

SCHEDULES

SCHEDULE 6

AMENDMENTS OF PART I OF THE LANDLORD AND TENANT ACT 1987

PART I

RIGHTS OF FIRST REFUSAL

The following sections are substituted for sections 5 to 10 of the Landlord and Tenant Act 1987—

“Rights of first refusal

5 Landlord required to serve offer notice on tenants

- (1) Where the landlord proposes to make a relevant disposal affecting premises to which this Part applies, he shall serve a notice under this section (an “offer notice”) on the qualifying tenants of the flats contained in the premises (the “constituent flats”).
- (2) An offer notice must comply with the requirements of whichever is applicable of the following sections—
 - section 5A (requirements in case of contract to be completed by conveyance, &c.),
 - section 5B (requirements in case of sale at auction),
 - section 5C (requirements in case of grant of option or right of pre-emption),
 - section 5D (requirements in case of conveyance not preceded by contract, &c.);and in the case of a disposal to which section 5E applies (disposal for non-monetary consideration) shall also comply with the requirements of that section.
- (3) Where a landlord proposes to effect a transaction involving the disposal of an estate or interest in more than one building (whether or not involving the same estate or interest), he shall, for the purpose of complying with this section, sever the transaction so as to deal with each building separately.
- (4) If, as a result of the offer notice being served on different tenants on different dates, the period specified in the notice as the period for accepting the offer would end on different dates, the notice shall have effect in relation to all the qualifying tenants on whom it is served as if it provided for that period to end with the latest of those dates.
- (5) A landlord who has not served an offer notice on all of the qualifying tenants on whom it was required to be served shall nevertheless be treated as having complied with this section—
 - (a) if he has served an offer notice on not less than 90% of the qualifying tenants on whom such a notice was required to be served, or
 - (b) where the qualifying tenants on whom it was required to be served number less than ten, if he has served such a notice on all but one of them.

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5A Offer notice: requirements in case of contract to be completed by conveyance, &c

- (1) The following requirements must be met in relation to an offer notice where the disposal consists of entering into a contract to create or transfer an estate or interest in land.
- (2) The notice must contain particulars of the principal terms of the disposal proposed by the landlord, including in particular—
 - (a) the property, and the estate or interest in that property, to which the contract relates,
 - (b) the principal terms of the contract (including the deposit and consideration required).
- (3) The notice must state that the notice constitutes an offer by the landlord to enter into a contract on those terms which may be accepted by the requisite majority of qualifying tenants of the constituent flats.
- (4) The notice must specify a period within which that offer may be so accepted, being a period of not less than two months which is to begin with the date of service of the notice.
- (5) The notice must specify a further period of not less than two months within which a person or persons may be nominated by the tenants under section 6.
- (6) This section does not apply to the grant of an option or right of pre-emption (see section 5C).

5B Offer notice: requirements in case of sale by auction

- (1) The following requirements must be met in relation to an offer notice where the landlord proposes to make the disposal by means of a sale at a public auction held in England and Wales.
- (2) The notice must contain particulars of the principal terms of the disposal proposed by the landlord, including in particular the property to which it relates and the estate or interest in that property proposed to be disposed of.
- (3) The notice must state that the disposal is proposed to be made by means of a sale at a public auction.
- (4) The notice must state that the notice constitutes an offer by the landlord, which may be accepted by the requisite majority of qualifying tenants of the constituent flats, for the contract (if any) entered into by the landlord at the auction to have effect as if a person or persons nominated by them, and not the purchaser, had entered into it.
- (5) The notice must specify a period within which that offer may be so accepted, being a period of not less than two months beginning with the date of service of the notice.
- (6) The notice must specify a further period of not less than 28 days within which a person or persons may be nominated by the tenants under section 6.
- (7) The notice must be served not less than four months or more than six months before the date of the auction; and—
 - (a) the period specified in the notice as the period within which the offer may be accepted must end not less than two months before the date of the auction, and

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- (b) the period specified in the notice as the period within which a person may be nominated under section 6 must end not less than 28 days before the date of the auction.
- (8) Unless the time and place of the auction and the name of the auctioneers are stated in the notice, the landlord shall, not less than 28 days before the date of the auction, serve on the requisite majority of qualifying tenants of the constituent flats a further notice stating those particulars.

