

SCHEDULES

SCHEDULE 11

Section 299

POSSESSION ORDERS RELATING TO CERTAIN TENANCIES

PART 1

AMENDMENTS TO THE HOUSING ACTS OF 1985, 1988 AND 1996

Housing Act 1985 (c. 68)

- 1 The Housing Act 1985 is amended as follows.
- 2 (1) Section 82 (security of tenure: date on which secure tenancy comes to an end as a result of a possession order etc.) is amended as follows.
 - (2) In subsection (1) for “by obtaining an order” substitute “as”.
 - (3) For subsections (1A) and (2) substitute—
 - “(1A) The tenancy may be brought to an end by the landlord—
 - (a) obtaining—
 - (i) an order of the court for the possession of the dwelling-house, and
 - (ii) the execution of the order,
 - (b) obtaining an order under subsection (3), or
 - (c) obtaining a demotion order under section 82A.
 - (2) In the case mentioned in subsection (1A)(a), the tenancy ends when the order is executed.”
- 3 (1) Section 85 (extended discretion of court in certain proceedings for possession) is amended as follows.
 - (2) In subsection (3)(a) omit the words from “or payments” to “profits”.
 - (3) For subsection (4) substitute—
 - “(4) The court may discharge or rescind the order for possession if it thinks it appropriate to do so having had regard to—
 - (a) any conditions imposed under subsection (3), and
 - (b) the conduct of the tenant in connection with those conditions.”
 - (4) Omit subsections (5) and (5A).
- 4 In Schedule 3 (grounds for withholding consent to assignment by way of exchange) for Ground 1 substitute—

Status: This is the original version (as it was originally enacted).

“Ground 1

The tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling-house of which he is the secure tenant.”

Housing Act 1988 (c. 50)

5 The Housing Act 1988 is amended as follows.

6 (1) Section 5 (security of tenure) is amended as follows.

(2) For subsection (1) substitute—

“(1) An assured tenancy cannot be brought to an end by the landlord except by—

(a) obtaining—

(i) an order of the court for possession of the dwelling-house under section 7 or 21, and

(ii) the execution of the order,

(b) obtaining an order of the court under section 6A (demotion order), or

(c) in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power,

and, accordingly, the service by the landlord of a notice to quit is of no effect in relation to a periodic assured tenancy.

(1A) Where an order of the court for possession of the dwelling-house is obtained, the tenancy ends when the order is executed.”

(3) In subsection (2)(a) after “court” insert “of the kind mentioned in subsection (1)(a) or (b) or any other order of the court”.

7 In section 7(7) (possession orders in cases of fixed term tenancies which have come to an end) for “on the day on which the order takes effect” substitute “in accordance with section 5(1A)”.

8 (1) Section 9 (extended discretion of court in possession claims) is amended as follows.

(2) In subsection (3) omit the words from “or payments” to “profits”.

(3) For subsection (4) substitute—

“(4) The court may discharge or rescind any such order as is referred to in subsection (2) if it thinks it appropriate to do so having had regard to—

(a) any conditions imposed under subsection (3), and

(b) the conduct of the tenant in connection with those conditions.”

(4) Omit subsections (5) and (5A).

9 (1) Section 21 (recovery of possession on expiry or termination of assured shorthold tenancies) is amended as follows.

(2) In subsection (3) for “on the day on which the order takes effect” substitute “in accordance with section 5(1A)”.

(3) After subsection (4) insert—

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“(4A) Where a court makes an order for possession of a dwelling-house by virtue of subsection (4) above, the assured shorthold tenancy shall end in accordance with section 5(1A).”

Housing Act 1996 (c. 52)

- 10 The Housing Act 1996 is amended as follows.
- 11 (1) Section 127 (introductory tenancies: proceedings for possession) is amended as follows.
- (2) In subsection (1) for the words from “an order” to the end substitute “—
- (a) an order of the court for the possession of the dwelling-house, and
- (b) the execution of the order.”
- (3) After subsection (1) insert—
- “(1A) In such a case, the tenancy ends when the order is executed.”
- (4) In subsection (2) for “such an order” substitute “an order of the kind mentioned in subsection (1)(a)”.
- (5) Omit subsection (3).
- 12 (1) Section 130 (introductory tenancies: effect of beginning proceedings for possession) is amended as follows.
- (2) In subsection (2)(a) for the words from “in pursuance of”, where they first appear, to “of the court” substitute “in accordance with section 127(1A)”.
- (3) In subsection (3)(b) for “127(2) and (3)” substitute “127(1A) and (2)”.
- 13 (1) Section 143D (demoted tenancies: proceedings for possession) is amended as follows.
- (2) In subsection (1) for the words from “an order” to the end substitute “—
- (a) an order of the court for the possession of the dwelling-house, and
- (b) the execution of the order.”
- (3) After subsection (1) insert—
- “(1A) In such a case, the tenancy ends when the order is executed.”
- (4) Omit subsection (3).

