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# Hill & Redman's Law of Landlord and Tenant

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## DIVISION A: GENERAL LAW

### Mortgage identity fraud – tenant paying rent to mortgagee – whether estopped from denying tenancy was binding on it

*Paratus AMC Ltd v Persons unknown and another* [2013] EWCA Civ 827 is a second appeal by the defendant, F, against the making of a possession order in favour of a mortgagee, P. Lest it seem strange that 'persons unknown' should be so active in litigation, it should be noted that P's possession action was so entitled when it was commenced, but the present appellant applied to be joined as a second defendant. Essentially, P, the claimant, had in January 2008 granted a mortgage to assist in the purchase of a property by a Mr Maru. It would appear that an identity fraud had been perpetrated, as he denied all knowledge of the mortgage, and it was likely, though not actually found, that the deed was a forgery. F had signed an agreement to rent the property from an agent acting for an undisclosed landlord. By the time she commenced living at the property in August 2009 the mortgage was in arrears; and, in circumstances which remained somewhat unclear, from November 2009 onwards she began to pay her rent of £1,000 p.m. directly into P's bank account. This sum later increased to £1,110 p.m. P's solicitors wrote to 'the tenants or occupiers' of the property in August 2010 alleging that any tenancy agreement with the purported owners was without their consent, and not binding on them, and in April 2011 they commenced the possession proceedings, to which F applied to be joined.

In the Court of Appeal, F's principal argument was that P was estopped from denying that she had a tenancy. The Court of Appeal (Longmore, Leveson

and Floyd LJJ) rejected this. Although she had made the payments to P, she had failed to establish that this was pursuant to any agreement, and, although her name had appeared on the paying-in slips, P had no reason to connect these payments with the then-unidentified occupier of the property. As against P, F remained a trespasser, and her appeal failed.

## Private possession action against squatters/trespassers – whether art 8, ECHR applied – proportionality of making of order

Although the case strictly does not involve a tenancy at all, the decision in *Malik v Fassenfelt* (*since deceased*)*, McGahan and persons unknown* [2013] EWCA Civ 798 has been long awaited in the expectation that it would offer guidance on the contentious issue of whether art 8, ECHR has horizontal applicability. In other words, whether courts must have regard to the article in determining possession claims by private landlords against their tenants and others. The judgments of the Court of Appeal (Sir Alan Ward, Lloyd LJ and Lord Toulson) offer interesting and competing analyses, but definitive guidance remains elusive.

The factual background to the case revolves around the 'Grow Heathrow' movement. Some land near Heathrow Airport that was owned by the claimant, M, had been unused since various unlawful uses (dumping of cars and fly tipping) had ceased, following enforcement notices. M's longer-term plans for the land were blighted by possible plans for the enlargement of the airport, and the appellants entered the land as trespassers. They restored it to its former attractiveness as a market garden, complete with glass houses. M took possession proceedings in the Central London CC, which they defended on the basis of, inter alia, an implied licence and the protection of art 8. The appeal was solely on the art 8 ground.

In a long and careful reserved judgment, HHJ Karen Walden-Smith held that art 8 did apply, but, applying the test of proportionality, decided that notwithstanding the work that the (present) appellants had put into improving the property, an immediate possession order was called for. She held that s 89, HA 1980 did not apply to trespassers, and so "the court has no jurisdiction to extend time for possession as a result of 'exceptional hardship'". It was unclear whether she relied for this upon *McPhail v Persons Unknown* [1973] Ch 447, which of course decided that an immediate possession order had to be made against squatters and the courts (at least then) had no power of suspension.

There is an air of unreality about the judgments, as technically this was an appeal by the squatters against the judge's refusal to suspend the possession. On this, the three Lords Justices (or, more accurately, one Lord Justice, a retired Lord Justice and a Lord Justice who has since been elevated to the Supreme Court) were all agreed that the judge's decision on this could not be faulted. The difficulty, however, is that, whilst the judge at first instance had granted permission for an appeal on her finding that art 8 did apply, the claimant did not wish to prolong the appeal by serving a respondent's notice

challenging that finding. The appeal therefore had to proceed on the basis that that aspect of her decision was correct, and argument was confined to the manner in which she exercised her discretion on the proportionality issue.

Sir Alan Ward, sitting on his final appeal, took the opportunity to conduct an extensive review of the now-familiar case law on *public* sector tenancies, and expressed the view (at [28]) – which has perforce to be obiter – that art 8 would apply to a possession claim by a private landlord, insofar as the court, as a public authority, would have to be approached in a similar way to a possession claim by a local authority, stressing nevertheless that “it is difficult to imagine circumstances which would give the defendant an unlimited and unconditional right to remain”.

Although Sir Alan delivered what is very much the leading judgment, the brief judgments of Lloyd LJ and Lord Toulson concur in his decision on what was technically the issue before the court (ie whether the possession claim should be remitted for a judge to reconsider whether it should be suspended) but express no view on what is the broader and more important issue ie whether HHJ Walden-Smith was correct to admit the applicability of art 8 at all. Lord Toulson expressly reserves his opinion on the issue to a case which directly raises the issue (at [47]), and Lloyd LJ says that it must await another day (at [50]). Both agree that *McPhail v Persons Unknown* should not be treated as having ceased to represent the law applicable to privately-owned land. Sir Alan Ward concludes ([40]) with a panegyric on the virtues of oral argument, and the British way of doing justice. He indicates regret at not being able to enjoy the application of art 8. Others may question whether it was useful or wise for him to bequeath the legacy of a lengthy analysis of an issue which was doomed, in the instant appeal, to be obiter. It nevertheless offers a rehearsal of a discussion which will surely have to come.

(Case noted at: S.J. 2013, 157(31), 9; and E.G. 2013, 1332, 48–50.)

## Landlord had entered into a long-term agreement prior to the grant of first lease in block – whether dispensation from s 20, LTA 1985 requirement to consult should have been obtained – relevance of regulations

*BDW Trading Ltd v South Anglia Housing Ltd* [2013] EWHC 2169 (Ch) is a surprising decision. The claimant had constructed an estate, which the freeholder had developed into various blocks of flats, and was now the sub-lessor to the defendant following a sale and lease-back. Before any leases were granted the claimant had entered into a long-term (25-year) agreement for the supply of electricity, and of hot water for domestic and space heating purposes, to the individual flats in the development. The reference in reg 3(1)(d) of the Service Charges (Consultation Requirements) (England) Regulations 2003 to certain such long-term agreements – those entered into for not exceeding five years, when there are no tenants of the premises – being exempted from the consultation requirements of s 20, LTA 1985 might lead one to expect that agreements entered into when there were no tenants, but which ***were*** intended to run for more than five years, would fall within the

scope of s 20. The claimant nevertheless argued that ***any*** agreement that was entered into when there were no tenants lay outside the scope of s 20, and succeeded with this argument before Mr N Strauss QC (sitting as a Deputy Judge of the Chancery Division).

