

## SCHEDULES

### SCHEDULE 7

Section 102

#### SPECIAL MEASURES

##### *Introductory*

- 1 In this Schedule—
- “special measures manager” means a person appointed under paragraph 4;
  - “special measures order” means an order under paragraph 4.

##### *Notification by regulator before applying for special measures order*

- 2 (1) This paragraph applies where the regulator proposes to make an application under paragraph 4 for a special measures order in relation to an occupied higher-risk building.
- (2) The regulator must give a notice (an “initial notice”) of the proposal to—
- (a) each accountable person for the building,
  - (b) each resident of the building who is aged 16 or over,
  - (c) each owner of a residential unit in the building,
  - (d) any managing agent for the building or any relevant part of the building,
  - (e) any recognised tenants’ association for the building or any part of the building,
  - (f) any manager appointed under section 24 of the Landlord and Tenant Act 1987 in relation to the building or any part of the building,
  - (g) the fire and rescue authority for the area in which the building is situated,
  - (h) the local housing authority for the area in which the building is situated,
  - (i) where any accountable person for the building is a registered provider of social housing, the Regulator of Social Housing, and
  - (j) where any part of the building contains premises occupied for the purposes of a business, each responsible person (within the meaning of article 3 of the Regulatory Reform (Fire Safety) Order 2005) in relation to those premises.
- (3) The initial notice must—
- (a) state that the regulator proposes to make an application for a special measures order in relation to the building,
  - (b) specify the address of the building,
  - (c) specify the reasons for the proposed application,
  - (d) specify the terms of the order that the regulator proposes to invite the tribunal to make (including the name and address of the person the regulator proposes to be the special measures manager for the building),
  - (e) specify a period in which recipients of the notice may make representations in response to the notice, and

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- (f) state that any representations must be in writing to such postal or email address as is specified in the notice.
- (4) Where the terms specified by virtue of sub-paragraph (3)(d) include a term requiring an accountable person for the building to make payments to the special measures manager for the building, the regulator must give to the persons mentioned in sub-paragraph (2) a financial management proposal with the initial notice.
- (5) After the end of the period mentioned in sub-paragraph (3)(e) the regulator must—
  - (a) decide whether to make the application, and
  - (b) give a notice (a “final notice”) of its decision to the persons mentioned in sub-paragraph (2).
- (6) The final notice must—
  - (a) state whether or not the regulator intends to make the application,
  - (b) specify the reasons for reaching that decision, and
  - (c) if the regulator intends to make the application, specify the terms of the order that the regulator intends to invite the tribunal to make (including the name and address of the person the regulator proposes to be the special measures manager for the building).
- (7) Where the terms specified by virtue of sub-paragraph (6)(c) include a term requiring an accountable person for the building to make payments to the special measures manager for the building, the regulator must give to the persons mentioned in sub-paragraph (2) a financial management proposal with the final notice.
- (8) The regulator must comply with sub-paragraphs (5) to (7) before making the application.
- (9) The duty under sub-paragraph (2), (4), (5)(b) or (7) does not apply in relation to a person mentioned in sub-paragraph (2) if the regulator—
  - (a) is not aware of the person, and
  - (b) has taken all reasonable steps to ascertain the identity of the persons mentioned in that sub-paragraph.
- (10) In this paragraph—
  - “financial management proposal” has the meaning given by paragraph 3;
  - “relevant part”, in relation to a higher-risk building, means any part of the building except premises occupied for the purposes of a business.
- (11) The Secretary of State may by regulations make provision in relation to notices under this paragraph, including in particular provision about—
  - (a) the form of the notice;
  - (b) the way in which the notice must be given.
- (12) The Secretary of State may by regulations amend the list in sub-paragraph (2).

*Meaning of “financial management proposal”*

- 3 (1) In this Schedule “financial management proposal”, in relation to a higher-risk building, means a document setting out—
  - (a) an estimate of the relevant expenses the regulator expects a special measures manager for the building to incur (including a reasonable amount in respect of contingencies),

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- (b) the measures to which the relevant expenses relate, and
  - (c) if there is more than one accountable person for the building—
    - (i) the regulator's proposed apportionment of the relevant expenses between them, and
    - (ii) the reasons for that proposal (including any calculation giving rise to it).
- (2) In this Schedule “relevant expenses” means expenses incurred by the special measures manager for a higher-risk building in connection with the exercise of their functions in relation to the building.

