

SCHEDULES

SCHEDULE 10

Section 157

SERVICE CHARGES: MINOR AND CONSEQUENTIAL AMENDMENTS

Information held by superior landlord

1 For section 23 of the 1985 Act (information held by superior landlord) substitute—

“23 Information held by superior landlord

- (1) If a statement of account which the landlord is required to supply under section 21 relates to matters concerning a superior landlord and the landlord is not in possession of the relevant information—
 - (a) he may by notice in writing require the person who is his landlord to give him the relevant information (and so on, if that person is not himself the superior landlord), and
 - (b) the superior landlord must comply with the requirement within a reasonable time.
- (2) If a notice under section 22 imposes a requirement in relation to documents held by a superior landlord—
 - (a) the landlord shall immediately inform the tenant or secretary of that fact and of the name and address of the superior landlord, and
 - (b) section 22 then applies in relation to the superior landlord (as in relation to the landlord).”

Change of landlord

2 After that section insert—

“23A Effect of change of landlord

- (1) This section applies where, at a time when a duty imposed on the landlord or a superior landlord by or by virtue of any of sections 21 to 23 remains to be discharged by him, he disposes of the whole or part of his interest as landlord or superior landlord to another person.
- (2) If the landlord or superior landlord is, despite the disposal, still in a position to discharge the duty to any extent, he remains responsible for discharging it to that extent.
- (3) If the other person is in a position to discharge the duty to any extent, he is responsible for discharging it to that extent.

- (4) Where the other person is responsible for discharging the duty to any extent (whether or not the landlord or superior landlord is also responsible for discharging it to that or any other extent)—
- (a) references to the landlord or superior landlord in sections 21 to 23 are to, or include, the other person so far as is appropriate to reflect his responsibility for discharging the duty to that extent, but
 - (b) in connection with its discharge by the other person, section 22(6) applies as if the reference to the day on which the landlord receives the notice were to the date of the disposal referred to in subsection (1)."

Assignment

- 3 For section 24 of the 1985 Act substitute—

“24 Effect of assignment

The assignment of a tenancy does not affect any duty imposed by or by virtue of any of sections 21 to 23A; but a person is not required to comply with more than a reasonable number of requirements imposed by any one person.”

Offences

- 4 In section 25(1) of the 1985 Act (offences), for “by section 21, 22 or 23” substitute “by or by virtue of any of sections 21 to 23A”.

Exceptions

- 5 In sections 26(1) and 27 of the 1985 Act (exceptions from sections 18 to 25), for “and requests for information about costs)” substitute “, statements of account and inspection etc. of documents)”.

Accountants

- 6 (1) Section 28 of the 1985 Act (meaning of “qualified accountant”) is amended as follows.
- (2) In subsection (1), for “21(6) (certification of summary of information about relevant costs)” substitute “21(3)(a) (certification of statements of account)”.
 - (3) In subsection (4)(d), for “any of the costs covered by the summary in question relate” substitute “the statement of account in question relates”.
 - (4) In subsection (5A)—
 - (a) for “any costs relate” substitute “a statement of account relates”, and
 - (b) for “those costs” substitute “costs covered by the statement of account”.
 - (5) In subsection (6), after “landlord is” insert “an emanation of the Crown,”.
- 7 In section 39 of the 1985 Act (defined expressions), in the entry relating to “qualified accountant”, for “21(6)” substitute “21(3)(a)”.

Insurance

- 8 (1) Paragraph 2 of the Schedule to the 1985 Act (request for summary of insurance cover) is amended as follows.
- (2) In sub-paragraph (1), for “require the landlord in writing” substitute “by notice in writing require the landlord”.
- (3) In sub-paragraph (2), for “request may be made” substitute “notice may be served”.
- (4) In sub-paragraph (3)—
- (a) for “request is duly” substitute “notice under this paragraph is duly”, and
- (b) for “whom a request” substitute “whom such a notice”.
- (5) In sub-paragraph (4), for “one month of the request,” substitute “the period of twenty-one days beginning with the day on which he receives the notice,”.
- (6) In sub-paragraph (6), for “request” substitute “notice”.
- 9 For paragraph 3 of that Schedule (request to inspect insurance policy etc. after obtaining summary of insurance cover) substitute—

“Inspection of insurance policy etc.