The primary issue ([9]) was whether "the landlord" in the definition of "qualifying long term agreement" in s 20ZA could encompass someone who at a later time became a landlord. The judge observed that terms such as 'landlord', 'tenant', 'lease' and 'tenancy' were defined in ss 30 and 36 of the LTA 1985 in conventional terms, with no hint that any extended meaning was intended. Unlike in, for example, s 107B, HAA 1985, there was no reference to 'prospective landlords'. When first enacted, the legislation on service charges covered only building works, not long-term contracts, so there would have been no point in including an extended definition. The contrary argument was that the restricted meaning would leave service charge payers without any protection. The judge did not accept this, pointing out that: (a) their pre-contract enquiries would reveal that there was a long-term agreement, and with that knowledge they could decide whether they wished to proceed or not; and (b) they would not be entirely without redress, as expenditure would still, under s 19, have to be reasonably incurred. For those readers who are wondering how, on the defendant's case, consultation would take place when there were, ex hypothesi, no tenants with whom to consult, its argument assumed that every long-term agreement entered into for more than five years when there were no tenants would require an application to the LVT to secure a dispensation: in effect, any (very) long-term agreement would require the sanction of the tribunal.

The decision is an interesting and unusual one, is that it offers a comparatively rare example where the draftsman of the Regulations has, in effect, been held to have misunderstood the scope of the principal Act. The judge held that whilst both the Regulations and government consultation that preceded them were admissible in evidence ([22]), they did not have any persuasive power as an aid to interpretation of the principal Act, and did not dislodge the clear meaning of s 20ZA ([26]).

## Consultation notice under s 20, LTA 1985 – whether notice invalidated by reference to wrong person – whether earlier notice was still valid – whether point should have been taken at all – whether dispensation should be granted

*Jastrzembski v Westminster CC* [2013] UKUT 0284 (LC) is a service charge appeal, where again one of the grounds of appeal is that the LVT took it upon itself to take a point which had not been raised by the parties, and thus put one of the parties at a disadvantage. The appellant tenant was the long leasehold owner of a flat. He had issued an application to the LVT to determine the reasonableness of an estimated account for future major works. He alleged that a s 20 consultation notice which the Council alleged that it had served upon him in 2009 ('the 2009 notice') had not in fact been

received by him. Rather than resolve this issue of fact, the LVT decided that the notice was in any event invalid, in that it invited that observations be made to someone (the project manager) who was no longer involved. It went on to decide that a previous consultation notice issued in 2007 ('the 2007 notice') was a perfectly good notice in respect of the works proposed in 2009; and that, if the LVT was wrong on that, it would have granted dispensation pursuant to s 20ZA, LTA 1985.

J appealed against the finding that the 2007 notice was a valid notice, and against the finding that dispensation would have been appropriate; the Council cross-appealed on the basis of the procedural irregularity in the LVT determining an issue which had not been raised as part of the dispute between the parties, and against the finding that the inclusion of the name of the project manager invalidated the 2009 notice.

Sitting in the Upper Tribunal, HHJ Walden-Smith and Mr Trott reiterated the stance previously taken by the UT in cases such as *Beitov Properties Ltd v Martin* [2012] UKUT 0133 (LC), that the LVT should not take a purely technical point which had not been raised before the tribunal. It accordingly found there to have been a procedural irregularity and allowed the cross-appeal on that point. It further allowed the cross-appeal on the point about the inclusion of the name of the project manager: the legislation was silent as to whom representations had to be made if the consultation process were engaged, and there was no evidence to suggest that representations directed to the address given on the notice would not have reached the Council. On the appeal itself, the UT allowed J's appeal on the point about the 2007 notice, holding that it was not, still, a valid notice for the purpose of the later works; but this did not in the end assist J, as the UT agreed with the LVT that it was appropriate to grant the Council a dispensation from complying with this, as there was no evidence that J had suffered any prejudice. The general principles established by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14 were applied on this point.

## Participation notice in respect of right to manage – whether one duly served – whether process invalidated

*Avon Freeholds Ltd v Regent Court RTM Co Ltd* [2013] UKUT 0213 (LC) offers guidance on the consequences if the notice requirements of ss 78 and 111 of the right to manage provisions of the CLRA 2002 are not strictly complied with. The respondent RTM company had purported to give notice inviting participation, pursuant to s 78 of the Act, to all qualifying tenants who were not members of the company. The appellant freeholder gave a counternotice to this, alleging that the notice had given insufficient time for such tenants to respond. The RTM company accepted this, and served a second notice. The appellant freeholder thereupon opposed the RTM claim before the LVT, on the grounds that (1) the second notice was invalid, as it was served at a time when the first claim notice remained in force; and (2) not all non-participating qualifying tenants had been served.

The LVT found against the freeholder on these issues, and its appeal to the Upper Tribunal raised the issues of (1) whether the admitted failure on the

part of the RTM company to prove service of the notice of invitation to participate on the non-resident joint owners of one of the flats invalidated the right to manage process; and (2) whether the LVT was right to hold that the existence of the earlier notice did not render the second notice invalid and ineffective.

On the first ground of appeal, the Upper Tribunal (Sir Keith Lindblom, P) conducted an extensive review of the case law, and followed the decision of former President Sir George Bartlett in *Sinclair Gardens Investments* (*Kensington*) *Ltd v Oak Investments RTM Co Ltd* (LRX/52/2004), in which he had held that the tribunal had to have regard to whether the qualifying tenant had in practice been aware of the procedures, whether there had been genuine inadvertence, and whether the landlord had been prejudiced ([32] of the instant case). The facts of the present appeal are in fact a salutary reminder that, if a statute contains provisions which, in effect, allow service to be deemed, solicitors 'make a rod for their own back' if they apply what would appear to be a more commonsense solution. It would seem that the directors of the RTM company were well aware that the flat in question was empty, and, not having a forwarding address for the two joint tenants, they served them at alternative addresses i e the addresses recorded for them in the proprietorship register at HM Land Registry. They had only certificates of posting, which it was accepted did not prove service. In fact, as the President pointed out, the terms of s 111(5) of the CLRA 2002 are quite unequivocal, and service at the flat address is deemed to be good service, unless the tenant has, under s 111(4), notified the RTM company that he wishes to be served elsewhere. The tenants had not done this, but the RTM had nevertheless followed what appeared to be the sensible course, instead of observing s 111(5) to the letter. (The tribunal rejected the argument that the entry of another address at the Land Registry could be taken as notification of a different address.)