Transitional provisions

- 14 (1) Subject as follows, this Part of this Schedule does not apply to any possession order made before the commencement date.
- (2) This Part of this Schedule does apply to a possession order made before the commencement date if the order applies to—
- (a) a new tenancy by virtue of paragraph 20, or
- (b) a tenancy which has not ended pursuant to the order before that date.
- (3) Paragraphs 3(3) and 8(3) apply to any possession order regardless of when it was made.

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- (4) In determining for the purposes of sub-paragraph (2) whether a tenancy has ended, any ending which was temporary because the tenancy was restored in consequence of a court order is to be ignored.
- (5) In this paragraph “the commencement date” means the day on which section 299 comes into force for purposes other than the purposes of the Secretary of State or the Welsh Ministers making orders under Part 2 of this Schedule.

PART 2

REPLACEMENT OF CERTAIN TERMINATED TENANCIES

Circumstances in which replacement tenancies arise

- 15 In this Part of this Schedule “an original tenancy” means any secure tenancy, assured tenancy, introductory tenancy or demoted tenancy—
 - (a) in respect of which a possession order was made before the commencement date, and
 - (b) which ended before that date pursuant to the order but not on the execution of the order.
- 16 (1) A new tenancy of the dwelling-house which was let under the original tenancy is treated as arising on the commencement date between the ex-landlord and the ex-tenant if—
 - (a) on that date—
 - (i) the home condition is met, and
 - (ii) the ex-landlord is entitled to let the dwelling-house, and
 - (b) the ex-landlord and the ex-tenant have not entered into another tenancy after the date on which the original tenancy ended but before the commencement date.
- (2) The home condition is that the dwelling-house which was let under the original tenancy—
 - (a) is, on the commencement date, the only or principal home of the ex-tenant, and
 - (b) has been the only or principal home of the ex-tenant throughout the termination period.
- (3) In this Part of this Schedule “the termination period” means the period—
 - (a) beginning with the end of the original tenancy, and
 - (b) ending with the commencement date.
- (4) For the purposes of sub-paragraph (2)(a) the dwelling-house is the only or principal home of the ex-tenant on the commencement date even though the ex-tenant is then absent from the dwelling-house as a result of having been evicted in pursuance of a warrant if the warrant is subsequently set aside but the possession order under which it was granted remains in force.
- (5) In that case, the new tenancy is treated as arising on the first day (if any) on which the ex-tenant resumes occupation of the dwelling-house as that person’s only or principal home.

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- (6) For the purposes of sub-paragraph (2)(b) any period of time within the termination period is to be ignored if—
- (a) it is a period in which the ex-tenant was absent from the dwelling-house as a result of having been evicted in pursuance of a warrant which was then set aside although the possession order under which it was granted remained in force, and
 - (b) the ex-tenant subsequently resumes occupation of the dwelling-house as the ex-tenant's only or principal home.
- (7) The appropriate national authority may by order provide for particular cases or descriptions of case, or particular circumstances, where the home condition is met where it would not otherwise be met.

Nature of replacement tenancies

- 17 The new tenancy is to be—
- (a) a secure tenancy if—
 - (i) the original tenancy was a secure tenancy, or
 - (ii) the original tenancy was an introductory tenancy but no election by the ex-landlord under section 124 of the Housing Act 1996 (c. 52) is in force on the day on which the new tenancy arises,
 - (b) an assured shorthold tenancy if the original tenancy was an assured shorthold tenancy,
 - (c) an assured tenancy which is not an assured shorthold tenancy if the original tenancy was a tenancy of that kind,
 - (d) an introductory tenancy if the original tenancy was an introductory tenancy and an election by the ex-landlord under section 124 of the Housing Act 1996 is in force on the day on which the new tenancy arises,
 - (e) a demoted tenancy to which section 20B of the Housing Act 1988 (c. 50) applies if the original tenancy was a demoted tenancy of that kind, and
 - (f) a demoted tenancy to which section 143A of the Housing Act 1996 applies if the original tenancy was a demoted tenancy of that kind.
- 18 (1) The new tenancy is, subject as follows, to have effect on the same terms and conditions as those applicable to the original tenancy immediately before it ended.
- (2) The terms and conditions of the new tenancy are to be treated as modified so as to reflect, so far as applicable, any changes made during the termination period to the level of payments for the ex-tenant's occupation of the dwelling-house or to the other terms and conditions of the occupation.
- (3) The terms and conditions of the new tenancy are to be treated as modified so that any outstanding liabilities owed by the ex-tenant to the ex-landlord in respect of payments for the ex-tenant's occupation of the dwelling-house during the termination period are liabilities in respect of rent under the new tenancy.
- (4) The appropriate national authority may by order provide for other modifications of the terms and conditions of the new tenancy.
- (5) Nothing in sub-paragraphs (2) to (4) is to be read as permitting modifications of the new tenancy which would not have been possible if the original tenancy had remained a tenancy throughout the termination period.

