



Landlord and Tenant Act 1987

1987 CHAPTER 31

PART V

MANAGEMENT OF LEASEHOLD PROPERTY

Service charges

41 Amendments relating to service charges.

- (1) Sections 18 to 30 of the 1985 Act (regulation of service charges payable by tenants) shall have effect subject to the amendments specified in Schedule 2 (which include amendments—
 - (a) extending the provisions of those sections to dwellings other than flats, and
 - (b) introducing certain additional limitations on service charges).
- (2) Sections 45 to 51 of the ^{M1}Housing Act 1985 (which are, so far as relating to dwellings let on long leases, superseded by sections 18 to 30 of the 1985 Act as amended by Schedule 2) shall cease to have effect in relation to dwellings so let.

Modifications etc. (not altering text)

C1 S. 41(2) excluded by S.I. 1988/1283, art. 2, Sch. para. 8

Marginal Citations

M1 1985 c. 68.

42 Service charge contributions to be held in trust.

- (1) This section applies where the tenants of two or more dwellings may be required under the terms of their leases to contribute to the same costs ^{F1}, or the tenant of a dwelling may be required under the terms of his lease to contribute to costs to which no other

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tenant of a dwelling may be required to contribute,] by the payment of service charges; and in this section—

“the contributing tenants” means those tenants; [^{F2}and “the sole contributing tenant” means that tenant;]

“the payee” means the landlord or other person to whom any such charges are payable by those tenants [^{F3}, or that tenant, under the terms of their leases, or his lease];

“relevant service charges” means any such charges;

“service charge” has the meaning given by section 18(1) of the 1985 Act, except that it does not include a service charge payable by the tenant of a dwelling the rent of which is registered under Part IV of the ^{M2}Rent Act 1977, unless the amount registered is, in pursuance of section 71(4) of that Act, entered as a variable amount;

“tenant” does not include a tenant of an exempt landlord; and

“trust fund” means the fund, or (as the case may be) any of the funds, mentioned in subsection (2) below.

- (2) Any sums paid to the payee by the contributing tenants [^{F4}, or the sole contributing tenant,] by way of relevant service charges, and any investments representing those sums, shall (together with any income accruing thereon) be held by the payee either as a single fund or, if he thinks fit, in two or more separate funds.
- (3) The payee shall hold any trust fund—
 - (a) on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable (whether incurred by himself or by any other person), and
 - (b) subject to that, on trust for the persons who are the contributing tenants for the time being [^{F5}, or the person who is the sole contributing tenant for the time being.]
- (4) Subject to subsections (6) to (8), the contributing tenants shall be treated as entitled by virtue of subsection (3)(b) to such shares in the residue of any such fund as are proportionate to their respective liabilities to pay relevant service charges [^{F6}or the sole contributing tenant shall be treated as so entitled to the residue of any such fund.]
- (5) If the Secretary of State by order so provides, any sums standing to the credit of any trust fund may, instead of being invested in any other manner authorised by law, be invested in such manner as may be specified in the order; and any such order may contain such incidental, supplemental or transitional provisions as the Secretary of State considers appropriate in connection with the order.
- (6) On the termination of the lease of [^{F7}any of the contributing tenants] the tenant shall not be entitled to any part of any trust fund, and (except where subsection (7) applies) any part of any such fund which is attributable to relevant service charges paid under the lease shall accordingly continue to be held on the trusts referred to in subsection (3).
- (7) [^{F8}On the termination of the lease of the last of the contributing tenants, or of the lease of the sole contributing tenant,] any trust fund shall be dissolved as at the date of the termination of the lease, and any assets comprised in the fund immediately before its dissolution shall—
 - (a) if the payee is the landlord, be retained by him for his own use and benefit, and
 - (b) in any other case, be transferred to the landlord by the payee.

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- (8) Subsections (4), (6) and (7) shall have effect in relation to [^{F9}any of the contributing tenants, or the sole contributing tenant,] subject to any express terms of his lease [^{F10}(whenever it was granted)] which relate to the distribution, either before or (as the case may be) at the termination of the lease, of amounts attributable to relevant service charges paid under its terms (whether the lease was granted before or after the commencement of this section).
- (9) Subject to subsection (8), the provisions of this section shall prevail over the terms of any express or implied trust created by a lease so far as inconsistent with those provisions, other than an express trust so created [^{F11}, in the case of a lease of any of the contributing tenants,] before the commencement of this section [^{F12}or, in the case of the lease of the sole contributing tenant, before the commencement of paragraph 15 of Schedule 10 to the Commonhold and Leasehold Reform Act 2002.]