The approach of the President was "to consider whether the statutory provisions have been substantially complied with, and whether such prejudice has been caused as to undermine the right to manage process as a whole" ([39]). Applying these principles to the facts, there had clearly been substantial compliance here (the owners of 40 out of 41 flats were either participants or had been invited to participate); although the RTM company had not taken advantage of s 111(5), it had made an attempt at service ([50]), and there was nothing to show that the notice was any more likely to have come to the tenants' attention if they had effected service at the flat. The tenants who had not been served were non-residents who appeared to have taken no interest in the management of the block, and it could not be said that they were significantly prejudiced. Further, the appeal was being mounted by the landlord, and the primary focus of the statutory provisions as to participation notices was clearly to protect other tenants rather than landlords ([53]). The appeal on this ground failed.

On the second ground – that the existence of the first notice rendered the second notice ineffective – the President followed *Sinclair Gardens Investments* (*Kensington*) *Ltd v Poets Chase Freehold Co Ltd* [2007] EWHC 1776

(Ch) and *Alleyn Court RTM Co Ltd v Abou-Hamdan* [2012] UKUT 74 (LC). The first notice was clearly invalid, so it could not be taken as preventing the service of a second notice. Another decision of Mr George Bartlett QC, P, in *Plintal SA v 36–48A Edgwood Drive Co Ltd* (LRX/16/2007), which suggested that an invalid notice could not be ignored, was held not to be inconsistent with the other cases: it had decided that an invalid notice could not be treated as though for all purposes it had not existed, and its scope was no wider than that.

## Interpretation of ground rent subject to escalator clause – whether clause imposed a 'service charge'

The present editor suggested in Bulletin No 97 that *Arnold v Britton and others* ([2012] EWHC 3451 (Ch) offered a reminder to solicitors to check figures with a calculator before agreeing to any escalator clause in a lease. The decision of the Court of Appeal ([2013] EWCA Civ 902) to uphold the decision serves to reinforce that advice.

The leases were of chalets on a leisure park at Oxwich, in the Gower, near Swansea. There were in fact five slightly different versions of the wording in question, though in essence the issues that they raised were the same. The leases, which were first granted in 1977, demised the chalets for terms of 99 years from 1974. Besides the ground rent, the leases required the lessees to pay a "service charge" of £90 p.a. in respect of various services. The leases further provided, however, that the charge should rise "by Ten Pounds per Hundred" for every subsequent year. The claimant lessor sought a declaration that this provided for a 10% uplift in the service charge each year. This would result in the current service charge amounting to over £3,000 p.a. per chalet, which would rise to £1,025,004 in the final year, 2072–73. Although no evidence was admitted as to the lessor's expenditure, it was obvious that the charges already exceeded the lessor's expenses of providing the services.

In the Cardiff County Court, HHJ Jarman QC found in favour of the lessees, holding that they were liable to pay only their proportionate share of the lessor's actual expenditure, the sum of £90 and the 10% uplift representing the maximum that a lessee could be required to pay. That charge was accordingly a 'service charge' within the meaning of s 18(1), LTA 1985. Hearing the appeal in the Cardiff District Registry, Morgan J reached a contrary decision. The leaseholders appealed to the Court of Appeal: a minor point of relevance to legal devolution is that the case was heard in Cardiff, before a panel of Lords Justices with Welsh connections (Richards, Davis, and Lloyd Jones LJJ). The judgment of Davis LJ (with which the others agreed) is relatively brief, as he was in agreement with Morgan J's reasoning. The leading cases bring out the potential difference between cases of ambiguity and mistake ([34]–[35]) but essentially here the leaseholders were seeking the re-writing of a bargain that proved to be a bad one for them.

As had Morgan J, Davis LJ rejected (at [39]) any supposed special principle that a service charge should be construed restrictively so as to ensure that the landlord could make a profit. His words do, however, need to be examined

carefully. He goes on to suggest that as most modern service charges are designed not to provide the landlord with a profit (or a loss), any wording which points to that conclusion would need to be carefully examined to ascertain whether that is in fact what the words mean. Having decided that it was likely that the original parties were opting for a fixed service charge (plus an 'escalator') rather than a variable one, it was likely, at the end of the day, that that formula would favour either the landlord or the leaseholders, and the court could not re-write that bargain.

## Lessor's failure to consult under s 20, LTA 1985 – effect on recoverability of service charge – working out of order including order as to costs

*Daejan Investments Ltd v Benson* [2013] UKSC 54 is a supplemental judgment of the Supreme Court (following written representations) dealing with issues as to costs and the precise wording of the order, arising from [2013] UKSC 14 (noted in Bulletin No 99). Although a decision as to costs would not generally be of wider interest, it is noted here, for, as the Supreme Court acknowledged, its principles might well be relied upon in future cases where a landlord seeks a dispensation. Readers will recall that part of the reasoning of the Supreme Court was that, as a condition of granting dispensation from complying with s 20, LTA 1985, an LVT (now the FTT) might well wish to impose a condition that the landlord should pay the tenants' legal costs incurred in connection with the landlord's application ([59]). Applying that principle here, where the tenants had won at the earlier hearings but had at the end of the day lost, was clearly going to raise some difficult issues. Certain issues on costs were not in dispute: even so, there were eight in contention. Lord Neuberger again gave the judgment of the court, and on this occasion the other justices all concurred with him. His rulings were:

(1) The respondents were entitled to their costs in the LVT insofar as they were incurred "*in reasonably investigating and establishing non-compliance with the Regulations, investigating or seeking to establish prejudice, and investigating and challenging [Daejan's] application for dispensation*". These should not be limited to those incurred after Daejan's application for a dispensation, and could include those incurred in connection with an earlier determination ([8]). (The italicised words were the formulation preferred by the respondents.)

(2) On the question of costs incurred in the UT, the Court of Appeal and the Supreme Court – but falling within the scope of the words italicised above – the respondents sought to include those also within their costs. As the respondents had lost, however, it was not appropriate to make an order which was more favourable to them than "no order as to costs" ([12]). (It will be recalled that Daejan was allowed to appeal only on condition that it did not seek costs from the respondents in either the Court of Appeal or the Supreme Court: as a large institutional landlord it clearly had an incentive to secure a precedent in its favour.)

(3) Although the result of (2) would be that Daejan would be entitled to recover any costs which it had paid to the respondents in respect of the UT or CA hearings, it was right for a stay to be imposed on any order for repayment, while the parties await the decision of the LVT on the sums that Daejan might be required to repay under (1), so that the liabilities could be set off against one another ([16]).

(4) The parties agreed that Daejan ought, as a condition of the dispensation, to be barred from including its own legal costs in the service charges: the Supreme Court rejected both parties' suggested wording here, and imposed its own ([17]).

(5) In view of (4), it might be thought surprising that the Supreme Court should be invited by the respondents to make an order under s 20C, LTA 1985, but it was, and it did so, on the basis that (4) was merely a condition imposed as a term of granting a dispensation, and in theory Daejan might not take up that dispensation ([18]).

(6) and (7) involved when the dispensation should take effect, as that would affect the interest payable by the respondents on late payments of service charge. The Supreme Court here ruled that the dispensation would take effect only once all conditions had been satisfied, and that contractual interest under the respondents' leases would therefore begun to run 14 days thereafter ([24]).