5C Offer notice: requirements in case of grant or option or right of pre-emption

- (1) The following requirements must be met in relation to an offer notice where the disposal consists of the grant of an option or right of pre-emption.
- (2) The notice must contain particulars of the principal terms of the disposal proposed by the landlord, including in particular—
 - (a) the property, and the estate or interest in that property, to which the option or right of pre-emption relates,
 - (b) the consideration required by the landlord for granting the option or right of pre-emption, and
 - (c) the principal terms on which the option or right of pre-emption would be exercisable, including the consideration payable on its exercise.
- (3) The notice must state that the notice constitutes an offer by the landlord to grant an option or right of pre-emption on those terms which may be accepted by the requisite majority of qualifying tenants of the constituent flats.
- (4) The notice must specify a period within which that offer may be so accepted, being a period of not less than two months which is to begin with the date of service of the notice.
- (5) The notice must specify a further period of not less than two months within which a person or persons may be nominated by the tenants under section 6.

5D Offer notice: requirements in case of conveyance not preceded by contract, &c

- (1) The following requirements must be met in relation to an offer notice where the disposal is not made in pursuance of a contract, option or right of pre-emption binding on the landlord.
- (2) The notice must contain particulars of the principal terms of the disposal proposed by the landlord, including in particular—
 - (a) the property to which it relates and the estate or interest in that property proposed to be disposed of, and
 - (b) the consideration required by the landlord for making the disposal.
- (3) The notice must state that the notice constitutes an offer by the landlord to dispose of the property on those terms which may be accepted by the requisite majority of qualifying tenants of the constituent flats.
- (4) The notice must specify a period within which that offer may be so accepted, being a period of not less than two months which is to begin with the date of service of the notice.

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- (5) The notice must specify a further period of not less than two months within which a person or persons may be nominated by the tenants under section 6.

5E Offer notice: disposal for non-monetary consideration

- (1) This section applies where, in any case to which section 5 applies, the consideration required by the landlord for making the disposal does not consist, or does not wholly consist, of money.
- (2) The offer notice, in addition to complying with whichever is applicable of sections 5A to 5D, must state—
- (a) that an election may be made under section 8C (explaining its effect), and
 - (b) that, accordingly, the notice also constitutes an offer by the landlord, which may be accepted by the requisite majority of qualifying tenants of the constituent flats, for a person or persons nominated by them to acquire the property in pursuance of sections 11 to 17.
- (3) The notice must specify a period within which that offer may be so accepted, being a period of not less than two months which is to begin with the date of service of the notice.

6 Acceptance of landlord's offer: general provisions

- (1) Where a landlord has served an offer notice, he shall not during—
- (a) the period specified in the notice as the period during which the offer may be accepted, or
 - (b) such longer period as may be agreed between him and the requisite majority of the qualifying tenants of the constituent flats,
- dispose of the protected interest except to a person or persons nominated by the tenants under this section.
- (2) Where an acceptance notice is duly served on him, he shall not during the protected period (see subsection (4) below) dispose of the protected interest except to a person duly nominated for the purposes of this section by the requisite majority of qualifying tenants of the constituent flats (a “nominated person”).
- (3) An “acceptance notice” means a notice served on the landlord by the requisite majority of qualifying tenants of the constituent flats informing him that the persons by whom it is served accept the offer contained in his notice.
- An acceptance notice is “duly served” if it is served within—
- (a) the period specified in the offer notice as the period within which the offer may be accepted, or
 - (b) such longer period as may be agreed between the landlord and the requisite majority of qualifying tenants of the constituent flats.
- (4) The “protected period” is the period beginning with the date of service of the acceptance notice and ending with—
- (a) the end of the period specified in the offer notice as the period for nominating a person under this section, or
 - (b) such later date as may be agreed between the landlord and the requisite majority of qualifying tenants of constituent flats.

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- (5) A person is “duly nominated” for the purposes of this section if he is nominated at the same time as the acceptance notice is served or at any time after that notice is served and before the end of—
 - (a) the period specified in the offer notice as the period for nomination, or
 - (b) such longer period as may be agreed between the landlord and the requisite majority of qualifying tenants of the constituent flats.
- (6) A person nominated for the purposes of this section by the requisite majority of qualifying tenants of the constituent flats may be replaced by another person so nominated if, and only if, he has (for any reason) ceased to be able to act as a nominated person.
- (7) Where two or more persons have been nominated and any of them ceases to act without being replaced, the remaining person or persons so nominated may continue to act.

