

SCHEDULES

SCHEDULE 3

Section 31

IMPROVEMENT NOTICES: ENFORCEMENT ACTION BY LOCAL HOUSING AUTHORITIES

PART 1

ACTION TAKEN BY AGREEMENT

Power to take action by agreement

- 1 (1) The local housing authority may, by agreement with the person on whom an improvement notice has been served, take any action which that person is required to take in relation to any premises in pursuance of the notice.
- (2) For that purpose the authority have all the rights which that person would have against any occupying tenant of, and any other person having an interest in, the premises (or any part of the premises).
- (3) In this paragraph—
 - “improvement notice” means an improvement notice which has become operative under Chapter 2 of Part 1 of this Act;
 - “occupying tenant”, in relation to any premises, means a person (other than an owner-occupier) who—
 - (a) occupies or is entitled to occupy the premises as a lessee;
 - (b) is a statutory tenant of the premises;
 - (c) occupies the premises under a restricted contract;
 - (d) is a protected occupier within the meaning of the Rent (Agriculture) Act 1976 (c. 80); or
 - (e) is a licensee under an assured agricultural occupancy;
 - “owner-occupier”, in relation to any premises, means the person who occupies or is entitled to occupy the premises as owner or lessee under a long tenancy (within the meaning of Part 1 of the Leasehold Reform Act 1967 (c. 88)).

Expenses of taking action by agreement

- 2 Any action taken by the local housing authority under paragraph 1 is to be taken at the expense of the person on whom the notice is served.

PART 2

POWER TO TAKE ACTION WITHOUT AGREEMENT

Power to take action without agreement

- 3
- (1) The local housing authority may themselves take the action required to be taken in relation to a hazard by an improvement notice if sub-paragraph (2) or (3) applies.
 - (2) This sub-paragraph applies if the notice is not complied with in relation to that hazard.
 - (3) This sub-paragraph applies if, before the end of the period which under section 30(2) is appropriate for completion of the action specified in the notice in relation to the hazard, they consider that reasonable progress is not being made towards compliance with the notice in relation to the hazard.
 - (4) Any person authorised in writing by the authority may enter any part of the specified premises for the purposes of the taking of any action which the authority are authorised to take under this paragraph.
 - (5) The right of entry conferred by sub-paragraph (4) may be exercised at any reasonable time.
 - (6) Any reference in this Part of this Schedule (of whatever nature) to a local housing authority entering any premises under this paragraph is a reference to their doing so in accordance with sub-paragraph (4).
 - (7) In this paragraph “improvement notice” means an improvement notice which has become operative under Chapter 2 of Part 1 of this Act.

Notice requirements in relation to taking action without agreement

- 4
- (1) The local housing authority must serve a notice under this paragraph before they enter any premises under paragraph 3 for the purpose of taking action in relation to a hazard.
 - (2) The notice must identify the improvement notice to which it relates and state—
 - (a) the premises and hazard concerned;
 - (b) that the authority intend to enter the premises;
 - (c) the action which the authority intend to take on the premises; and
 - (d) the power under which the authority intend to enter the premises and take the action.
 - (3) The notice must be served on the person on whom the improvement notice was served, and a copy of the notice must be served on any other person who is an occupier of the premises.
 - (4) The notice and any such copy must be served sufficiently in advance of the time when the authority intend to enter the premises as to give the recipients reasonable notice of the intended entry.
 - (5) A copy of the notice may also be served on any owner of the premises.

Obstruction of action taken without agreement

- 5 (1) If, at any relevant time—
- (a) the person on whom the notice under paragraph 4 was served is on the premises for the purpose of carrying out any works, or
 - (b) any workman employed by that person, or by any contractor employed by that person, is on the premises for such a purpose,
- that person is to be taken to have committed an offence under section 241(1).
- (2) In proceedings for such an offence it is a defence that there was an urgent necessity to carry out the works in order to prevent danger to persons occupying the premises.
- (3) In sub-paragraph (1) “relevant time” means any time—
- (a) after the end of the period of 7 days beginning with the date of service of the notice under paragraph 4, and
 - (b) when any workman or contractor employed by the local housing authority is taking action on the premises which has been mentioned in the notice in accordance with paragraph 4(2)(c).

Expenses in relation to taking action without agreement

- 6 (1) Part 3 of this Schedule applies with respect to the recovery by the local housing authority of expenses incurred by them in taking action under paragraph 3.
- (2) Sub-paragraph (3) applies where, after a local housing authority have given notice under paragraph 4 of their intention to enter premises and take action, the action is in fact taken by the person on whom the improvement notice is served.
- (3) Any administrative and other expenses incurred by the authority with a view to themselves taking the action are to be treated for the purposes of Part 3 of this Schedule as expenses incurred by them in taking action under paragraph 3.

PART 3

RECOVERY OF CERTAIN EXPENSES

Introductory

- 7 This Part of this Schedule applies for the purpose of enabling a local housing authority to recover expenses reasonably incurred by them in taking action under paragraph 3.