(8) The parties disagreed as to whether the dispensation issue should be remitted to the same or a differently constituted LVT. The court took the view that it could be, but need not be, the same panel. As the original panel had been reversed on a point of law, there could be no doubting its ability to determine the necessary issues; as its members were familiar with the issues, there might be a saving of time and costs, but it might in practice be difficult to reconvene the same panel as in 2007 and 2008 ([26]).

Disputes involving service charges can raise some complex issues as to costs, as is shown by the need for s 20C, LTA 1985, and some of the difficult decisions on it. Lord Neuberger's careful supplemental judgment offers useful guidance on the principles to be applied in any case where there is a dispute as to the terms upon which a dispensation under s 20(1)(b) should be granted.

## Claim to adverse possession based on para 5, Sch 1, Limitation Act 1980 – whether there was a "lease in writing" – whether need for notice to comply with Pt II, LTA 1954

*Mitchell v Watkinson* [2013] EWHC 2266 (Ch) is a case on facts that the judge (Morgan J) described as "highly unusual", an additional complication being that the arguments of the parties shifted from their pleaded cases during the course of the hearing. In essence, Mr Arthur Mitchell in 1947 granted a written tenancy to three persons as trustees of a cricket club. However, shortly before the tenancy was granted, Mr Mitchell had conveyed

the land by deed of gift to his son, whose widow was the current claimant. Title to the land was now registered, but, if there had been adverse possession, it had been completed before 2002. Rent had ceased to be paid in 1974, and the defendants defended the possession claim brought by the son's widow's by relying on para 5 of Sch 1 to the Limitation Act 1980 ie the special rules applicable to tenancies from year to year "without a lease in writing". The claimant disputed their applicability, on the basis that there ***had*** been an agreement in writing, but Morgan J rejected this argument: although he accepted that the tenancy would have implicitly incorporated the terms in the written agreement, applying *Long v Tower Hamlets LBC* [1998] Ch 197, the special rules applied even when a lease was evidenced in writing: for para 5 not to apply, the lease had actually to be ***effected*** in writing.

A further point that arose was whether the requirement of para 5 – that a tenancy from year to year should be treated as having been determined – should apply even though in practice any notice would have had to comply with the LTA 1954. This point was left open in *Long*, but Morgan J applied by analogy the case of *Moses v Lovegrove* [1952] 2 QB 533, which had held that para 5 deemed a tenancy to have come to an end for adverse possession purposes, and it was irrelevant that it would have been continued by the Rent Acts. So here, Morgan J decided that it was unnecessary to decide whether the tenancy of the cricket club trustees fell within the 1954 Act or not, as, even if it did, para 5 would deem that the tenancy had been determined for the purposes of establishing adverse possession. The views on this expressed in *Jourdan and Radley-Gardner on Adverse Possession* (2nd edn), at paras 24–37 to 24–41 were preferred to an unreported county court decision.

## Rectification of lease where parties under mistaken belief that prior document would supplement principal agreement

*Ahmad v Secret Garden (Cheshire) Ltd* [2013] EWCA Civ 1005 is on the often problematic area of rectification. A, the landlord, and S, the owner and driving force behind the tenant company, had agreed and signed terms for a seven-year lease, in a document ('Lease 1') which was not legally enforceable as it did not include all the terms, and it was intended that there would be a final lease. Shortly afterwards they signed a formal lease in the Law Society's printed form LS2 ('Lease 2'). This lease did not include the terms contained in Lease 1. The recorder in Manchester County Court accepted that both parties had mistakenly thought that the terms that they had originally agreed in Lease 1 would remain in effect to supplement Lease 2. She therefore ordered that Lease 2 be rectified to incorporate also the terms agreed in Lease 1.

In the Court of Appeal, Arden LJ (sitting with Lloyd Jones and Fulford LJJ) applied the test for rectification applied in *Swainland Builders Ltd v Freehold Properties Ltd* [2002] EWCA Civ 560 and approved by the House of Lords in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] AC 1101 at [48], and held that it had been correctly applied here. One argument of the landlord, opposing rectification, was that *Oun v Ahmad* [2008] EWHC 545

(Ch) did not permit rectification of one document where the parties had deliberately decided to retain some terms in another document (see [51]). Arden LJ, however, distinguished the present case, pointing out that in the former case the parties had made a deliberate decision to have separate documents, as it was necessary to achieve their ends. Here the parties had executed Lease 2 under the common misapprehension that the amendments to the standard form lease agreed in Lease 1 would remain effective ([52]–[53]).

The landlord also challenged the recorder's exercise of her discretion in ordering rectification, alleging that she had taken insufficient account of the tenant's delay in seeking rectification, possible acts of affirmation, and the fact that the property had been re-let to another tenant (although the new lease would not override the subject lease). These challenges were also rejected.

## Dispute over use of right of way – whether use as a distribution centre was use as 'an industrial unit'

*British Malleable Iron Co Ltd v Revelan* (*IoM*) *Ltd* [2013] EWHC 1954 (Ch) is technically a dispute between two freehold owners but it brings in an issue on non-derogation which may be of relevance in landlord and tenant cases. The claimant, BMI, owned a private road that gave access to a small industrial estate owned by R. The deed of grant was "for the purposes of industrial units" and there was a reference in one clause to BMI having the power to withhold consent to changes of use from these if they would result in increased traffic. The entrance to the roadway was barred by a gate which was kept open during weekday business hours but could be opened on request at other times. R had let one of the industrial units to CES (UK) Ltd which (BMI alleged) operated a warehouse/distribution centre for motor parts which delivered to local garages at short notice, and hence involved numerous comings and goings, and also involved some retail sales. This both increased the traffic on the private road and also – because of the frequent openings of the gate – compromised security. BMI sought a declaration seeking a restrictive construction of the right of way; R applied for summary judgment dismissing the claim.

HHJ David Cooke, hearing the case as a Deputy Chancery Judge, made the point that R would be liable for the actions of its tenants, including CES, only if it had expressly or impliedly authorised the use. This would be a question of fact, to be determined at trial. The judge did not, however, allow the matter to go to trial, because he held that, as a matter of construction of the deed of grant, here 'use as industrial units' should here be taken as including uses falling with the B8 (storage and distribution) use class, as well as B2 (general industrial ie processing) uses. Even making all relevant assumptions of fact in the claimant's favour, therefore, its claim could not succeed.

## Service charge dispute – whether underlessees had to contribute to expenses incurred in relation to land outside their estate

*Paddington Basin Developments Ltd and others v Grits and others* [2013] UKUT 338 (LC) is a decision on the construction of the ultimate underleases which has as its background the same complicated factual scenario as the widely-reported decision of Lewison J in *Paddington Basin Developments Ltd v West End Quay Management Ltd* [2010] EWHC 833 (Ch), in which he held that an 'Estate Management Deed' (EMD) was capable of being a 'qualifying long term agreement' for the purposes of s 20ZA, LTA 1985. That was, however, only the determination of a preliminary issue, and it would appear that further proceedings on that action were stayed pending the determination of the present case.

