



# Housing (Scotland) Act 2014

## 2014 asp 14

### PART 6

#### PRIVATE HOUSING CONDITIONS

#### 85 Tenement management scheme

- (1) In the Tenements (Scotland) Act 2004 (asp 11)—
- (a) in section 4(14) (defined terms), after “section” insert “and section 4A”,
  - (b) after section 4, insert—

#### **“4A Power of local authority to pay share of scheme costs**

- (1) The local authority for the area in which a tenement is situated may pay a sum representing an owner’s share of scheme costs if that owner—
  - (a) is unable or unwilling to do so, or
  - (b) cannot, by reasonable inquiry, be identified or found.
- (2) But a local authority may not pay a sum representing an owner’s share of scheme costs which are attributable to a scheme decision mentioned in rule 3.1(e) of the Tenement Management Scheme.
- (3) For the purposes of this section an owner’s share of any scheme costs is to be determined in accordance with—
  - (a) the Tenement Management Scheme as it applies to the owner’s tenement, or
  - (b) where a tenement burden provides that the entire liability for those scheme costs (in so far as liability for those costs is not to be met by someone other than an owner) is to be met by one or more of the owners, that burden.
- (4) Before making a payment under this section, the local authority must give notice to the owner who has failed to pay a share of any scheme costs.

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*Status: This is the original version (as it was originally enacted).*

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- (5) The local authority may recover from the owner who failed to pay a share of any scheme costs any—
    - (a) payments made under this section, and
    - (b) administrative expenses incurred by it in connection with the making of the payment.
  - (6) This section is without prejudice to any entitlement to recover sums in accordance with section 11 or 12.”
  - (c) in section 13(1)(a) (persons who may register a notice of potential liability for costs), after paragraph (ii) insert—
    - “(iia) a local authority entitled to recover costs under section 4A(5),”
  - (d) in rule 5 of schedule 1 (redistribution of share of costs), after “then” insert “(unless that share has been paid by the local authority under section 4A)”, and
  - (e) in rule 8.4 of schedule 1 (enforcement by third party), after “concerned” insert “and a local authority entitled to recover costs under section 4A(5)”.
- (2) In section 172 of the 2006 Act (repayment charges)—
- (a) in subsection (1), for “or paragraph 6(1) of schedule 5” substitute “, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11)”,
  - (b) in subsection (2)(a), for “or paragraph 6(1) of schedule 5” substitute “, section 61(3A), subsection (6A) below, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004”, and
  - (c) after subsection (6A), insert—
    - “(6B) Subsection (6A)(c) does not apply where the recoverable amount relates to a sum the local authority is entitled to recover under section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11).”.
- (3) After section 174 of the 2006 Act, insert—

**“174A Repayment charges: registered social landlords**

- (1) The Scottish Ministers may by regulations make provision allowing a registered social landlord to make in favour of itself a charge to recover a sum which—
  - (a) the registered social landlord is entitled to recover from an owner of a flat in a tenement, and
  - (b) represents the owner’s share of scheme costs as determined in accordance with section 4A(3) of the 2004 Act.
- (2) Regulations under subsection (1) may, in particular—
  - (a) apply (with or without modifications), or make provision similar to, any provision of or made under this Part,
  - (b) prescribe conditions which must apply before a charge can be made in relation to a sum mentioned in subsection (1), including conditions relating to—
    - (i) the registered social landlord which may make a charge,
    - (ii) the circumstances leading to the sum becoming recoverable by the registered social landlord,

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- (c) modify the Tenement Management Scheme or its operation,
  - (d) make provision about rights of appeal which apply in relation to—
    - (i) the decision to impose a charge,
    - (ii) the terms of the charge.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) such bodies representing local authorities,
  - (b) such bodies representing registered social landlords,
  - (c) such other persons,as they think fit.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) In this section—
  - “owner of a flat in a tenement” is to be construed in accordance with the definition of “owner” in section 28 of the 2004 Act,
  - “registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 ([asp 17](#)),
  - “Tenement Management Scheme” has the same meaning as in the 2004 Act, and
  - “the 2004 Act” means the Tenements (Scotland) Act 2004 ([asp 11](#)).”.
- (4) In section 191(5) of the 2006 Act (affirmative procedure for regulations), for “or 121(1)” substitute “, 121(1) or 174A(1)”.