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- (6) The terms and conditions of a new secure tenancy which arises by virtue of paragraph 17(a)(ii) are to be treated as modified so far as necessary to reflect the fact that the new tenancy is a secure tenancy and not an introductory tenancy.
- 19 (1) Any provision which is made by or under an enactment and relates to a secure tenancy, assured tenancy, introductory tenancy or demoted tenancy applies, subject as follows, to a new tenancy of a corresponding kind.
- (2) Any such provision which relates to an introductory tenancy applies to a new tenancy which is an introductory tenancy as if the trial period mentioned in section 125(2) of the Housing Act 1996 (c. 52) were the period of one year beginning with the day on which the new tenancy arises.
- (3) Any such provision which relates to a demoted tenancy applies to a new tenancy which is a demoted tenancy as if the demotion period mentioned in section 20B(2) of the Housing Act 1988 (c. 50) or section 143B(1) of the Housing Act 1996 were the period of one year beginning with the day on which the new tenancy arises.
- (4) The appropriate national authority may by order modify any provision made by or under an enactment in its application to a new tenancy.

Status of possession order and other court orders

- 20 (1) The possession order in pursuance of which the original tenancy ended is to be treated, so far as practicable, as if it applies to the new tenancy.
- (2) Any court orders made before the commencement date which—
- (a) are in force on that date,
 - (b) relate to the occupation of the dwelling-house, and
 - (c) were made in contemplation of, in consequence of or otherwise in connection with the possession order,
- are to be treated, so far as practicable, as if they apply to the new tenancy.

Continuity of tenancies

- 21 (1) The new tenancy and the original tenancy are to be treated for the relevant purposes as—
- (a) the same tenancy, and
 - (b) a tenancy which continued uninterrupted throughout the termination period.
- (2) The relevant purposes are—
- (a) determining whether the ex-tenant is a successor in relation to the new tenancy,
 - (b) calculating on or after the commencement date the period qualifying, or the aggregate of such periods, under Schedule 4 to the Housing Act 1985 (c. 68) (qualifying period for right to buy and discount),
 - (c) determining on or after the commencement date whether the condition set out in paragraph (b) of Ground 8 of Schedule 2 to that Act is met, and
 - (d) any other purposes specified by the appropriate national authority by order.
- (3) In proceedings on a relevant claim the court concerned may order that the new tenancy and the original tenancy are to be treated for the purposes of the claim as—
- (a) the same tenancy, and

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- (b) a tenancy which continued uninterrupted throughout the termination period.
- (4) The following are relevant claims—
- (a) a claim by the ex-tenant or the ex-landlord against the other for breach of a term or condition of the original tenancy—
 - (i) in respect of which proceedings are brought on or after the commencement date, or
 - (ii) in respect of which proceedings were brought, but were not finally determined, before that date,
 - (b) a claim by the ex-tenant against the ex-landlord for breach of statutory duty in respect of which proceedings are or were brought as mentioned in paragraph (a)(i) or (ii), and
 - (c) any other claim of a description specified by the appropriate national authority by order.
- (5) For the purposes of sub-paragraph (4)(a) proceedings must be treated as finally determined if—
- (a) they are withdrawn,
 - (b) any appeal is abandoned, or
 - (c) the time for appealing has expired without an appeal being brought.

Compliance with consultation requirements

- 22 (1) The fact that—
- (a) the views of the ex-tenant during the termination period were not sought or taken into account when they should have been sought or taken into account, or
 - (b) the views of the ex-tenant during that period were sought or taken into account when they should not have been sought or taken into account,
- is not to be taken to mean that the consultation requirements were not complied with.
- (2) The consultation requirements are—
- (a) the requirements under—
 - (i) section 105(1) of the Housing Act 1985 (c. 68),
 - (ii) paragraphs 3 and 4 of Schedule 3A to that Act,
 - (iii) regulations made under section 27AB of that Act which relate to arranging for ballots or polls with respect to a proposal to enter into a management agreement, and
 - (iv) section 137(2) of the Housing Act 1996 (c. 52), and
 - (b) any other requirements specified by the appropriate national authority by order.

