

## SCHEDULES

### SCHEDULE 3

Further provision about notices that specify works

#### Part 2

Failure to carry out works required by rectification notice or hazard notice

##### *Application of Part of Schedule*

4. This Part of this Schedule applies if the owner of living accommodation fails to comply with—

- (a) a requirement in a rectification notice to carry out works in or to an HMO, or
- (b) a works requirement in a hazard notice.

##### *Carrying out of work by council*

5.—(1) The council may carry out any work required by the notice.

(2) But the council may do so only if one of the following three conditions is met.

(3) The first condition is that—

- (a) the date specified for that work to be completed has passed, and
- (b) the council has given the owner not less than 7 days' notice of its intention to carry out the work under this paragraph.

(4) The second condition is that the owner has given notice to the council that the owner is unable to comply with the requirement because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.

(5) The third condition is that the owner has given notice to the council stating that the owner considers that carrying out the work is likely to endanger any person.

##### *Vacation of land or premises to allow work to be carried out*

6.—(1) Where the council—

- (a) is authorised by paragraph 5 to carry out work, and

- (b) considers that doing so is likely to endanger any occupant of any land or premises,

it must require that occupant to move from the land or premises.

(2) A requirement under sub-paragraph (1) must be made by serving a notice on the occupant specifying—

- (a) by reference to the work which the council is authorised to carry out, the reason why the occupant is required to move, and
- (b) the date, not less than 28 days after the date on which the notice is served, by which the occupant must move.

(3) A requirement under sub-paragraph (1) ceases to have effect if—

- (a) a court of summary jurisdiction refuses to issue a warrant under paragraph 7(1) in relation to it, or
- (b) the work is completed.

*Warrants requiring occupant to vacate land or premises*

7.—(1) Where an occupant has not complied with a requirement under paragraph 6(1), the council may apply to a court of summary jurisdiction for a warrant requiring the occupant—

- (a) to move from the land or premises in question by such date as the court may determine, and
- (b) not to return until the work is completed.

(2) The court may issue a warrant under sub-paragraph (1) only if satisfied that the occupant is likely to be endangered by the carrying out of the work concerned.

(3) No application under this paragraph may be made before the date specified in the notice served under paragraph 6(2).

(4) On such an application, the court may require the service of a further notice on the occupant.

(5) Where a further notice has been required to be served under sub-paragraph (4), the date determined under sub-paragraph (1)(a) must not be less than 14 days after service of that notice.

(6) A warrant may be made subject to such other conditions (including conditions with respect to payment of rent) as the court considers just and equitable.

(7) No warrant may require a person (“A”) to move from any living accommodation which is that person’s only or main residence (“A’s home”) unless the court is satisfied that suitable alternative living accommodation on reasonable terms will be available to A.

(8) In sub-paragraph (7) “suitable alternative living accommodation” means accommodation which is suitable for occupation by—

- (a) A, and
  - (b) any other person who would, but for the location of that other person's place of work or of any educational institution which the person attends, reside only or mainly at A's home.
- (9) The decision of a court on an application under this paragraph is to be final.
- (10) Refusal by the court to issue a warrant sought under this paragraph does not affect the validity of the requirement to carry out works in relation to which the warrant was sought.

*Unlawful occupation etc*

- 8.—(1) A person commits an offence if the person—
- (a) knows that a requirement under paragraph 6(1) has effect in relation to any land or premises, and
  - (b) occupies the land or premises.
- (2) But it is not an offence under sub-paragraph (1) for a person to continue to occupy land or premises which the person occupied on the day on which the requirement under paragraph 6(1) was made.
- (3) A person commits an offence if the person—
- (a) knows that a requirement under paragraph 6(1) has effect in relation to any land or premises, and
  - (b) permits another person to occupy the land or premises.
- (4) But it is not an offence under sub-paragraph (3) for a person to permit another person to continue to occupy land or premises which that other person occupied on the day on which the requirement under paragraph 6(1) was made.
- (5) A person guilty of an offence under this paragraph is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

*Recovery of expenses etc from owner*

- 9.—(1) The council may recover from the owner of the HMO in question—
- (a) any expenses that the council incurs in or in connection with carrying out work that it is authorised to carry out by paragraph 5, and
  - (b) any expenses that it incurs in applying for or executing a warrant issued under paragraph 7.
- (2) Sub-paragraph (1) entitles the council to recover—
- (a) any administrative expenses incurred by it in connection with the act to which the expenses relate,

- (b) where notice is served under paragraph 5(3)(b), any administrative or other expenses incurred either in connection with that notice or with a view to carrying out the works (even if the works are carried out by someone other than the council), and
  - (c) interest, at such reasonable rate as it may determine, from the date when a demand for payment is served until the whole amount is paid.
- (3) The sums mentioned in sub-paragraphs (1) and (2) are a civil debt recoverable summarily.
- (4) Notice of any decision to demand recovery of any sums under this paragraph must be served on the owner.
- (5) That notice may include a declaration by the council that any sums recoverable under this paragraph are to be payable by instalments.
- (6) In all summary proceedings by the council for the recovery of sums under this paragraph, the time within which the proceedings may be taken are to be reckoned from the date of the service of that notice.
- (7) Until they are recovered, sums recoverable under this paragraph are a charge on the estate that the owner has in the HMO.
- (8) The charge created by sub-paragraph (7) is enforceable in all respects as if it were a valid mortgage by deed created in favour of the council by the owner (with, where necessary, any authorisation or consent required by law) and the council may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgagees by deed accordingly.
- (9) In proceedings by the council for the recovery of any sums under this paragraph, it shall not be open to the owner to raise any question which the owner could have raised on an appeal under section 67 against the rectification notice or hazard notice in question.

*Recovery of expenses etc from other person benefiting from works*

- 10.—**(1) This paragraph applies if a court of summary jurisdiction is satisfied, on the application of the council, that—
- (a) any sums which the council is entitled to recover under paragraph 9 have not been, and are unlikely to be, recovered, and
  - (b) some person is profiting by the execution of the works in respect of which the sums were incurred to obtain rents or other payments which would not have been obtainable if the number of persons occupying the HMO was limited to that appropriate for the HMO in its state before the works were executed.
- (2) The court may order the person mentioned in sub-paragraph (1)(b) to make such payment or payments to the council as appear to the court to be just and equitable.

(3) But the court may make such an order only if it is satisfied that that person has had proper notice of the application.