- 3 (1) Where a service charge is payable by the tenant of a dwelling which consists of or includes an amount payable directly or indirectly for insurance, the tenant may by notice in writing require the landlord—
- (a) to afford him reasonable facilities for inspecting any relevant policy or associated documents and for taking copies of or extracts from them, or
- (b) to take copies of or extracts from any such policy or documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
- (2) 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).
- (3) A notice under this paragraph is duly served on the landlord if it is served on—
- (a) an agent of the landlord named as such in the rent book or similar document, or
- (b) the person who receives the rent on behalf of the landlord;
- and a person on whom such a notice is so served shall forward it as soon as may be to the landlord.
- (4) The landlord shall comply with a requirement imposed by a notice under this paragraph within the period of twenty-one days beginning with the day on which he receives the notice.
- (5) To the extent that a notice under this paragraph requires the landlord to afford facilities for inspecting documents—
- (a) he shall do so free of charge, but

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

- (b) he may treat as part of his costs of management any costs incurred by him in doing so.
- (6) The landlord may make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under this paragraph.
- (7) In this paragraph—
- “relevant policy” includes a policy of insurance under which the dwelling was insured for the period of insurance immediately preceding that current when the notice is served (being, in the case of a flat, a policy covering the building containing it), and
- “associated documents” means accounts, receipts or other documents which provide evidence of payment of any premiums due under a relevant policy in respect of the period of insurance which is current when the notice is served or the period of insurance immediately preceding that period.”
- 10 (1) Paragraph 4 of that Schedule (insurance effected by superior landlord) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “a request is made” substitute “a notice is served”,
- (b) for “to whom the request is made” substitute “on whom the notice is served”,
- (c) for “make a written request for the relevant information to the person who is his landlord” substitute “by notice in writing require the person who is his landlord to give him the relevant information”,
- (d) for “that request” substitute “the notice”, and
- (e) for “secretary’s request” substitute “secretary’s notice”.
- (3) In sub-paragraph (2)—
- (a) for “request under paragraph 3 relates” substitute “notice under paragraph 3 imposes a requirement relating”, and
- (b) for “to whom the request is made” substitute “on whom the notice is served”.
- 11 After that paragraph insert—

“Effect of change of landlord

- 4A (1) This paragraph applies where, at a time when a duty imposed on the landlord or a superior landlord by virtue of any of paragraphs 2 to 4 remains to be discharged by him, he disposes of the whole or part of his interest as landlord or superior landlord).
- (2) If the landlord or superior landlord is, despite the disposal, still in a position to discharge the duty to any extent, he remains responsible for discharging it to that extent.
- (3) If the other person is in a position to discharge the duty to any extent, he is responsible for discharging it to that extent.

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

- (4) Where the other person is responsible for discharging the duty to any extent (whether or not the landlord or superior landlord is also responsible for discharging it to that or any other extent)—
- (a) references to the landlord or superior landlord in paragraphs 2 to 4 are to, or include, the other person so far as is appropriate to reflect his responsibility for discharging the duty to that extent, but
 - (b) in connection with its discharge by that person, paragraphs 2(4) and 3(4) apply as if the reference to the day on which the landlord receives the notice were to the date of the disposal referred to in sub-paragraph (1)."
- 12 In paragraph 5 of that Schedule, for the words from “the validity” onwards substitute “any duty imposed by virtue of any of paragraphs 2 to 4A; but a person is not required to comply with more than a reasonable number of requirements imposed by any one person.”
- 13 In paragraph 6 of that Schedule, for “paragraph 2, 3 or 4” substitute “any of paragraphs 2 to 4A”; and for the heading before that paragraph substitute “Offence of failure to comply”.

Service charge contributions: appointment of manager

- 14 In section 24(2) of the 1987 Act (grounds for appointment of manager), before paragraph (ac) insert—
- “(abb) where the tribunal is satisfied—
 - (i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;”.