7 Failure to accept landlord’s offer or to make nomination

- (1) Where a landlord has served an offer notice on the qualifying tenants of the constituent flats and—
 - (a) no acceptance notice is duly served on the landlord, or
 - (b) no person is nominated for the purposes of section 6 during the protected period, the landlord may, during the period of 12 months beginning with the end of that period, dispose of the protected interest to such person as he thinks fit, but subject to the following restrictions.
- (2) Where the offer notice was one to which section 5B applied (sale by auction), the restrictions are—
 - (a) that the disposal is made by means of a sale at a public auction, and
 - (b) that the other terms correspond to those specified in the offer notice.
- (3) In any other case the restrictions are—
 - (a) that the deposit and consideration required are not less than those specified in the offer notice, and
 - (b) that the other terms correspond to those specified in the offer notice.
- (4) The entitlement of a landlord, by virtue of this section or any other corresponding provision of this Part, to dispose of the protected interest during a specified period of 12 months extends only to a disposal of that interest, and accordingly the requirements of section 1(1) must be satisfied with respect to any other disposal by him during that period of 12 months (unless the disposal is not a relevant disposal affecting any premises to which at the time of the disposal this Part applies).

8 Landlord’s obligations in case of acceptance and nomination

- (1) This section applies where a landlord serves an offer notice on the qualifying tenants of the constituent flat and—
 - (a) an acceptance notice is duly served on him, and
 - (b) a person is duly nominated for the purposes of section 6, by the requisite majority of qualifying tenants of the constituent flats.
- (2) Subject to the following provisions of this Part, the landlord shall not dispose of the protected interest except to the nominated person.

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- (3) The landlord shall, within the period of one month beginning with the date of service of notice of nomination, either—
 - (a) serve notice on the nominated person indicating an intention no longer to proceed with the disposal of the protected interest, or
 - (b) be obliged to proceed in accordance with the following provisions of this Part.
- (4) A notice under subsection (3)(a) is a notice of withdrawal for the purposes of section 9B(2) to (4) (consequences of notice of withdrawal by landlord).
- (5) Nothing in this section shall be taken as prejudicing the application of the provisions of this Part to any further offer notice served by the landlord on the qualifying tenants of the constituent flats.

8A Landlord’s obligation: general provisions

- (1) This section applies where the landlord is obliged to proceed and the offer notice was not one to which section 5B applied (sale by auction).
- (2) The landlord shall, within the period of one month beginning with the date of service of the notice of nomination, send to the nominated person a form of contract for the acquisition of the protected interest on the terms specified in the landlord’s offer notice.
- (3) If he fails to do so, the following provisions of this Part apply as if he had given notice under section 9B (notice of withdrawal by landlord) at the end of that period.
- (4) If the landlord complies with subsection (2), the nominated person shall, within the period of two months beginning with the date on which it is sent or such longer period beginning with that date as may be agreed between the landlord and that person, either—
 - (a) serve notice on the landlord indicating an intention no longer to proceed with the acquisition of the protected interest, or
 - (b) offer an exchange of contracts, that is to say, sign the contract and send it to the landlord, together with the requisite deposit.

In this subsection “the requisite deposit” means a deposit of an amount determined by or under the contract or an amount equal to 10 per cent of the consideration, whichever is the less.

- (5) If the nominated person—
 - (a) serves notice in pursuance of paragraph (a) of subsection (4), or
 - (b) fails to offer an exchange of contracts within the period specified in that subsection,
 the following provisions of this Part apply as if he had given notice under section 9A (withdrawal by nominated person) at the same time as that notice or, as the case may be, at the end of that period.
- (6) If the nominated person offers an exchange of contracts within the period specified in subsection (4), but the landlord fails to complete the exchange within the period of seven days beginning with the day on which he received that person’s contract, the following provisions of this Part apply as if the landlord had given notice under section 9B (withdrawal by landlord) at the end of that period.

8B Landlord's obligation: election in case of sale at auction

- (1) This section applies where the landlord is obliged to proceed and the offer notice was one to which section 5B applied (sale by auction).
- (2) The nominated person may, by notice served on the landlord not less than 28 days before the date of the auction, elect that the provisions of this section shall apply.
- (3) If a contract for the disposal is entered into at the auction, the landlord shall, within the period of seven days beginning with the date of the auction, send a copy of the contract to the nominated person.
- (4) If, within the period of 28 days beginning with the date on which such a copy is so sent, the nominated person—
 - (a) serves notice on the landlord accepting the terms of the contract, and
 - (b) fulfils any conditions falling to be fulfilled by the purchaser on entering into the contract,the contract shall have effect as if the nominated person, and not the purchaser, had entered into the contract.
- (5) Unless otherwise agreed, any time limit in the contract as it has effect by virtue of subsection (4) shall start to run again on the service of notice under that subsection; and nothing in the contract as it has effect by virtue of a notice under this section shall require the nominated person to complete the purchase before the end of the period of 28 days beginning with the day on which he is deemed to have entered into the contract.
- (6) If the nominated person—
 - (a) does not serve notice on the landlord under subsection (2) by the time mentioned in that subsection, or
 - (b) does not satisfy the requirements of subsection (4) within the period mentioned in that subsection,the following provisions of this Part apply as if he had given notice under section 9A (withdrawal by nominated person) at the end of that period.