Mr Grits ('G') was the underlessee of one of the individual flats. The service charge provisions in his underlease required payment of a block service charge to the appropriate block management company, and an estate service charge to West End Quay Management Ltd. Some of the services provided by WEQM, however, were provided across the Paddington Basin Development – a wider area than the estate – by Paddington Basin Management Ltd. The EMD required WEQM to contribute a proportion of these costs. The point at issue was whether these costs could include the costs that PBM incurred in maintaining an area of land referred to as 'the retained land', an area which lay outside the West End Quay estate.

Sitting in the Upper Tribunal, HHJ Walden-Smith upheld the decision of the LVT and construed the underlease as not requiring G to contribute to such of PBM's expenditure as related to the retained land, rather than to the West End Quay estate itself. Although large sums of money were at stake for the parties involved, the case is essentially one on the construction of specific documents, and it does not seem possible to extract from the decision any point which is likely to be of wider relevance. The judge's starting point in construing the documents was, as one might expect, the judgment of Lord Hoffmann in *Investment Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896.

It seems unlikely that this decision will be the end of the Paddington Basin saga. Although 'divided' service charges are unavoidable with complex developments, it does seem rather asking for trouble to set up a development scheme which requires as many as three tiers of management.

## Application to vary leases – whether LVT had complied with regulation permitting determination of an issue without an oral hearing

*Keeney Construction Ltd v Brooke* [2013] UKUT 329 (LC) offers some guidance on the procedure to be adopted by the LVTs (now the FTT) in determining applications in whole or in part without an oral hearing. The original application to the LVT was for a variation of leases under s 35, LTA

1987. The building in question was a block of nine flats above commercial premises, and was in poor repair. It appeared that the flats did not bear a fair proportion of the cost of upkeep of the building. Following a contested oral hearing, the LVT ordered variation of the leases, but also held that the case was appropriate for the award of compensation to the leaseholders under s 38(10), LTA 1987. The LVT's order therefore invited the submission of a claim for compensation, and provided for that part of the case to be heard either on the 'paper track', or by an oral hearing should either party request one. The leaseholders submitted expert evidence, which was served on the appellant landlord's solicitors, but no further explicit directions were given. No response was received from the landlord's solicitor, and the LVT then proceeded to determine the issue of compensation, largely accepting the leaseholders' submissions.

The landlord appealed on the basis that there had been a procedural irregularity. HHJ Huskinson in the Upper Tribunal allowed the appeal, holding that ([22], [24]), although the landlord's solicitors had received the submissions on behalf of the leaseholders, the order of the LVT did not sufficiently comply with reg 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, which deals with determination of applications without an oral hearing. Further, the LVT had not taken into account that it was inherently unlikely that the landlord would have no observations to make on the unusual step of awarding compensation when leases were varied. He left open (at [23]) the wider question of whether it was ever permissible to use the written representation procedure under reg 13 for a discrete part of a case where there had been an oral hearing, save with the express consent of the parties. The landlord's appeal was accordingly allowed, and the matter of compensation remitted to what is now the FTT for rehearing.

### Costs incurred by 'in-house' solicitor – whether charge out rate should be reduced

See *Re an Appeal by Alka Arora* [2013] UKUT 0362 (LC) in **Division E: Long Leases** (below).

## DIVISION B: BUSINESS TENANCIES

### Landlord and Tenant Act 1954 – meaning of "notice given under s 24(2)" – whether notice complied – whether break notice thereby invalidated

*Siemens Hearing Instruments Ltd v Friends Life Ltd* [2013] All ER (D) 188 (Jul) raises some issues on the meaning of a somewhat ill-conceived clause which seems to have been fairly widely adopted around the time when it was thought to be uncertain whether a tenant could simultaneously exercise a break clause and apply for a new tenancy under s 26(2), LTA 1954, a course of action which might be attractive in a falling market.

The relevant clause of a lease required T, when serving a break notice, *to state that it was being given under s 24*(*2*)*, LTA 1954*. T purported to serve a break

notice, but failed to refer to s 24(2) (though it did not combine the notice with any step seeking a new tenancy). L contested the validity of the notice: one of its arguments was that s 24(2) would be relevant only to a tenant in occupation, and so T, who here was out of occupation, could not serve a valid break notice. Unsurprisingly, this argument was rejected. Mr N Strauss QC, however, rejected (at [18]) T's suggestion that the relevant clause was meaningless: one could draft a break notice so that it was expressed to be compliant with s 24(2), even if it was not strictly possible to serve a notice 'under' that subsection. T's break notice did not therefore ([21]) comply with the relevant clause, but, following a detailed consideration of the cases on mistakes in notices, he decided that this did not serve to invalidate the notice. The wording of the relevant clause of the lease had evolved in an attempt to cover the potential loophole in the law which *Garston v Scottish Widows Fund* [1996] 1 WLR 834 had held did not in fact exist.

### Claim to adverse possession based on para 5, Sch 1, Limitation Act 1980 – whether there was a 'lease in writing' – whether need for notice to comply with Pt II, LTA 1954

See *Mitchell v Watkinson* [2013] EWHC 2266 (Ch) in **Division A** (above).

## DIVISION C: PRIVATE SECTOR RESIDENTIAL TENANCIES

### Damages for unlawful eviction – whether appeal could raise issue as to whether defendant was properly a party

*Lee v Lasrado* [2013] EWHC 2302 (QB) is an appeal by the landlord, principally against an order for payment of damages for unlawful eviction, under the Housing Act 1988. The chief ground of his appeal was that his wife, rather than he, was the landlord of the property in question. The appeal failed on this ground, as it had not been raised in the original county court proceedings, the appeal was out of time, and no evidence to support it was adduced. The court also dismissed an appeal as to the quantum of damages awarded – a total of £24,600 – as Griffith Williams J was satisfied that the various elements of the award lay within the accepted brackets.

## DIVISION D: PUBLIC SECTOR RESIDENTIAL TENANCIES

### Enquiry into homelessness – temporary accommodation provided under s 188(1), HA 1996 – whether Council bound after Pinnock to obtain possession order

*R* (*on the application of CN*) *v Lewisham LBC; R* (*on the application of ZH* (*a child by his litigation friend*)) *v Newham LBC* [2013] EWCA Civ 804 raises the

issue of whether a local authority is bound to seek a possession order against someone to whom it has provided temporary accommodation under s 188(1), HA 1996 whilst pursuing further enquiries as their status for homelessness purposes.