*Special measures order*

- 4
- (1) The regulator may apply to the tribunal for an order under this paragraph in relation to an occupied higher-risk building (a “special measures order”).
  - (2) A special measures order is an order appointing a person to be the manager (a “special measures manager”) for the building to carry out the functions of all accountable persons for the building under, or under regulations made under, this Part.
  - (3) A special measures order may also appoint the manager to carry out any function as a receiver in relation to commonhold building safety assessments.
  - (4) The tribunal may make a special measures order if satisfied that there has been a serious failure, or a failure on two or more occasions, by an accountable person for the building to comply with a duty imposed on that person under, or under regulations made under, this Part.
  - (5) A special measures order may make provision with respect to—
    - (a) payments to be made by an accountable person for the building to the special measures manager in connection with relevant expenses incurred, or to be incurred, by the manager,
    - (b) any other matter relating to the exercise of the manager’s functions, and
    - (c) any incidental or ancillary matter.
  - (6) A special measures order may not make the provision mentioned in sub-paragraph (5)
    - (a) in relation to a higher-risk building on commonhold land.
  - (7) A special measures order continues in force until it is discharged.
  - (8) In this Schedule “commonhold building safety assessment” means income raised from commonhold unit-holders by virtue of section 38A of the Commonhold and Leasehold Reform Act 2002.

*Special measures order: supplementary*

- 5
- (1) This paragraph applies where a special measures order is made in relation to a higher-risk building.
  - (2) While the order is in force any function of an accountable person for the building under, or under regulations made under, this Part is to be treated as a function of the special measures manager for the building, except any function relating to—
    - (a) the making of an application to the tribunal, or
    - (b) the making of an appeal to the tribunal.

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- (3) Any compliance notice given under section 99 relating to the building ceases to have effect (but this does not affect any liability incurred as a result of a contravention of a compliance notice occurring before the making of the order).

*Payments received by special measures manager to be held on trust*

- 6 (1) This paragraph applies where a special measures order relating to a higher-risk building requires one or more accountable persons for the building to make payments to the special measures manager for the building.
- (2) The manager must hold the payments (together with any income accruing on those payments) as either—
- (a) a single trust fund, or
  - (b) in two or more separate trust funds.
- (3) The manager must hold any trust fund—
- (a) on trust to defray relevant expenses, and
  - (b) subject to that, on trust for the accountable person or persons for the building for the time being.
- (4) The accountable person or persons for the building for the time being are to be treated as entitled by virtue of sub-paragraph (3)(b) to—
- (a) if there is one accountable person for the building, the residue of the fund or funds;
  - (b) otherwise, to such shares in that residue as the accountable persons may agree in writing or (in default of agreement) as the tribunal may direct.
- (5) An application for a direction under sub-paragraph (4)(b) may be made by—
- (a) the regulator,
  - (b) an accountable person for the building, or
  - (c) the manager.

*Effect of special measures order on relevant contracts and legal proceedings*

- 7 (1) Sub-paragraphs (2) and (6) apply while a special measures order relating to a higher-risk building is in force.
- (2) A relevant contract has effect as if relevant rights and liabilities of an accountable person for the building arising under the contract were rights and liabilities of the special measures manager for the building.
- (3) A contract is a “relevant contract” if—
- (a) it is effective on the date the special measures order is made,
  - (b) one of the parties to it is an accountable person for the building,
  - (c) one or more rights or liabilities of that person under the contract are relevant rights or liabilities,
  - (d) it is specified for the purposes of this sub-paragraph in the special measures order or falls within a description of contracts so specified, and
  - (e) the manager gives notice in writing to the parties to it stating that sub-paragraph (2) is to apply to it.

- (4) A right or liability of an accountable person for the building under a relevant contract is a “relevant right or liability” if it relates to a function of that person under, or under regulations made under, this Part in relation to the building.
- (5) The notice under sub-paragraph (3)(e) must state which rights or liabilities under the contract are relevant rights or liabilities.
- (6) The special measures manager for the building may bring, continue or defend a relevant cause of action.
- (7) A cause of action is a “relevant cause of action” if—
  - (a) it accrued to or against an accountable person for the building before the date the special measures order was made,
  - (b) it relates to a function of that person under, or under regulations made under, this Part in relation to the building,
  - (c) it is specified for the purposes of this sub-paragraph in the special measures order or falls within a description of causes of action so specified, and
  - (d) the manager gives notice in writing to any person the manager considers would have an interest in the cause of action that sub-paragraph (6) is to apply to it.
- (8) Where, by virtue of this paragraph, the special measures manager for the building is subject to a liability to pay damages in respect of anything done (or not done) before the date of their appointment by or on behalf of an accountable person for the building, that person is liable to reimburse to the manager an amount equal to the amount of damages paid by the manager.