Trust of service charges paid by only one tenant

- 15 (1) Section 42 of the 1987 Act (service charge contributions of tenants to be held in trust) is amended as follows.
- (2) In subsection (1)—
- (a) after “costs” insert “, or the tenant of a dwelling may be required under the terms of his lease to contribute to costs to which no other tenant of a dwelling may be required to contribute;”,
 - (b) at the end of the definition of “the contributing tenants” insert “and “the sole contributing tenant” means that tenant;”, and
 - (c) in the definition of “the payee”, for “under the terms of their leases” substitute “, or that tenant, under the terms of their leases, or his lease”.
- (3) In subsection (2), after “tenants” insert “, or the sole contributing tenant;”.
- (4) In subsection (3), insert at the end “, or the person who is the sole contributing tenant for the time being.”
- (5) In subsection (4), insert at the end “or the sole contributing tenant shall be treated as so entitled to the residue of any such fund.”

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

- (6) In subsection (6), for “a contributing tenant” substitute “any of the contributing tenants”.
- (7) In subsection (7), for “If after the termination of any such lease there are no longer any contributing tenants,” substitute “On the termination of the lease of the last of the contributing tenants, or of the lease of the sole contributing tenant,”.
- (8) In subsection (8)—
 - (a) for “a contributing tenant” substitute “any of the contributing tenants, or the sole contributing tenant,” and
 - (b) after “his lease” insert “(whenever it was granted)”.
- (9) In subsection (9)—
 - (a) after “so created” insert “, in the case of a lease of any of the contributing tenants,” and
 - (b) insert at the end “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.”

Management audit

- 16 (1) Section 79 of the 1993 Act (rights exercisable in connection with management audit) is amended as follows.
- (2) In subsection (1), for “subsection (2)” substitute “subsections (2) and (2A)”.
 - (3) For subsection (2) substitute—
 - “(2) The right conferred on the auditor by this subsection is a right to require the landlord—
 - (a) to afford him reasonable facilities for inspecting accounts, receipts or other documents relevant to the matters which must be shown in any statement of account required to be supplied to the qualifying tenants of the constituent dwellings under section 21 of the 1985 Act and for taking copies of or extracts from them, or
 - (b) to take copies of or extracts from any such accounts, receipts or other documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).
 - (2A) The right conferred on the auditor by this subsection is a right to require the landlord or any relevant person—
 - (a) to afford him reasonable facilities for inspecting any other documents sight of which is reasonably required by him for the purpose of carrying out the audit and for taking copies of or extracts from them, 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 the auditor specifies).”
 - (4) In subsection (3), for “subsection (2)” substitute “subsections (2) and (2A)”.
 - (5) For subsections (5) and (6) substitute—

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

- “(5) To the extent that a requirement imposed under this section on the landlord or any relevant person requires him to afford facilities for inspecting documents, he shall do so free of charge; but the landlord may treat as part of his costs of management any costs incurred by him in doing so.
- (6) The landlord or a relevant person may make a reasonable charge for doing anything else in compliance with such a requirement.”
- (6) In subsection (8)(a), for “being afforded any such facilities as are mentioned in subsection (2)” substitute “a requirement imposed under subsection (2) or (2A)”.
- 17 In section 80(3) of the 1993 Act (matters to be contained in notice of exercise of right management audit), for paragraph (c) substitute—
- “(c) specify any documents or description of documents in respect of which a requirement is imposed on him under section 79(2) or (2A); and”.
- 18 (1) Section 81 of the 1993 Act (procedure following giving of notice under section 80) is amended as follows.
- (2) In subsection (1), for paragraphs (a) and (b) substitute—
- “(a) comply with it so far as it relates to documents within section 79(2);
- (b) either—
- (i) comply with it, or
- (ii) give the auditor a notice stating that he objects to doing so for such reasons as are specified in the notice,
- so far as it relates to documents within section 79(2A); and”.
- (3) In subsection (3), for the words from “requiring him” to the end substitute “, then within the period of one month beginning with the date of the giving of the notice, he shall either—
- (a) comply with it, or
- (b) give the auditor a notice stating that he objects to doing so for such reasons as are specified in the notice,
- in the case of every document or description of document specified in the notice.”
- (4) In subsection (5), for “paragraph (a) or (b) of section 79(2)” substitute “section 79(2) or (2A)”.
- 19 In section 82 of the 1993 Act (information held by superior landlord), for subsections (1) and (2) substitute—
- “(1) Where the landlord is given a notice under section 80 imposing on him a requirement relating to any documents which are held by a superior landlord, he shall inform the auditor as soon as may be of that fact and of the name and address of the superior landlord.
- (2) The auditor may then give the superior landlord a notice requiring him to comply with the requirement.”