Although s 3 of the Protection from Eviction Act 1977 imposes a general requirement that a possession order be obtained to evict someone from premises occupied as a dwelling (whether under a tenancy or certain licences), the Court of Appeal had in *Mohammed v Manek v Royal Borough of Kensington and Chelsea* (1995) 27 HLR 439 construed the expression "occupied as a dwelling under a licence" in s 3(2B) as not extending to temporary accommodation provided in the circumstances mentioned above. This interpretation was upheld by the majority in *Desnousse v Newham LBC* [2006] EWCA Civ 547, but the question was raised in the instant appeals of whether this construction could withstand the decisions of the Supreme Court in *Manchester CC v Pinnock* [2010] UKSC 45 and *Hounslow LBC v Powell* [2011] UKSC 8.

The unanimous decision of the court (Moses, Kitchin and Floyd LJJ) (at [64]) was that *Pinnock* did not require that a public authority had always to take proceedings before evicting someone from his home. Giving the leading judgment, Kitchin LJ held that insofar as someone in the applicant's position might need to challenge the legality of the eviction, they had sufficient opportunity to do so in judicial review proceedings ([65]). It was now understood that a court in doing so had the power to assess the proportionality of the measure, and could assess the relevant facts, and so this was sufficient to give effect to an occupier's art 8 rights.

Further, as explained by the ECtHR in *Tysiac v Poland* (2007) 45 EHRR 42 at [115], regard had to be had to the Council's decision making process as a whole. Relevant here were factors such as the many opportunities that the applicant would have to engage with the Council's processes by which it dealt with those presenting as homeless ([43]), and to require review of them; and, moreover, as in practice 28 days' notice would be given, that would ([42]), if necessary, afford sufficient opportunity to challenge the decision by judicial review and secure an interim injunction staying eviction. Further, it was clear ([69]) from cases such as *Tysiac* that, in the field of the provision of social housing the ECtHR would extend to national courts a wide margin of appreciation on how art 8 rights should be secured. The sheer number of cases where temporary accommodation was provided would mean that it would impose an intolerable burden on local authorities if they had to resort to court proceedings in every case: [70]. Permission to appeal to the Supreme Court was refused.

## Position of a 'tolerated trespasser' who was granted a new tenancy under 'decant agreement' – whether a secure tenant of either property

*Francis v Brent Housing Partnership Ltd* [2013] EWC Civ 912 deals with the interrelationship between a F's status as a 'tolerated trespasser' and a 'decant

agreement', whereby F was given alternative accommodation while her own property was being repaired. F was granted a secure tenancy and occupied 25C Stonebridge Park from 1981 until 2005. As a result of rent arrears, a possession order was made against her in 1991, but for the next 14 years she remained in possession under various orders suspending the execution of the original order. By 2002 her rent account was in credit, though it slipped into arrears in 2004. Under the law as it existed prior to the changes introduced by s 299 of and Sch 11 to the Housing and Regeneration Act 2008, F's status was that of a tolerated trespasser.

In 2004 Brent LBC (which, in spite of the title of the case, was the landlord) wished to repair 25C and so entered into a 'decant agreement' with her, whereby she was given alternative accommodation at No 1 Kingthorpe whilst 25C was being repaired. For various reasons she was still residing at No 1 in 2009 when Brent LBC obtained an outright possession order against her in respect of ***that*** property on the ground of rent arrears. A warrant under the 2009 order was eventually suspended: the fact that it was suspended implicitly recognised that her tenancy of No 1 was secure. When the works to 25C were completed, Brent advised F – which they had not done previously – that as her 'decant' had persisted for more than 12 months, she would not be permitted to return to No 25C, but would instead receive a home loss disturbance allowance.

Trying a preliminary issue, HHJ Moloney QC in the Central London County Court determined that F had a tenancy of No 1, but not of 25C. She appealed against this decision, and succeeded on this point in the Court of Appeal (Laws, Rimer and Beatson LJJ). The basis of the decision was that the decant agreement was clearly worded on the assumption that F was a secure tenant, and not a tolerated trespasser. The court therefore declared that she was and remained a secure tenant of 25C (see [47]). It rejected a subsidiary argument of F that she became a secure tenant of 25C by virtue of s 299 of the HRA 2008, on the ground that she could not satisfy the condition that 25C was her 'only or principal home': she clearly could not, as this would be inconsistent with the finding that she had a secure tenancy of No 1.

## DIVISION E: LONG LEASES

### Deferment rate for lease extensions under Pt II, LRHUDA 1993 – whether further uplift should be allowed to take account of complexities of flat management

*Voyvoda v Grosvenor West End Properties, 32 Grosvenor Sq Ltd* [2013] UKUT 0334 (LC) revisits the gloss placed on *Sportelli* (*Cadogan* (*Earl*) *v Sportelli* [2007] EWCA Civ 1042) by the Upper Tribunal in *Zuckerman v Calthorpe Estate* [2009] UKUT 0235 (LC). Sportelli, it will be recalled, endorsed a generic deferment rate of 4.75%, with a standard uplift for flats of a further 0.25% to take account of the greater risks involved with their management. Zuckerman allowed a further 0.25% uplift for flats, to represent the increasing complexity of the legislation governing service charges, etc, making them

less attractive as investments. *City and Country Properties Ltd v Yeats* [2012] UKUT 0227 (LC) had endorsed this approach, subject to the qualification that the 'Zuckerman addition' would not be appropriate where it was unlikely that the freeholder would ever have to resume management responsibilities.

The LVT in *Voyvoda* had declined to allow the '*Zuckerman* addition'. The appellant alleged that this approach was wrong. However, Sir Jeremy Sullivan (Senior President), sitting in the Upper Tribunal with Mr N J Rose, FRICS, dismissed the appeal. All the management difficulties surrounding long leasehold flats had been present at the relevant valuation dates in *Sportelli* (which were between December 2003 and July 2005), save that the more onerous 2003 Consultation Regulations had not then been in force ([66]–[67]). Much of the force behind the arguments that had succeeded in Zuckerman and Yeats had been removed by the decision of the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14, which had decided that failure to comply with those requirements would be likely to result only in the landlord having to bear any actual loss suffered by the leaseholders paying the service charge, rather than running the far more draconian risk that the excess over £250 per flat would be found wholly irrecoverable. It was accepted that the slightly earlier decision of the Chancellor in *Phillips v Francis* [2012] EWHC 3650 (Ch) (as to which see Bulletin No 97, and **HR A[3808]** in the principal work) would make a landlord's position more difficult ([72]), but Sir Jeremy Sullivan's view was that, overall, the net effect on the market of *Daejan v Benson* and *Phillips v Francis* favoured the landlord ([72]). It was therefore no longer appropriate to allow the *Zuckerman* addition: the addition to the standard deferment rate of 4.75% of 0.25% for blocks of flats in *Sportelli* was now sufficient.

The judgment contains much useful discussion of the experts' views of the effect that recent case law has had on valuations in the long leasehold sector, and warrants closer consideration from those whose who practise in this area.