*Special measures orders and orders under section 24 of the Landlord and Tenant Act 1987*

- 8 (1) Sub-paragraph (2) applies where—
  - (a) the tribunal makes a special measures order in relation to a higher-risk building, and
  - (b) an order under section 24 of the Landlord and Tenant Act 1987 appointing a manager in relation to that building is in force (a “section 24 order”).
- (2) The tribunal may amend the section 24 order so as to ensure that the functions to be carried out by virtue of that order do not include any function that the special measures order provides is to be carried out by the special measures manager.
- (3) In section 24 of the Landlord and Tenant Act 1987, after subsection (2B) insert—
  - “(2C) Where a special measures order relating to the building is in force, an order under this section may not provide for a manager to carry out a function which the special measures order provides is to be carried out by the special measures manager for the building.
  - (2D) In this section—
    - “special measures manager” means a person appointed under paragraph 4 of Schedule 7 to the Building Safety Act 2022;
    - “special measures order” means an order under paragraph 4 of Schedule 7 to the Building Safety Act 2022.”
- 9 (1) The Landlord and Tenant Act 1987 is amended as follows.

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- (2) In section 21(2) after “subsection (3)” insert “and section 24ZA”.
- (3) After section 24 insert—

**“24ZA Application for appointment of manager by special measures manager**

- (1) A special measures manager for an occupied higher-risk building may apply to the appropriate tribunal for an order under section 24 (as modified by subsection (4)) appointing a manager to act in relation to premises to which this section applies.
- (2) This section applies to premises consisting of the whole or part of the higher-risk building if the building or part contains two or more flats.
- (3) Section 22 applies in relation to such an application as if—
  - (a) for subsection (1) there were substituted—
    - “(1) Before an application for an order under section 24 is made in respect of any premises to which section 24ZA applies by a special measures manager for an occupied higher-risk building, a notice under this section must (subject to subsection (3)) be served by the special measures manager on—
      - (a) the landlord;
      - (b) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to tenants of flats contained in those premises under a tenancy;
      - (c) each accountable person for the higher-risk building.”;
  - (b) for subsection (2)(a) there were substituted—
    - “(a) specify the special measures manager’s name and an address in England and Wales at which any person on whom the notice is served may serve notices, including notices in proceedings, on the special measures manager in connection with this Part.”;
  - (c) in subsection (2)(b)—
    - (i) for “tenant” there were substituted “special measures manager”;
    - (ii) for “this Part” there were substituted “section 24ZA”;
  - (d) in subsection (2)(c) for “tenant” there were substituted “special measures manager”.
- (4) Section 24 applies in relation to such an application as if—
  - (a) in subsection (1) for “this Part” there were substituted “section 24ZA”;
  - (b) for subsection (2) there were substituted—
    - “(2) The appropriate tribunal may only make an order under this section where it is satisfied—
      - (a) that—

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- (i) the relevant person is in breach of any obligation owed by the person to the special measures manager by virtue of a special measures order, and
  - (ii) it is just and convenient to make the order in all the circumstances of the case; or
  - (b) that other circumstances exist which make it just and convenient for the order to be made.”;
  - (c) subsections (2A), (2B) and (10) were omitted.
- (5) In this section “special measures manager” has the meaning given by section 24(2D).”

*Provision of financial assistance by regulator*

- 10 (1) The regulator may give financial assistance to the special measures manager for a higher-risk building by way of loans or grants.
- (2) The Secretary of State may by regulations make provision in relation to financial assistance given under this paragraph, including in particular provision about—
- (a) the circumstances in which financial assistance may be given;
  - (b) the kind of financial assistance that may be given;
  - (c) conditions that may or must be attached to any financial assistance (including conditions as to repayment).
- (3) In this paragraph “special measures manager”, in relation to a higher-risk building, includes the person who was the special measures manager for that building immediately before the special measures order relating to the building was discharged.

*Special measures order: further directions*

- 11 (1) This paragraph applies while a special measures order relating to a higher-risk building is in force.
- (2) On an application by a person mentioned in sub-paragraph (3) the tribunal may give directions to the special measures manager for the building or any other person with respect to—
- (a) any matter relating to the exercise of the manager’s functions, and
  - (b) any incidental or ancillary matter.
- (3) The persons are—
- (a) the regulator,
  - (b) an accountable person for the building, or
  - (c) the manager.

