

SCHEDULE 1

(introduced by section 4)

TENEMENT MANAGEMENT SCHEME

RULE 1 –

SCOPE AND INTERPRETATION

Scope of scheme

- 1.1 This scheme provides for the management and maintenance of the scheme property of a tenement.

Meaning of “scheme property”

- 1.2 For the purposes of this scheme, “scheme property” means, in relation to a tenement, all or any of the following—
- (a) any part of the tenement that is the common property of two or more of the owners,
 - (b) any part of the tenement (not being common property of the type mentioned in paragraph (a) above) the maintenance of which, or the cost of maintaining which, is, by virtue of a tenement burden, the responsibility of two or more of the owners,
 - (c) with the exceptions mentioned in rule 1.3, the following parts of the tenement building (so far as not scheme property by virtue of paragraph (a) or (b) above)—
 - (i) the ground on which it is built,
 - (ii) its foundations,
 - (iii) its external walls,
 - (iv) its roof (including any rafter or other structure supporting the roof),
 - (v) if it is separated from another building by a gable wall, the part of the gable wall that is part of the tenement building, and
 - (vi) any wall (not being one falling within the preceding subparagraphs), beam or column that is load bearing.

Parts not included in rule 1.2(c)

- 1.3 The following parts of a tenement building are the exceptions referred to in rule 1.2(c)—
- (a) any extension which forms part of only one flat,
 - (b) any—
 - (i) door,
 - (ii) window,
 - (iii) skylight,
 - (iv) vent, or
 - (v) other opening,which serves only one flat,
 - (c) any chimney stack or chimney flue.

Status: This is the original version (as it was originally enacted).

Meaning of “scheme decision”

- 1.4 A decision is a “scheme decision” for the purposes of this scheme if it is made in accordance with—
- (a) rule 2, or
 - (b) where that rule does not apply, the tenement burden or burdens providing the procedure for the making of decisions by the owners.

Other definitions

- 1.5 In this scheme—
- “maintenance” includes repairs and replacement, cleaning, painting and other routine works, gardening, the day to day running of a tenement and the reinstatement of a part (but not most) of the tenement building, but does not include demolition, alteration or improvement unless reasonably incidental to the maintenance,
- “manager” means, in relation to a tenement, a person appointed (whether or not by virtue of rule 3.1(c)(i)) to manage the tenement, and
- “scheme costs” has the meaning given by rule 4.1.

Rights of co owners

- 1.6 If a flat is owned by two or more persons, then one of them may do anything that the owner is by virtue of this scheme entitled to do.

RULE 2 –

PROCEDURE FOR MAKING SCHEME DECISIONS

Making scheme decisions

- 2.1 Any decision to be made by the owners shall be made in accordance with the following provisions of this rule.

Allocation and exercise of votes

- 2.2 Except as mentioned in rule 2.3, for the purpose of voting on any proposed scheme decision one vote is allocated as respects each flat, and any right to vote is exercisable by the owner of that flat or by someone nominated by the owner to vote as respects the flat.

Qualification on allocation of votes

- 2.3 No vote is allocated as respects a flat if—
- (a) the scheme decision relates to the maintenance of scheme property, and
 - (b) the owner of that flat is not liable for maintenance of, or the cost of maintaining, the property concerned.

Exercise of vote where two or more persons own flat

- 2.4 If a flat is owned by two or more persons the vote allocated as respects that flat may be exercised in relation to any proposal by either (or any) of them, but if those persons disagree as to how the vote should be cast then the vote is not to be counted unless—
- (a) where one of those persons owns more than a half share of the flat, the vote is exercised by that person, or
 - (b) in any other case, the vote is the agreed vote of those who together own more than a half share of the flat.

Decision by majority

- 2.5 A scheme decision is made by majority vote of all the votes allocated.

Notice of meeting

- 2.6 If any owner wishes to call a meeting of the owners with a view to making a scheme decision at that meeting that owner must give the other owners at least 48 hours' notice of the date and time of the meeting, its purpose and the place where it is to be held.

Consultation of owners if scheme decision not made at meeting

- 2.7 If an owner wishes to propose that a scheme decision be made but does not wish to call a meeting for the purpose that owner must instead—
- (a) unless it is impracticable to do so (whether because of absence of any owner or for other good reason) consult on the proposal each of the other owners of flats as respects which votes are allocated, and
 - (b) count the votes cast by them.

Consultation where two or more persons own flat

- 2.8 For the purposes of rule 2.7, the requirement to consult each owner is satisfied as respects any flat which is owned by more than one person if one of those persons is consulted.