Textual Amendments

- F1** Words in s. 42(1) inserted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(2\)\(a\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F2** Words in s. 42(1) inserted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(2\)\(b\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F3** Words in s. 42(1) substituted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(2\)\(c\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F4** Words in s. 42(2) inserted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(3\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F5** Words in s. 42(3) inserted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(4\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F6** Words in s. 42(4) inserted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(5\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F7** Words in s. 42(6) substituted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(6\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F8** Words in s. 42(7) substituted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(7\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F9** Words in s. 42(8) substituted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(8\)\(a\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F10** Words in s. 42(8) inserted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(8\)\(b\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F11** Words in s. 42(9) inserted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(9\)\(a\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)
- F12** Words in s. 42(9) inserted (28.2.2005 for E., 31.5.2005 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 10 para. 15\(9\)\(b\)](#); S.I. 2004/3056, art. 3(b); S.I. 2005/1353, art. 2(b)

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Modifications etc. (not altering text)

C2 Ss. 42-42B modified (30.9.2003 for E., 30.3.2004 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 7 para. 11](#); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)

Marginal Citations

M2 1977 c. 42.

[^{F13}42A Service charge contributions to be held in designated account

- (1) The payee must hold any sums standing to the credit of any trust fund in a designated account at a relevant financial institution.
- (2) An account is a designated account in relation to sums standing to the credit of a trust fund if—
 - (a) the relevant financial institution has been notified in writing that sums standing to the credit of the trust fund are to be (or are) held in it, and
 - [any other sums held in the account are sums standing to the credit of one or
 - ^{F14}(b) more other trust funds,]
 and the account is an account of a description specified in regulations made by the [^{F15}Secretary of State.][^{F15}appropriate national authority]

[The appropriate national authority may by regulations ensure that a payee who holds

 - ^{F16}(2A) more than one trust fund in the same designated account cannot move any of those funds to another designated account unless conditions specified in the regulations are met.]
- (3) Any of the contributing tenants, or the sole contributing tenant, may by notice in writing require the payee—
 - (a) to afford him reasonable facilities for inspecting documents evidencing that subsection (1) is [^{F17}, or regulations under subsection (2A) are,] complied with and for taking copies of or extracts from [^{F18}them][^{F18}such documents], or
 - (b) to take copies of or extracts from any such documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
- (4) If the tenant is represented by a recognised tenants' association and he consents, the notice may be served by the secretary of the association instead of by the tenant (and in that case any requirement imposed by it is to afford reasonable facilities, or to send copies or extracts, to the secretary).
- (5) A notice under [^{F19}this section][^{F19}subsection (3)] is duly served on the payee if it is served on—
 - (a) an agent of the payee named as such in the rent book or similar document, or
 - (b) the person who receives the rent on behalf of the payee;
 and a person on whom such a notice is so served must forward it as soon as may be to the payee.
- (6) The payee must comply with a requirement imposed by a notice under [^{F20}this section][^{F20}subsection (3)] within the period of twenty-one days beginning with the day on which he receives the notice.
- (7) To the extent that a notice under [^{F21}this section][^{F21}subsection (3)] requires the payee to afford facilities for inspecting documents—