*Regulator to keep certain matters under review*

- 12 (1) This paragraph applies while a special measures order relating to a higher-risk building is in force.
- (2) The regulator must, from time to time (and at least once every 12 months), review the following matters—

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- (a) the measures taken by the special measures manager in exercising the manager's functions;
  - (b) the expenses incurred by the manager in connection with taking those measures;
  - (c) any payments made by accountable persons for the building to the manager in respect of any of those expenses;
  - (d) any amounts received by the manager by way of commonhold building safety assessments in relation to the building.
- (3) If, on such a review, the regulator considers that any term of the order should be varied, it must make such application under paragraph 14 as it considers appropriate.

*Notification by regulator before applying to vary special measures order*

- 13 (1) This paragraph applies where the regulator proposes to make an application under paragraph 14 to vary a special measures order relating to a higher-risk building.
- (2) The regulator must give a notice (an "initial notice") of the proposal to—
- (a) each accountable person for the building,
  - (b) each resident of the building who is aged 16 or over,
  - (c) each owner of a residential unit in the building,
  - (d) any managing agent for the building or any relevant part of the building,
  - (e) any recognised tenants' association for the building or any part of the building,
  - (f) any manager appointed under section 24 of the Landlord and Tenant Act in relation to the building or any part of the building,
  - (g) the fire and rescue authority for the area in which the building is situated,
  - (h) the local housing authority for the area in which the building is situated,
  - (i) where any accountable person for the building is a registered provider of social housing, the Regulator of Social Housing, and
  - (j) where any part of the building contains premises occupied for the purposes of a business, each responsible person (within the meaning of article 3 of the Regulatory Reform (Fire Safety) Order 2005) in relation to those premises.
- (3) The initial notice must—
- (a) state that the regulator proposes to make an application to vary the special measures order specified in the notice,
  - (b) specify the reasons for the proposed application,
  - (c) specify the terms of the order that the regulator proposes to invite the tribunal to make,
  - (d) specify a period in which recipients of the notice may make representations in response to the notice, and
  - (e) state that any representations must be in writing to such postal or email address as is specified in the notice.
- (4) After the end of the period mentioned in sub-paragraph (3)(d) the regulator must—
- (a) decide whether to make the application, and
  - (b) give a notice (a "final notice") of its decision to the persons mentioned in sub-paragraph (2).
- (5) The final notice must—



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- (a) state whether or not the regulator intends to make the application,
  - (b) specify the reasons for reaching that decision, and
  - (c) if the regulator intends to make the application, specify the terms of the order that the regulator intends to invite the tribunal to make.
- (6) The regulator must comply with sub-paragraphs (4) and (5) before making the application.
- (7) The duty under sub-paragraph (2) or (4)(b) does not apply in relation to a person mentioned in sub-paragraph (2) if the regulator—
- (a) is not aware of the person, and
  - (b) has taken all reasonable steps to ascertain the identity of the persons mentioned in that sub-paragraph.
- (8) In this paragraph “relevant part”, in relation to a higher-risk building, has the meaning given by paragraph 2(10).
- (9) The Secretary of State may by regulations make provision in relation to notices under this paragraph, including in particular provision about—
- (a) the form of the notice;
  - (b) the way in which the notice must be given.
- (10) The Secretary of State may by regulations amend the list in sub-paragraph (2).

*Variation or discharge of special measures order*

- 14 (1) The tribunal may vary or discharge a special measures order relating to a higher-risk building on an application by—
- (a) the regulator,
  - (b) an accountable person for the building, or
  - (c) the special measures manager for the building.
- (2) An application to vary a special measures order so as to change the identity of the manager may only be made by the regulator.
- (3) In considering whether to vary or discharge an order the tribunal must have regard to—
- (a) the likelihood of variation or discharge of the order resulting in a recurrence of the circumstances which led to the order being made, and
  - (b) whether it is just and convenient in all the circumstances to vary or discharge the order.
- (4) Sub-paragraphs (2) and (3) do not apply on an application where each person mentioned in sub-paragraph (1) agrees to the application (and for this purpose where there is more than one accountable person each accountable person must agree).
- (5) Sub-paragraph (4) does not require the agreement of the special measures manager where that person lacks capacity to agree to the application.
- (6) Where the order is varied or discharged, the tribunal may give directions to any person with respect to—
- (a) any matter relating to the variation or discharge, and
  - (b) any incidental or ancillary matter.