NOTE: the judgment contains a reference (at [42]) to a pending application for permission to appeal the (former) Chancellor's controversial decision in *Phillips v Francis.*

## Costs incurred by 'in-house' solicitor – whether charge out rate should be reduced

*Re an Appeal by Alka Arora* [2013] UKUT 0362 (LC) confirms the short but important point that, where a party is required to pay another's legal costs, these are not to be reduced by reason only of the fact that the legal services are provided by an in-house solicitor. Mr Arora had been in practice as a solicitor but now had an arrangement to work for a company owned by members of his family. He had acted for the landlords on a largely uncontentious tenant's application for a lease extension under Part II of the LRHUDA 1993. His costs had been charged as seven hours at £250 per hour. The LVT reduced the charge to £1,000, on the basis that five hours should have sufficed, and also reduced the hourly rate from the £250 which would have been reasonable for a solicitor in private practice for the sole reason that

he was an 'in-house' solicitor and so had lower overheads. Permission to appeal had not been granted on the point about the reduction in the hours allowed, but Mr Martin Rodger QC, Deputy President, held that to reduce the hourly rate solely because the lawyer was 'in-house' went again established costs precedents such as *Henderson v Merthyr Tydfil Urban District Council* [1900] 1 QB 434 and *Re Eastwood* (*deceased*) [1975] Ch 112. Mr Arora was therefore entitled to recover £1,250 in respect of his costs.

## PERMISSION TO APPEAL

The decision of the Upper Tribunal in *Vovyoda* (see above) contains a reference to a pending application for permission to appeal the Chancellor's controversial decision in *Phillips v Francis* [2012] EWHC 3650 (Ch) (as to which see Bulletin No 97, and **HR A[3808]** in the principal work).

## NOTES ON CASES

*Blueco Ltd v BWAT Retail Nominee* (*1*) *Ltd* [2013] EWHC 1135 (Ch): [2013] Comm Leases 1958–1962

*Brickfield Properties Ltd v Botten* [2013] UKUT 133 (LC): E.G. 2013, 1329, 102 (noted in Bulletin No 99)

*Cravecrest v Trustees of the Will of the Second Duke of Westminster* [2013] EWCA Civ 731: E.G. 2013, 1330, 77 (noted in Bulletin No 100)

*Golden Ocean Group Ltd v Salgaocar Mining Industries Pvt Ltd* [2012] EWCA Civ 265: E.G. 2013, 1332, 55

*Marks and Spencer plc v Paribas Securities Services Trust Co* (*Jersey*) *Ltd* [2013] EWHC 1279 (Ch): N.L.J. 2013, 163(7568), 15–16; and [2013] Comm Leases 2013, Jun/Jul, 1949–195 (noted in Bulletin No 100)

*Peel Land and Property* (*Ports No 3*) *Ltd v TS Sheerness Steel* [2013] EWHC 1658 (Ch): E.G. 2013, 1328, 81; and [2013] Comm Leases 1962–1966 (noted in Bulletin No 100)

*Singh v Sanghera* [2013] EWHC 956 (Ch): [2013] Comm Leases 1956–1958

*Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669: E.G. 2013, 1329, 103 (noted in Bulletin No 100)

*Topland Portfolio No 1 Ltd v Smiths News Trading Ltd* [2013] EWHC 1445 (Ch): E.G. 2013, 1328, 83; and [2013] Comm Leases 2013, Jun/Jul, 1943–1947 (noted in Bulletin No 100)

## ARTICLES OF INTEREST

*1925 and all that* (less common provisions of LPA 1925) E.G. 2013, 1330, 72–73

*All tied up* (use of Land Registry restrictions) S.J. 2013, 157(27), 21

*And here is the news: some of it good* (establishment of Property Chamber within First-tier Tribunal; and the *Legal Education and Training Review 2013*) [2013] Conv 255–258

*Avoiding a messy break-up* (problems with exercising break clauses) E.G. 2013, 1333, 44–46

*Challenging a secure tenancy* (in fact relates to opposing renewal under Pt II, LTA 1954) E.G. 2013, 1332, 52

*Cleaning up leases on renewal* E.G. 2013, 1327, 83

*Commercial Property: Building Sights* (in-house lawyers and commercial property external advisers) (2013) Law Soc Gazette 5 Aug, 16

*Dealing with defects* (*Hunt v Optima* (*Cambridge*) *Ltd* [2013] EWHC 681 (TCC) – leasehold flats) PLJ 3 June 2013, 2–6

*Empty promises* (meaning of 'vacant possession' when a break clause is exercised) E.G. 2013, 1334, 44, 46

*Exercising a right to forfeit* (forfeiture of long residential leases, esp. ss 166, 168, CLRA 2002) E.G. 2013, 1334, 48–49

*Human Rights and the law of leases* Edin. L.R. 2013, 17(2), 184–209

*Human rights and the rule in Hammersmith and Fulham LBC v Monk* (reviews *Sims v Dacorum BC*) [2013] Conv 326–334

*Migrating liability for visa checks to landlords* (discusses government proposals) E.G. 2013, 1334, 47

*New Property Chamber begins work* Sol Jo, July 1, 2013 (Online edition)

*Protecting long leases against market losses* S.J. 2013, 157(27), 10

*Putting on the Breaks* (*Marks & Spencer plc v BNP Paribas* [2013] EWHC 1279 and other recent cases on payment of rent and break clauses) NLJ 2013, 163(7571), 15–17

*Quiet reflection* (evaluation of 20 years of the LRHUDA 1993, Pt I and key cases on it) E.G. 2013, 1329, 94–96

*Recent developments in housing law* Legal Action 2013, Jul/Aug, 20–24

*Safe as houses* (use of ADR in landlord and tenant disputes) N.L.J. 2013, 163 (7573), 21

*Surviving succession: the relationship between statute and the common law* (reviews *Solihull MBC v Hickin*) [2013] Conv 314–326

*The ongoing "house" conundrum* E.G. 2013, 1327, 80–82

## NEWS AND CONSULTATIONS

A **Home Office** consultation seeks views on imposing a requirement on landlords to check the immigration status of prospective tenants, with penalties imposed on those who let to non-EEA migrants (responses were required by 21 August 2013): http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/consultation.pdf?view=Binary

A letter to the Residential Landlords Association from Mr Mark Prisk MP, Minister for Housing at the **Department of Communities and Local Government**, comments that the outcome of the decision in *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669 (see Bulletin No 100) was not that intended by the legislation, and the Government will be considering whether amending legislation is required: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230293/Residential_Landlords_Association_letter.pdf

## REPORTS

Response to Consultation Changes to the Network Access Agreement and the Technical Manual Part 1 – Electronic Document Registration Service (July 2013) (summarises response to its June 2013 consultation proposing to amend the network access agreement, including proposals for next steps): http://www.landregistry.gov.uk/__data/assets/pdf_file/0016/48301/consultation-response-NAA-tech-manual.pdf