8C Election in case of disposal for non-monetary consideration

- (1) This section applies where an acceptance notice is duly served on the landlord indicating an intention to accept the offer referred to in section 5E (offer notice: disposal for non-monetary consideration).
- (2) The requisite majority of qualifying tenants of the constituent flats may, by notice served on the landlord within—
 - (a) the period specified in the offer notice for nominating a person or persons for the purposes of section 6, or
 - (b) such longer period as may be agreed between the landlord and the requisite majority of qualifying tenants of the constituent flats,elect that the following provisions shall apply.
- (3) Where such an election is made and the landlord disposes of the protected interest on terms corresponding to those specified in his offer notice in accordance with section 5A, 5B, 5C or 5D, sections 11 to 17 shall have effect as if—
 - (a) no notice under section 5 had been served;
 - (b) in section 11A(3) (period for serving notice requiring information, &c.), the reference to four months were a reference to 28 days; and

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- (c) in section 12A(2) and 12B(3) (period for exercise of tenants' rights against purchaser) each reference to six months were a reference to two months.
- (4) For the purposes of sections 11 to 17 as they have effect by virtue of subsection (3) so much of the consideration for the original disposal as did not consist of money shall be treated as such amount in money as was equivalent to its value in the hands of the landlord.

The landlord or the nominated person may apply to have that amount determined by a leasehold valuation tribunal.

8D Disposal in pursuance of option or right of pre-emption

- (1) Where—
 - (a) the original disposal was the grant of an option or right of pre-emption, and
 - (b) in pursuance of the option or right, the landlord makes another disposal affecting the premises (“the later disposal”) before the end of the period specified in subsection (2),
 sections 11 to 17 shall have effect as if the later disposal, and not the original disposal, were the relevant disposal.
- (2) The period referred to in subsection (1)(b) is the period of four months beginning with the date by which—
 - (a) notices under section 3A of the Landlord and Tenant Act 1985 (duty of new landlord to inform tenants of rights) relating to the original disposal, or
 - (b) where that section does not apply, documents of any other description—
 - (i) indicating that the original disposal has taken place, and
 - (ii) alerting the tenants to the existence of their rights under this Part and the time within which any such rights must be exercised,
 have been served on the requisite majority of qualifying tenants of the constituent flats.

8E Covenant, &c affecting landlord’s power to dispose

- (1) Where the landlord is obliged to proceed but is precluded by a covenant, condition or other obligation from disposing of the protected interest to the nominated person unless the consent of some other person is obtained—
 - (a) he shall use his best endeavours to secure that the consent of that person to that disposal is given, and
 - (b) if it appears to him that that person is obliged not to withhold his consent unreasonably but has nevertheless so withheld it, he shall institute proceedings for a declaration to that effect.
- (2) Subsection (1) ceases to apply if a notice of withdrawal is served under section 9A or 9B (withdrawal of either party from transaction) or if notice is served under section 10 (lapse of landlord’s offer: premises ceasing to be premises to which this Part applies).
- (3) Where the landlord has discharged any duty imposed on him by subsection (1) but any such consent as is there mentioned has been withheld, and no such declaration as is there mentioned has been made, the landlord may serve a notice on the nominated person stating that to be the case.

Status: This is the original version (as it was originally enacted).

When such a notice has been served, the landlord may, during the period of 12 months beginning with the date of service of the notice, dispose of the protected interest to such person as he thinks fit, but subject to the following restrictions.

- (4) Where the offer notice was one to which section 5B applied (sale by auction), the restrictions are—
 - (a) that the disposal is made by means of a sale at a public auction, and
 - (b) that the other terms correspond to those specified in the offer notice.
- (5) In any other case the restrictions are—
 - (a) that the deposit and consideration required are not less than those specified in the offer notice or, if higher, those agreed between the landlord and the nominated person (subject to contract), and
 - (b) that the other terms correspond to those specified in the offer notice.
- (6) Where notice is given under subsection (3), the landlord may recover from the nominated party and the qualifying tenants who served the acceptance notice any costs reasonably incurred by him in connection with the disposal between the end of the first four weeks of the nomination period and the time when that notice is served by him.