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- (a) he must do so free of charge, but
 - (b) he may treat as part of his costs of management any costs incurred by him in doing so.
- (8) The payee may make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under ^{F22}[this section]^{F22}[subsection (3)] .
- (9) Any of the contributing tenants, or the sole contributing tenant, may withhold payment of a service charge if he has reasonable grounds for believing that the payee has failed to comply with the duty imposed on him by subsection (1); and any provisions of his tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- ^{F23}[Regulations under subsection (2A) may include provision about —
- ^{F23}(9A) (a) the circumstances in which a contributing tenant who has reasonable grounds for believing that the payee has not complied with a duty imposed on him by the regulations may withhold payment of a service charge,
- (b) the period for which payment may be so withheld,
- (c) the amount of service charge that may be so withheld;
- and the regulations may provide that any provisions of the contributing tenant's tenancy relating to non-payment or late payment of service charge do not have effect in relation to the period for which the payment is so withheld.]
- (10) Nothing in this section ^{F24}[or in regulations under subsection (2A)] applies to the payee if the circumstances are such as are specified in regulations made by the ^{F25}[Secretary of State]^{F25}[appropriate national authority] .
- ^{F26}[Regulations under this section may—
- ^{F26}(10A) (a) make different provision for different cases, including different provision for different areas,
- (b) contain such supplementary, incidental, consequential, transitional, transitory or saving provision as the appropriate national authority considers appropriate.
- (10B) Regulations under this section are to be made by statutory instrument which—
- (a) in the case of regulations made by the Secretary of State, is to be subject to annulment in pursuance of a resolution of either House of Parliament, and
- (b) in the case of regulations made by the Welsh Ministers, is to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.]
- (11) In this section—
- ^{F27}“the appropriate national authority”—
- (a) in relation to England, means the Secretary of State, and
- (b) in relation to Wales, means the Welsh Ministers,]
- “recognised tenants’ association” has the same meaning as in the 1985 Act, and
- “relevant financial institution” has the meaning given by regulations made by the ^{F28}[Secretary of State]^{F28}[appropriate national authority] ;
- and expressions used both in section 42 and this section have the same meaning as in that section.

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Textual Amendments

- F13** Ss. 42A, 42B inserted (26.7.2002 for E. for specified purposes, 1.1.2003 for W. for specified purposes and otherwise prosp.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), s. 156\(1\)](#); S.I. 2002/1912, [art. 2\(c\)](#) (subject to [Sch. 2](#)); S.I. 2002/3012, [art. 2\(c\)](#) (subject to [Sch. 2](#))
- F14** S. 42A(2)(b) substituted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(2\)\(a\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F15** Words in s. 42A(2) substituted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(2\)\(b\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F16** S. 42A(2A) inserted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(3\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F17** Words in s. 42A(3)(a) inserted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(4\)\(a\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F18** Words in s. 42A(3)(a) substituted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(4\)\(b\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F19** Words in s. 42A(5) substituted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(5\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F20** Words in s. 42A(6) substituted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(5\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F21** Words in s. 42A(7) substituted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(5\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F22** Words in s. 42A(8) substituted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(5\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F23** S. 42A(9A) inserted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(6\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F24** Words in s. 42A(10) inserted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(7\)\(a\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F25** Words in s. 42A(10) substituted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(7\)\(b\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F26** S. 42A(10A)(10B) inserted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(8\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F27** Words in s. 42A(11) inserted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(9\)\(a\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)
- F28** Words in s. 42A(11) substituted (1.12.2008 for E. for specified purposes) by [Housing and Regeneration Act 2008 \(c. 17\), s. 325\(1\), Sch. 12 para. 12\(9\)\(b\)](#); S.I. 2008/3068, [art. 4\(7\)](#) (with arts. 6-13)

Modifications etc. (not altering text)

- C2** Ss. 42-42B modified (30.9.2003 for E., 30.3.2004 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\), s. 181\(1\), Sch. 7 para. 11](#); S.I. 2003/1986, [art. 2\(a\)](#); S.I. 2004/669, [art. 2\(a\)](#)

42B Failure to comply with section 42A

- (1) If a person fails, without reasonable excuse, to comply with a duty imposed on him by or by virtue of section 42A he commits an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) Where an offence under this section committed by a body corporate is proved—

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- (a) to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in such a capacity, or
 - (b) to be due to any neglect on the part of such an officer or person, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (5) Proceedings for an offence under this section may be brought by a local housing authority (within the meaning of section 1 of the Housing Act 1985 (c. 68)).]

Textual Amendments

F13 Ss. 42A, 42B inserted (26.7.2002 for E. for specified purposes, 1.1.2003 for W. for specified purposes and otherwise prosp.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 156(1); S.I. 2002/1912, art. 2(c) (subject to Sch. 2); S.I. 2002/3012, art. 2(c) (subject to Sch. 2)

Modifications etc. (not altering text)

C2 Ss. 42-42B modified (30.9.2003 for E., 30.3.2004 for W.) by [Commonhold and Leasehold Reform Act 2002 \(c. 15\)](#), s. 181(1), [Sch. 7 para. 11](#); S.I. 2003/1986, art. 2(a); S.I. 2004/669, art. 2(a)

Insurance

43 Rights of tenants with respect to insurance.

—

- (1) The following section shall be inserted after section 30 of the 1985 Act—

“ Insurance

30A Rights of tenants with respect to insurance.