The Leasehold Advisory Service (LEASE) has published its Annual Report and Accounts for 2012–13: http://www.lease-advice.org/documents/AR-2013.pdf

## PRESS RELEASES

The **Property Ombudsman** has advised that **Client Money Protection cover** is now available to all UK letting agents, as two additional CMP providers are available from July 2013. Letting agents who are not registered with a trade body will therefore be able to obtain cover to protect tenants' deposits: http://www.tpos.co.uk/news-13.htm

The **Land Registry** announced on 6 August 2013 that it was opening up its **electronic Document Registration Service** (**e-DRS**) to all its professional customers who send in applications to change the register: http://www.landregistry.gov.uk/announcements/2013/updates-to-business-e-services-terms-and-conditions

## STATUTES, ETC

A **House of Commons Library Standard Note** published on 13 August 2013 provides background briefing on the **Prevention of Social Housing Fraud Act 2013**: http://www.parliament.uk/briefing-papers/SN06378/prevention-of-social-housing-fraud-act-2013. The Act received Royal Assent on 31 January 2013 and comes into force on a date or dates to be appointed. The press release suggests that regulations and commencement orders are expected "later this summer".

## STATUTORY INSTRUMENTS

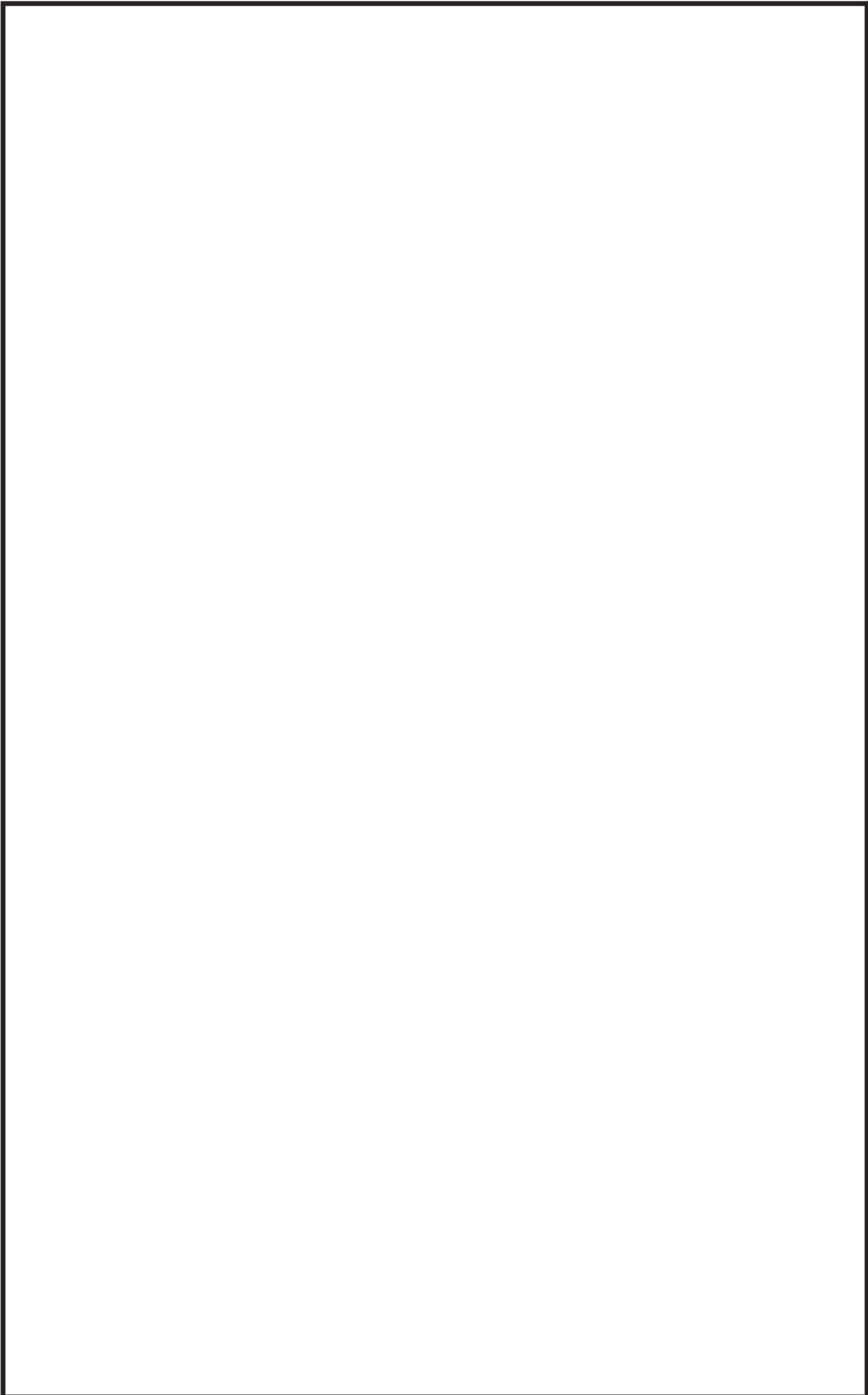
The **Tribunals, Courts and Enforcement Act 2007** (**Commencement No 9**) **Order 2013**, SI 2013/1739 brought s 90 of the principal Act into force with effect from 15 July 2013, and various other sections into force for the purpose only of making regulations. These future regulations will abolish distraint for

rent, and replace it – for commercial premises only – with the long-postponed CRAR (Commercial Rent Arrears Recovery) scheme outlined in the TCEA 2007.

The **Housing and Regeneration Act 2008 (Commencement No 3 and Transitional, Transitory and Saving Provisions) (Wales) Order 2013**, SI 2013/1469 (W. 140) (C. 57) appointed 10 July 2013 as the day upon which s 318 of the 2008 Act took effect in Wales, so extending the provisions of the Mobile Homes Act 1983 to local authority gypsy and traveller sites in Wales. (The provision has been in force in England since 30 April 2011 by virtue of SI 2011/1002.)

The **Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) (Wales) Order 2013**, SI 2013/1722 (W. 166) and the **Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013**, SI 2013/1723 (W. 167) both came into force on 10 July 2013. The former order amends the Mobile Homes Act 1983 by including references to Wales, and the latter order amends Part 1 of Sch 1 so that the sets of implied terms for local authority gypsy and traveller sites inserted by the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011 in relation to England, are applied to the equivalent sites in Wales, though some of the terms implied in Wales differ from those implied in England.

The **Annual Tax on Enveloped Dwellings (Returns) Regulations 2013**, SI 2013/1844 provide HMRC with authority to prescribe the form and content of an ATED return. (ATED was introduced by Part 3 of the Finance Act 2013 and is directed chiefly at high-value UK residential property held by certain non-natural persons.)



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