disclaimer limited to part only of demised premises

- (1) Where—
- (a) as a result of one or more assignments a person is the tenant of part only of the premises demised by a tenancy, and
 - (b) under a proviso or stipulation in the tenancy there is a right of re-entry or forfeiture for a breach of a tenant covenant of the tenancy, and
 - (c) the right is (apart from this subsection) exercisable in relation to that part and other land demised by the tenancy,

the right shall nevertheless, in connection with a breach of any such covenant by that person, be taken to be a right exercisable only in relation to that part.

(2) Where—

- (a) a company which is being wound up, or a trustee in bankruptcy, is as a result of one or more assignments the tenant of part only of the premises demised by a tenancy, and
- (b) the liquidator of the company exercises his power under section 178 of the Insolvency Act 1986, or the trustee in bankruptcy exercises his power under section 315 of that Act, to disclaim property demised by the tenancy,

the power is exercisable only in relation to the part of the premises referred to in paragraph (a).

Landlord's consent to assignments

22 Imposition of conditions regulating giving of landlord's consent to assignments

After subsection (1) of section 19 of the Landlord and Tenant Act 1927 (provisions as to covenants not to assign etc. without licence or consent) there shall be inserted—

“(1A) Where the landlord and the tenant under a qualifying lease have entered into an agreement specifying for the purposes of this subsection—

- (a) any circumstances in which the landlord may withhold his licence or consent to an assignment of the demised premises or any part of them, or
- (b) any conditions subject to which any such licence or consent may be granted,

then the landlord—

- (i) shall not be regarded as unreasonably withholding his licence or consent to any such assignment if he withholds it on the ground (and it is the case) that any such circumstances exist, and
- (ii) if he gives any such licence or consent subject to any such conditions, shall not be regarded as giving it subject to unreasonable conditions;

and section 1 of the Landlord and Tenant Act 1988 (qualified duty to consent to assignment etc.) shall have effect subject to the provisions of this subsection.

(1B) Subsection (1A) of this section applies to such an agreement as is mentioned in that subsection—

- (a) whether it is contained in the lease or not, and
- (b) whether it is made at the time when the lease is granted or at any other time falling before the application for the landlord's licence or consent is made.

(1C) Subsection (1A) shall not, however, apply to any such agreement to the extent that any circumstances or conditions specified in it are framed by reference to any matter falling to be determined by the landlord or by any other person for the purposes of the agreement, unless under the terms of the agreement—

- (a) that person's power to determine that matter is required to be exercised reasonably, or

- (b) the tenant is given an unrestricted right to have any such determination reviewed by a person independent of both landlord and tenant whose identity is ascertainable by reference to the agreement, and in the latter case the agreement provides for the determination made by any such independent person on the review to be conclusive as to the matter in question.
- (1D) In its application to a qualifying lease, subsection (1)(b) of this section shall not have effect in relation to any assignment of the lease.
- (1E) In subsections (1A) and (1D) of this section—
- (a) “qualifying lease” means any lease which is a new tenancy for the purposes of section 1 of the Landlord and Tenant (Covenants) Act 1995 other than a residential lease, namely a lease by which a building or part of a building is let wholly or mainly as a single private residence; and
- (b) references to assignment include parting with possession on assignment.”

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 or part 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.