Notification of scheme decisions

- 2.9 A scheme decision must, as soon as practicable, be notified—
- (a) if it was made at a meeting, to all the owners who were not present when the decision was made, by such person as may be nominated for the purpose by the persons who made the decision, or
 - (b) in any other case, to each of the other owners, by the owner who proposed that the decision be made.

Case where decision may be annulled by notice

- 2.10 Any owner (or owners) who did not vote in favour of a scheme decision to carry out, or authorise, maintenance to scheme property and who would be liable for not less than 75 per cent. of the scheme costs arising from that decision may, within the time mentioned in rule 2.11, annul that decision by giving notice that the decision is annulled to each of the other owners.

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Time limits for rule 2.10

- 2.11 The time within which a notice under rule 2.10 must be given is—
- (a) if the scheme decision was made at a meeting attended by the owner (or any of the owners), not later than 21 days after the date of that meeting, or
 - (b) in any other case, not later than 21 days after the date on which notification of the making of the decision was given to the owner or owners (that date being, where notification was given to owners on different dates, the date on which it was given to the last of them).

RULE 3 –

MATTERS ON WHICH SCHEME DECISIONS MAY BE MADE

Basic scheme decisions

- 3.1 The owners may make a scheme decision on any of the following matters—
- (a) to carry out maintenance to scheme property,
 - (b) to arrange for an inspection of scheme property to determine whether or to what extent it is necessary to carry out maintenance to the property,
 - (c) except where a power conferred by a manager burden (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) is exercisable in relation to the tenement—
 - (i) to appoint on such terms as they may determine a person (who may be an owner or a firm) to manage the tenement,
 - (ii) to dismiss any manager,
 - (d) to delegate to a manager power to exercise such of their powers as they may specify, including, without prejudice to that generality, any power to decide to carry out maintenance and to instruct it,
 - (e) to arrange for the tenement a common policy of insurance complying with section 18 of this Act and against such other risks (if any) as the owners may determine and to determine on an equitable basis the liability of each owner to contribute to the premium,
 - (f) to install a system enabling entry to the tenement to be controlled from each flat,
 - (g) to determine that an owner is not required to pay a share (or some part of a share) of such scheme costs as may be specified by them,
 - (h) to authorise any maintenance of scheme property already carried out,
 - (i) to modify or revoke any scheme decision.

Scheme decisions relating to maintenance

- 3.2 If the owners make a scheme decision to carry out maintenance to scheme property or if a manager decides, by virtue of a scheme decision, that maintenance needs to be carried out to scheme property, the owners may make a scheme decision on any of the following matters—
- (a) to appoint on such terms as they may determine a person (who may be an owner or a firm) to manage the carrying out of the maintenance,
 - (b) to instruct or arrange for the carrying out of the maintenance,
 - (c) subject to rule 3.3, to require each owner to deposit—

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- (i) by such date as they may decide (being a date not less than 28 days after the requirement is made of that owner), and
 - (ii) with such person as they may nominate for the purpose,
- a sum of money (being a sum not exceeding that owner's apportioned share of a reasonable estimate of the cost of the maintenance),
- (d) to take such other steps as are necessary to ensure that the maintenance is carried out to a satisfactory standard and completed in good time.

Scheme decisions under rule 3.2(c) requiring deposits exceeding certain amounts

3.3 A requirement, in pursuance of a scheme decision under rule 3.2(c), that each owner deposit a sum of money—

- (a) exceeding £100, or
- (b) of £100 or less where the aggregate of that sum taken together with any other sum or sums required (otherwise than by a previous notice under this rule) in the preceding 12 months to be deposited by each owner by virtue any scheme decision under rule 3.2(c) exceeds £200,

shall be made by written notice to each owner and shall require the sum to be deposited into such account (the “maintenance account”) as the owners may nominate for the purpose.