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- (7) Where the order is discharged the tribunal must direct the special measures manager to—
- (a) prepare a reconciliation account, and
  - (b) give a copy of the account to—
    - (i) the regulator, and
    - (ii) each accountable person for the building.
- (8) The tribunal may give a direction under sub-paragraph (6)(a) (at the time the order is discharged or after that time) for the making of a payment—
- (a) by an accountable person for the building to the special measures manager, or
  - (b) by the special measures manager to an accountable person for the building.
- (9) In this paragraph—
- “reconciliation account” means a document—
- (a) setting out, in relation to the period during which the special measures order was in force, a comparison between—
    - (i) the receipts and expenses of the manager in connection with the exercise of their functions in relation to the building, and
    - (ii) the credits to, and debits from, all relevant accounts, and
  - (b) containing a statement explaining any differences;
- “relevant account” means an account in which any of the following are (or have been) held—
- (a) payments made by an accountable person for the building to the manager;
  - (b) amounts received by the manager by way of commonhold building safety assessments in relation to the building.
- (10) In this paragraph “special measures manager”, in relation to a higher-risk building, includes the person who was the special measures manager for that building immediately before the special measures order relating to the building was discharged.

*Notifications about special measures order*

- 15 (1) The regulator must take all reasonable steps to notify the persons mentioned in sub-paragraph (2) of the making, variation or discharge of a special measures order in relation to a higher-risk building.
- (2) The persons are—
- (a) each accountable person for the building,
  - (b) each resident of the building who is aged 16 or over,
  - (c) each owner of a residential unit in the building,
  - (d) any managing agent for the building or any relevant part of the building,
  - (e) any recognised tenants’ association for the building or any part of the building,
  - (f) any manager appointed under section 24 of the Landlord and Tenant Act 1987 in relation to the building or any part of the building,
  - (g) the fire and rescue authority for the area in which the building is situated,
  - (h) the local housing authority for the area in which the building is situated,

- (i) where any accountable person for the building is a registered provider of social housing, the Regulator of Social Housing, and
  - (j) where any part of the building contains premises occupied for the purposes of a business, each responsible person (within the meaning of article 3 of the Regulatory Reform (Fire Safety) Order 2005) in relation to those premises.
- (3) In this paragraph “relevant part”, in relation to a higher-risk building, has the meaning given by paragraph 2(10).
- (4) The Secretary of State may by regulations amend the list in sub-paragraph (2).

*Special measures order: change in accountable person etc*

- 16 (1) Sub-paragraphs (2) and (3) apply where at any time (“the relevant time”) during which a special measures order relating to a higher-risk building is in force, an accountable person for the building (“the outgoing person”) ceases to be responsible for all or any part of the building (“the relevant part of the building”).
- (2) From the relevant time the special measures order ceases to apply to the outgoing person in relation to the relevant part of the building.
- (3) From the relevant time the special measures order applies to any person who, immediately after the relevant time—
- (a) is an accountable person for the building, and
  - (b) is responsible for the relevant part of the building or any part of the relevant part,
- as it applied to the outgoing person in relation to the relevant part or part of the relevant part (as the case may be) immediately before the relevant time.
- (4) But sub-paragraphs (2) and (3) do not affect any liability under the order to which the outgoing person became subject before the relevant time.
- (5) Where an enactment requires interests, charges or other obligations affecting land to be registered, sub-paragraph (3) has effect whether or not the special measures order is registered.
- (6) Nothing in this paragraph affects the powers of the tribunal under paragraph 14 (power to vary special measures order etc).

*Interpretation*

- 17 In this Schedule—
- “commonhold building safety assessment” has the meaning given by paragraph 4;
  - “local housing authority” has the meaning given by section 261 of the Housing Act 2004;
  - “managing agent”: for the purposes of this Schedule a person (A) is a managing agent for any part of a building if—
    - (a) A has been appointed to discharge the obligations of a person (B) relating to the management by B of that part of the building, and
    - (b) B has a legal estate in that part of the building which is—
      - (i) an estate in fee simple absolute in possession, or;

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- (ii) a term of years absolute granted for a term of more than 21 years from the date of the grant;
- “recognised tenants association” has the meaning given by section 29 of the Landlord and Tenant Act 1985;
- “relevant expenses” has the meaning given by paragraph 3;
- “special measures manager” has the meaning given by paragraph 1;
- “special measures order” has the meaning given by paragraph 1.