Any such liability of the nominated person and those tenants is a joint and several liability.

9A Notice of withdrawal by nominated person

- (1) Where the landlord is obliged to proceed, the nominated person may serve notice on the landlord (a “notice of withdrawal”) indicating his intention no longer to proceed with the acquisition of the protected interest.
- (2) If at any time the nominated person becomes aware that the number of the qualifying tenants of the constituent flats desiring to proceed with the acquisition of the protected interest is less than the requisite majority of qualifying tenants of those flats, he shall forthwith serve a notice of withdrawal.
- (3) Where notice of withdrawal is given by the nominated person under this section, the landlord may, during the period of 12 months beginning with the date of service of the notice, dispose of the protected interest to such person as he thinks fit, but subject to the following restrictions.
- (4) Where the offer notice was one to which section 5B applied (sale by auction), the restrictions are—
 - (a) that the disposal is made by means of a sale at a public auction, and
 - (b) that the other terms correspond to those specified in the offer notice.
- (5) In any other case the restrictions are—
 - (a) that the deposit and consideration required are not less than those specified in the offer notice or, if higher, those agreed between the landlord and the nominated person (subject to contract), and
 - (b) that the other terms correspond to those specified in the offer notice.
- (6) If notice of withdrawal is served under this section before the end of the first four weeks of the nomination period specified in the offer notice, the nominated person and the qualifying tenants who served the acceptance notice are not liable for any costs incurred by the landlord in connection with the disposal.

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- (7) If notice of withdrawal is served under this section after the end of those four weeks, the landlord may recover from the nominated person and the qualifying tenants who served the acceptance notice any costs reasonably incurred by him in connection with the disposal between the end of those four weeks and the time when the notice of withdrawal was served on him.

Any such liability of the nominated person and those tenants is a joint and several liability.

- (8) This section does not apply after a binding contract for the disposal of the protected interest—
- (a) has been entered into by the landlord and the nominated person, or
 - (b) has otherwise come into existence between the landlord and the nominated person by virtue of any provision of this Part.

9B Notice of withdrawal by landlord

- (1) Where the landlord is obliged to proceed, he may serve notice on the nominated person (a “notice of withdrawal”) indicating his intention no longer to proceed with the disposal of the protected interest.
- (2) Where a notice of withdrawal is given by the landlord, he is not entitled to dispose of the protected interest during the period of 12 months beginning with the date of service of the notice.
- (3) If a notice of withdrawal is served before the end of the first four weeks of the nomination period specified in the offer notice, the landlord is not liable for any costs incurred in connection with the disposal by the nominated person and the qualifying tenants who served the acceptance notice.
- (4) If a notice of withdrawal is served after the end of those four weeks, the nominated person and the qualifying tenants who served the acceptance notice may recover from the landlord any costs reasonably incurred by them in connection with the disposal between the end of those four weeks and the time when the notice of withdrawal was served.
- (5) This section does not apply after a binding contract for the disposal of the protected interest—
- (a) has been entered into by the landlord and the nominated person, or
 - (b) has otherwise come into existence between the landlord and the nominated person by virtue of any provision of this Part.

10 Lapse of landlord’s offer

- (1) If after a landlord has served an offer notice the premises concerned cease to be premises to which this Part applies, the landlord may serve a notice on the qualifying tenants of the constituent flats stating—
- (a) that the premises have ceased to be premises to which this Part applies, and
 - (b) that the offer notice, and anything done in pursuance of it, is to be treated as not having been served or done;
- and on the service of such a notice the provisions of this Part cease to have effect in relation to that disposal.

- (2) A landlord who has not served such a notice on all of the qualifying tenants of the constituent flats shall nevertheless be treated as having duly served a notice under subsection (1)—
- (a) if he has served such a notice on not less than 90% of those tenants, or
 - (b) where those qualifying tenants number less than ten, if he has served such a notice on all but one of them.
- (3) Where the landlord is entitled to serve a notice under subsection (1) but does not do so, this Part shall continue to have effect in relation to the disposal in question as if the premises in question were still premises to which this Part applies.
- (4) The above provisions of this section do not apply after a binding contract for the disposal of the protected interest—
- (a) has been entered into by the landlord and the nominated person, or
 - (b) has otherwise come into existence between the landlord and the nominated person by virtue of any provision of this Part.
- (5) Where a binding contract for the disposal of the protected interest has been entered into between the landlord and the nominated person but it has been lawfully rescinded by the landlord, the landlord may, during the period of 12 months beginning with the date of the rescission of the contract, dispose of that interest to such person (and on such terms) as he thinks fit.”