Joint tenancies

- 23 (1) In the application of this Part of this Schedule in relation to an original tenancy which was a joint tenancy, a reference to the dwelling-house being the only or principal home of the ex-tenant is to be treated as a reference to the dwelling-house being the only or principal home of at least one of the ex-tenants of the joint tenancy.

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- (2) The appropriate national authority may by order provide for this Part of this Schedule to apply in relation to an original tenancy which was a joint tenancy subject to such additional modifications as may be specified in the order.

Successor landlords

- 24 (1) The appropriate national authority may by order provide for this Part of this Schedule to apply, subject to such modifications as may be specified in the order, to successor landlord cases.
- (2) For the purposes of sub-paragraph (1) a successor landlord case is a case, in relation to an original tenancy, where the interest of the ex-landlord in the dwelling-house—
- (a) has been transferred to another person after the end of the original tenancy and before the commencement date, and
 - (b) on the commencement date, belongs to the person to whom it has been transferred or a subsequent transferee.

Supplementary

- 25 In determining for the purposes of this Part of this Schedule whether a tenancy has ended, any ending which was temporary because the tenancy was restored in consequence of a court order is to be ignored.
- 26 (1) In this Part of this Schedule—
- “appropriate national authority” means—
 - (a) in relation to a dwelling-house in England, the Secretary of State, and
 - (b) in relation to a dwelling-house in Wales, the Welsh Ministers,
 - “assured shorthold tenancy” and “assured tenancy” have the same meanings as in Part 1 of the Housing Act 1988 (c. 50) but do not include a demoted tenancy to which section 20B of that Act applies,
 - “the commencement date” means the day on which section 299 comes into force for purposes other than the purposes of the Secretary of State or the Welsh Ministers making orders under this Part of this Schedule,
 - “demoted tenancy” means a tenancy to which section 20B of the Act of 1988 or section 143A of the Housing Act 1996 (c. 52) applies,
 - “dwelling-house”—
 - (a) in relation to an assured tenancy, or a tenancy to which section 20B of the Act of 1988 applies, has the same meaning as in Part 1 of that Act,
 - (b) in relation to a tenancy to which section 143A of the Act of 1996 applies, has the same meaning as in Chapter 1A of Part 5 of that Act,
 - (c) in relation to an introductory tenancy, has the meaning given by section 139 of the Act of 1996, and
 - (d) in relation to a secure tenancy, has the meaning given by section 112 of the Housing Act 1985 (c. 68),
 - “ex-landlord” means the person who was the landlord under an original tenancy,
 - “ex-tenant” means the person who was the tenant under an original tenancy,
 - “introductory tenancy” has the same meaning as in Chapter 1 of Part 5 of the Act of 1996,

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“modification” includes omission,

“new tenancy” means a tenancy which is treated as arising by virtue of paragraph 16,

“original tenancy” has the meaning given by paragraph 15,

“possession order”, in relation to a tenancy, means a court order for the possession of the dwelling-house,

“secure tenancy” has the same meaning as in Part 4 of the Act of 1985,

“successor”—

- (a) in relation to a new tenancy which is an assured tenancy or which is a demoted tenancy to which section 20B of the Act of 1988 applies, has the same meaning as in section 17 of that Act,
- (b) in relation to a new tenancy which is a demoted tenancy to which section 143A of the Act of 1996 applies, has the meaning given by section 143J of that Act,
- (c) in relation to a new tenancy which is an introductory tenancy, has the same meaning as in section 132 of the Act of 1996, and
- (d) in relation to a new tenancy which is a secure tenancy, has the same meaning as in section 88 of the Act of 1985.

“termination period” has the meaning given by paragraph 16(3).

(2) For the purposes of the definition of “appropriate national authority” in subparagraph (1) a dwelling-house which is partly in England and partly in Wales is to be treated—

- (a) as being in England if it is treated as situated in the area of a billing authority in England by virtue of regulations under section 1(3) of the Local Government Finance Act 1992 (c. 14) (council tax in respect of dwellings), and
- (b) as being in Wales if it is treated as situated in the area of a billing authority in Wales by virtue of regulations under that section.