Recovery of expenses

- 8 (1) The expenses are recoverable by the local housing authority from the person on whom the improvement notice was served (“the relevant person”).
- (2) Where the relevant person receives the rent of the premises as agent or trustee for another person, the expenses are also recoverable by the local housing authority from the other person, or partly from him and partly from the relevant person.
- (3) Sub-paragraph (4) applies where the relevant person proves in connection with a demand under paragraph 9—

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- (a) that sub-paragraph (2) applies, and
 - (b) that he has not, and since the date of the service on him of the demand has not had, in his hands on behalf of the other person sufficient money to discharge the whole demand of the local housing authority.
- (4) The liability of the relevant person is limited to the total amount of the money which he has, or has had, in his hands as mentioned in sub-paragraph (3)(b).
- (5) Expenses are not recoverable under this paragraph so far as they are, by any direction given by a residential property tribunal on an appeal to the tribunal under paragraph 11, recoverable under an order of the tribunal.

Service of demand

- 9 (1) A demand for expenses recoverable under paragraph 8, together with interest in accordance with paragraph 10, must be served on each person from whom the local housing authority are seeking to recover them.
- (2) If no appeal is brought, the demand becomes operative at the end of the period of 21 days beginning with the date of service of the demand.
- (3) A demand which becomes operative under sub-paragraph (2) is final and conclusive as to matters which could have been raised on an appeal.
- (4) Paragraph 11 deals with appeals against demands.

Interest

- 10 Expenses in respect of which a demand is served carry interest, at such reasonable rate as the local housing authority may determine, from the date of service until payment of all sums due under the demand.

Appeals

- 11 (1) A person on whom a demand for the recovery of expenses has been served may appeal to a residential property tribunal against the demand.
- (2) An appeal must be made within the period of 21 days beginning with the date of service of the demand or copy of it under paragraph 9.
- (3) A residential property tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).
- (4) Where the demand relates to action taken by virtue of paragraph 3(3), an appeal may be brought on the ground that reasonable progress was being made towards compliance with the improvement notice when the local housing authority gave notice under paragraph 4 of their intention to enter and take the action.

This does not affect the generality of sub-paragraph (1).

- (5) The tribunal may, on an appeal, make such order confirming, quashing or varying the demand as it considers appropriate.
- (6) A demand against which an appeal is brought becomes operative as follows—

- (a) if a decision is given on the appeal which confirms the demand and the period within which an appeal to the Lands Tribunal may be brought expires without such an appeal having been brought, the demand becomes operative at end of that period;
 - (b) if an appeal to the Lands Tribunal is brought and a decision is given on the appeal which confirms the demand, the demand becomes operative at the time of that decision.
- (7) For the purposes of sub-paragraph (6)—
- (a) the withdrawal of an appeal has the same effect as a decision which confirms the demand, and
 - (b) references to a decision which confirms the demand are to a decision which confirms it with or without variation.
- (8) No question may be raised on appeal under this paragraph which might have been raised on an appeal against the improvement notice.

Expenses and interest recoverable from occupiers

- 12 (1) Where a demand becomes operative by virtue of paragraph 9(2) or 11(6), the local housing authority may serve a recovery notice on any person—
- (a) who occupies the premises concerned, or part of those premises, as the tenant or licensee of the person on whom the demand was served under paragraph 9(1); and
 - (b) who, by virtue of his tenancy or licence, pays rent or any sum in the nature of rent to the person on whom the demand was served.
- (2) A recovery notice is a notice—
- (a) stating the amount of expenses recoverable by the local housing authority; and
 - (b) requiring all future payments by the tenant or licensee of rent or sums in the nature of rent (whether already accrued due or not) to be made direct to the authority until the expenses recoverable by the authority, together with any accrued interest on them, have been duly paid.
- (3) In the case of a demand which was served on any person as agent or trustee for another person (“the principal”), sub-paragraph (1) has effect as if the references in paragraphs (a) and (b) to the person on whom the demand was served were references to that person or the principal.
- (4) The effect of a recovery notice, once served under sub-paragraph (1), is to transfer to the local housing authority the right to recover, receive and give a discharge for the rent or sums in the nature of rent.
- (5) This is subject to any direction to the contrary contained in a further notice served by the local housing authority on the tenant or licensee.
- (6) In addition, the right to recover, receive and give a discharge for any rent or sums in the nature of rent is postponed to any right in respect of that rent or those sums which may at any time be vested in a superior landlord by virtue of a notice under section 6 of the Law of Distress Amendment Act 1908 (c. 53).

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Expenses and interest to be a charge on the premises

- 13 (1) Until recovered, the expenses recoverable by the local housing authority, together with any accrued interest on them, are a charge on the premises to which the improvement notice related.
- (2) The charge takes effect when the demand for the expenses and interest becomes operative by virtue of paragraph 9(2) or 11(6).
- (3) For the purpose of enforcing the charge, the local housing authority have the same powers and remedies, under the Law of Property Act 1925 (c. 20) and otherwise, as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.
- (4) The power of appointing a receiver is exercisable at any time after the end of one month beginning with the date when the charge takes effect.

Recovery of expenses and interest from other persons profiting from taking of action

- 14 (1) Sub-paragraph (2) applies if, on an application to a residential property tribunal, the local housing authority satisfy the tribunal that—
- (a) the expenses and interest have not been and are unlikely to be recovered; and
- (b) a person is profiting by the taking of the action under paragraph 3 in respect of which the expenses were incurred in that he is obtaining rents or other payments which would not have been obtainable if the number of persons living in the premises was limited to that appropriate for the premises in their state before the action was taken.
- (2) The tribunal may, if satisfied that the person concerned has had proper notice of the application, order him to make such payments to the local housing authority as the tribunal considers to be just.