The Schedule to this Act (which confers on tenants certain rights with respect to the insurance of their dwellings) shall have effect.”

- (2) Schedule 3 to this Act shall be added to the 1985 Act as the Schedule to that Act.

Managing agents

44 Recognised tenants’ associations to be consulted about managing agents.

The following section shall be inserted in the 1985 Act after the section 30A inserted by section 43—

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“ Managing agents

30B Recognised tenants’ associations to be consulted about managing agents.

- (1) A recognised tenants’ association may at any time serve a notice on the landlord requesting him to consult the association in accordance with this section on matters relating to the appointment or employment by him of a managing agent for any relevant premises.
- (2) Where, at the time when any such notice is served by a recognised tenants’ association, the landlord does not employ any managing agent for any relevant premises, the landlord shall, before appointing such a managing agent, serve on the association a notice specifying—
 - (a) the name of the proposed managing agent;
 - (b) the landlord’s obligations to the tenants represented by the association which it is proposed that the managing agent should be required to discharge on his behalf; and
 - (c) a period of not less than one month beginning with the date of service of the notice within which the association may make observations on the proposed appointment.
- (3) Where, at the time when a notice is served under subsection (1) by a recognised tenants’ association, the landlord employs a managing agent for any relevant premises, the landlord shall, within the period of one month beginning with the date of service of that notice, serve on the association a notice specifying—
 - (a) the landlord’s obligations to the tenants represented by the association which the managing agent is required to discharge on his behalf; and
 - (b) a reasonable period within which the association may make observations on the manner in which the managing agent has been discharging those obligations, and on the desirability of his continuing to discharge them.
- (4) Subject to subsection (5), a landlord who has been served with a notice by an association under subsection (1) shall, so long as he employs a managing agent for any relevant premises—
 - (a) serve on that association at least once in every five years a notice specifying—
 - (i) any change occurring since the date of the last notice served by him on the association under this section in the obligations which the managing agent has been required to discharge on his behalf; and
 - (ii) a reasonable period within which the association may make observations on the manner in which the managing agent has discharged those obligations since that date, and on the desirability of his continuing to discharge them;
 - (b) serve on that association, whenever he proposes to appoint any new managing agent for any relevant premises, a notice specifying the matters mentioned in paragraphs (a) to (c) of subsection (2).

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(5) A landlord shall not, by virtue of a notice served by an association under subsection (1), be required to serve on the association a notice under subsection (4)(a) or (b) if the association subsequently serves on the landlord a notice withdrawing its request under subsection (1) to be consulted by him.

(6) Where—

- (a) a recognised tenants’ association has served a notice under subsection (1) with respect to any relevant premises, and
- (b) the interest of the landlord in those premises becomes vested in a new landlord,

that notice shall cease to have effect with respect to those premises (without prejudice to the service by the association on the new landlord of a fresh notice under that subsection with respect to those premises).

(7) Any notice served by a landlord under this section shall specify the name and the address in the United Kingdom of the person to whom any observations made in pursuance of the notice are to be sent; and the landlord shall have regard to any such observations that are received by that person within the period specified in the notice.

(8) In this section—

“landlord”, in relation to a recognised tenants’ association, means the immediate landlord of the tenants represented by the association or a person who has a right to enforce payment of service charges payable by any of those tenants;

“managing agent”, in relation to any relevant premises, means an agent of the landlord appointed to discharge any of the landlord’s obligations to the tenants represented by the recognised tenants’ association in question which relate to the management by him of those premises; and

“tenant” includes a statutory tenant;

and for the purposes of this section any premises (whether a building or not) are relevant premises in relation to a recognised tenants’ association if any of the tenants represented by the association may be required under the terms of their leases to contribute by the payment of service charges to costs relating to those premises.”

Textual Amendments

F29 S. 45 repealed by [Housing Act 1988 \(c. 50, SIF 61, 75:1\)](#), s. 140, [Sch. 18](#)

Status:

Point in time view as at 01/12/2008.

Changes to legislation:

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