Provision supplementary to rule 3.3

3.4 Where a requirement is, or is to be, made in accordance with rule 3.3—

- (a) the owners may make a scheme decision authorising a manager or at least two other persons (whether or not owners) to operate the maintenance account on behalf of the owners,
- (b) there must be contained in or attached to the notice to be given under rule 3.3 a note comprising a summary of the nature and extent of the maintenance to be carried out together with the following information—
 - (i) the estimated cost of carrying out that maintenance,
 - (ii) why the estimate is considered a reasonable estimate,
 - (iii) how the sum required from the owner in question and the apportionment among the owners have been arrived at,
 - (iv) what the apportioned shares of the other owners are,
 - (v) the date on which the decision to carry out the maintenance was made and the names of those by whom it was made,
 - (vi) a timetable for the carrying out of the maintenance, including the dates by which it is proposed the maintenance will be commenced and completed,
 - (vii) the location and number of the maintenance account, and
 - (viii) the names and addresses of the persons who will be authorised to operate that account on behalf of the owners,
- (c) the maintenance account to be nominated under rule 3.3 must be a bank or building society account which is interest bearing, and the authority of at least two persons or of a manager on whom has been conferred the right to give authority, must be required for any payment from it,

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- (d) if a modification or revocation under rule 3.1(i) affects the information contained in the notice or the note referred to in paragraph (b) above, the information must be sent again, modified accordingly, to the owners,
- (e) an owner is entitled to inspect, at any reasonable time, any tender received in connection with the maintenance to be carried out,
- (f) the notice to be given under rule 3.3 may specify a date as a refund date for the purposes of paragraph (g)(i) below,
- (g) if—
 - (i) the maintenance is not commenced by—
 - (A) where the notice under rule 3.3 specifies a refund date, that date, or
 - (B) where that notice does not specify such a date, the twenty-eighth day after the proposed date for its commencement as specified in the notice by virtue of paragraph (b)(vi) above, and
 - (ii) a depositor demands, by written notice, from the persons authorised under paragraph (a) above repayment (with accrued interest) of such sum as has been deposited by that person in compliance with the scheme decision under rule 3.2(c),
 the depositor is entitled to be repaid accordingly, except that no requirement to make repayment in compliance with a notice under sub-paragraph (ii) arises if the persons so authorised do not receive that notice before the maintenance is commenced,
- (h) such sums as are held in the maintenance account by virtue of rule 3.3 are held in trust for all the depositors, for the purpose of being used by the persons authorised to make payments from the account as payment for the maintenance,
- (i) any sums held in the maintenance account after all sums payable in respect of the maintenance carried out have been paid shall be shared among the depositors—
 - (i) by repaying each depositor, with any accrued interest and after deduction of that person's apportioned share of the actual cost of the maintenance, the sum which the person deposited, or
 - (ii) in such other way as the depositors agree in writing.

Scheme decisions under rule 3.1(g): votes of persons standing to benefit not to be counted

- 3.5 A vote in favour of a scheme decision under rule 3.1(g) is not to be counted if—
- (a) the owner exercising the vote, or
 - (b) where the vote is exercised by a person nominated by an owner—
 - (i) that person, or
 - (ii) the owner who nominated that person,
 is the owner or an owner who, by virtue of the decision, would not be required to pay as mentioned in that rule.

RULE 4 –

SCHEME COSTS: LIABILITY AND APPORTIONMENT

Meaning of “scheme costs”

- 4.1 Except in so far as rule 5 applies, this rule provides for the apportionment of liability among the owners for any of the following costs—
- (a) any costs arising from any maintenance or inspection of scheme property where the maintenance or inspection is in pursuance of, or authorised by, a scheme decision,
 - (b) any remuneration payable to a person appointed to manage the carrying out of such maintenance as is mentioned in paragraph (a),
 - (c) running costs relating to any scheme property (other than costs incurred solely for the benefit of one flat),
 - (d) any costs recoverable by a local authority in respect of work relating to any scheme property carried out by them by virtue of any enactment,
 - (e) any remuneration payable to any manager,
 - (f) the cost of any common insurance to cover the tenement,
 - (g) the cost of installing a system enabling entry to the tenement to be controlled from each flat,
 - (h) any costs relating to the calculation of the floor area of any flat, where such calculation is necessary for the purpose of determining the share of any other costs for which each owner is liable,
 - (i) any other costs relating to the management of scheme property,
- and a reference in this scheme to “scheme costs” is a reference to any of the costs mentioned in paragraphs (a) to (i).

Maintenance and running costs

- 4.2 Except as provided in rule 4.3, if any scheme costs mentioned in rule 4.1(a) to (d) relate to—
- (a) the scheme property mentioned in rule 1.2(a), then those costs are shared among the owners in the proportions in which the owners share ownership of that property,
 - (b) the scheme property mentioned in rule 1.2(b) or (c), then—
 - (i) in any case where the floor area of the largest (or larger) flat is more than one and a half times that of the smallest (or smaller) flat, each owner is liable to contribute towards those costs in the proportion which the floor area of that owner’s flat bears to the total floor area of all (or both) the flats,
 - (ii) in any other case, those costs are shared equally among the flats,
- and each owner is liable accordingly.

