

SCHEDULES

SCHEDULE 3

IMPROVEMENT NOTICES: ENFORCEMENT ACTION BY LOCAL HOUSING AUTHORITIES

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—
- (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.

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- (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).

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.

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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.