Scheme costs relating to roof over the close

- 4.3 Where—
- (a) any scheme costs mentioned in rule 4.1(a) to (d) relate to the roof over the close, and
 - (b) that roof is common property by virtue of section 3(1)(a) of this Act,

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then, despite the fact that the roof is scheme property mentioned in rule 1.2(a), paragraph (b) of rule 4.2 shall apply for the purpose of apportioning liability for those costs.

Insurance premium

- 4.4 Any scheme costs mentioned in rule 4.1(f) are shared among the flats—
- (a) where the costs relate to common insurance arranged by virtue of rule 3.1(e), in such proportions as may be determined by the owners by virtue of that rule, or
 - (b) where the costs relate to common insurance arranged by virtue of a tenement burden, equally,
- and each owner is liable accordingly.

Other scheme costs

- 4.5 Any scheme costs mentioned in rule 4.1(e), (g), (h) or (i) are shared equally among the flats, and each owner is liable accordingly.

RULE 5 –

REDISTRIBUTION OF SHARE OF COSTS

Where an owner is liable for a share of any scheme costs but—

- (a) a scheme decision has been made determining that the share (or a portion of it) should not be paid by that owner, or
- (b) the share cannot be recovered for some other reason such as that—
 - (i) the estate of that owner has been sequestered, or
 - (ii) that owner cannot, by reasonable inquiry, be identified or found,

then that share must be paid by the other owners who are liable for a share of the same costs (the share being divided equally among the flats of those other owners), but where paragraph (b) applies that owner is liable to each of those other owners for the amount paid by each of them.

RULE 6 –

PROCEDURAL IRREGULARITIES

Validity of scheme decisions

- 6.1 Any procedural irregularity in the making of a scheme decision does not affect the validity of the decision.

Liability for scheme costs where procedural irregularity

- 6.2 If any owner is directly affected by a procedural irregularity in the making of a scheme decision and that owner—
- (a) was not aware that any scheme costs relating to that decision were being incurred, or

- (b) on becoming aware as mentioned in paragraph (a), immediately objected to the incurring of those costs,
that owner is not liable for any such costs (whether incurred before or after the date of objection), and, for the purposes of determining the share of those scheme costs due by each of the other owners, that owner is left out of account.

RULE 7 –

EMERGENCY WORK

Power to instruct or carry out

- 7.1 Any owner may instruct or carry out emergency work.

Liability for cost

- 7.2 The owners are liable for the cost of any emergency work instructed or carried out as if the cost of that work were scheme costs mentioned in rule 4.1(a).

Meaning of “emergency work”

- 7.3 For the purposes of this rule, “emergency work” means work which, before a scheme decision can be obtained, requires to be carried out to scheme property—
- (a) to prevent damage to any part of the tenement, or
 - (b) in the interests of health or safety.

RULE 8 –

ENFORCEMENT

Scheme binding on owners

- 8.1 This scheme binds the owners.

Scheme decision to be binding

- 8.2 A scheme decision is binding on the owners and their successors as owners.

Enforceability of scheme decisions

- 8.3 Any obligation imposed by this scheme or arising from a scheme decision may be enforced by any owner.

Enforcement by third party

- 8.4 Any person authorised in writing for the purpose by the owner or owners concerned may—
- (a) enforce an obligation such as is mentioned in rule 8.3 on behalf of one or more owners, and
 - (b) in doing so, may bring any claim or action in that person’s own name.

RULE 9 – GIVING OF NOTICE

Giving of notice

- 9.1 Any notice which requires to be given to an owner under or in connection with this scheme may be given in writing by sending the notice to—
- (a) the owner, or
 - (b) the owner’s agent.

Methods of “sending” for the purposes of rule 9.1

- 9.2 The reference in rule 9.1 to sending a notice is to its being—
- (a) posted,
 - (b) delivered, or
 - (c) transmitted by electronic means.

Giving of notice to owner where owner’s name is not known

- 9.3 Where an owner cannot by reasonable inquiry be identified or found, a notice shall be taken for the purposes of rule 9.1(a) to be sent to the owner if it is posted or delivered to the owner’s flat addressed to “The Owner” or using some other similar expression such as “The Proprietor”.

Day on which notice is to be taken to be given

- 9.4 For the purposes of this scheme—
- (a) a notice posted shall be taken to be given on the day of posting, and
 - (b) a notice transmitted by electronic means shall be taken to be given on the day of transmission.