

SCHEDULES

SCHEDULE 2

Section 41.

AMENDMENTS RELATING TO SERVICE CHARGES

Meaning of "service charge" and "relevant cost"s

1 In section 18(1) of the 1985 Act, for "flat" substitute "dwelling".

Limitation of service charges: reasonableness

2 In section 19 of the 1985 Act—

- (a) in subsection (3), for "flat" substitute "dwelling"; and
- (b) after subsection (4) add—

“(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.”

Limitation of service charges: estimates and consultation

3 The following section shall be substituted for section 20 of the 1985 Act—

“**20** (1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3), the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either—

- (a) complied with, or
 - (b) dispensed with by the court in accordance with subsection (9);
- and the amount payable shall be limited accordingly.

(2) In subsection (1) "qualifying works", in relation to a service charge, means works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.

(3) The limit is whichever is the greater of—

- (a) £25, or such other amount as may be prescribed by order of the Secretary of State, multiplied by the number of dwellings let to the tenants concerned; or
- (b) £500, or such other amount as may be so prescribed.

(4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants' association are—

- (a) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.

Status: This is the original version (as it was originally enacted).

- (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.
 - (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and the address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.
 - (d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).
 - (e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.
- (5) The relevant requirements in relation to such of the tenants concerned as are represented by a recognised tenants' association are—
- (a) The landlord shall give to the secretary of the association a notice containing a detailed specification of the works in question and specifying a reasonable period within which the association may propose to the landlord the names of one or more persons from whom estimates for the works should in its view be obtained by the landlord.
 - (b) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.
 - (c) A copy of each of the estimates shall be given to the secretary of the association.
 - (d) A notice shall be given to each of the tenants concerned represented by the association, which shall—
 - (i) describe briefly the works to be carried out,
 - (ii) summarise the estimates,
 - (iii) inform the tenant that he has a right to inspect and take copies of a detailed specification of the works to be carried out and of the estimates,
 - (iv) invite observations on those works and on the estimates, and
 - (v) specify the name and the address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.
 - (e) The date stated in the notice shall not be earlier than one month after the date on which the notice is given as required by paragraph (d).
 - (f) If any tenant to whom the notice is given so requests, the landlord shall afford him reasonable facilities for inspecting a detailed specification of the works to be carried out and the estimates, free of charge, and for taking copies of them on payment of such reasonable charge, as the landlord may determine.
 - (g) The landlord shall have regard to any observations received in pursuance of the notice and, unless the works are urgently required, they shall not be begun earlier than the date specified in the notice.

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

- (6) Paragraphs (d)(ii) and (iii) and (f) of subsection (5) shall not apply to any estimate of which a copy is enclosed with the notice given in pursuance of paragraph (d).
- (7) The requirement imposed on the landlord by subsection (5)(f) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.
- (8) In this section "the tenants concerned" means all the landlord's tenants who may be required under the terms of their leases to contribute to the costs of the works in question by the payment of service charges.
- (9) In proceedings relating to a service charge the court may, if satisfied that the landlord acted reasonably, dispense with all or any of the relevant requirements.
- (10) An order under this section—
 - (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
 - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Additional limitations on service charges

- 4 The following sections shall be inserted in the 1985 Act after the section 20A inserted by paragraph 9 of Schedule 5 to the Housing and Planning Act 1986—

“20B Limitation of service charges: time limit on making demands.

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

20C Limitation of service charges: costs of court proceedings.

- (1) A tenant may make an application to the appropriate court for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with any proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application; and the court may make such order on the application as it considers just and equitable in the circumstances.

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

- (2) In subsection (1) "the appropriate court" means—
- (a) if the application is made in the course of the proceedings in question, the court before which the proceedings are taking place; and
 - (b) if the application is made after those proceedings are concluded, a county court.”

Request for summary of relevant costs

- 5 (1) Section 21 of the 1985 Act shall be amended as follows.
- (2) In subsection (2), for the words from "there is" to "and the tenant" substitute "the tenant is represented by a recognised tenants' association and he".
- (3) In subsection (5), for the words from "how they are or will be" onwards substitute
- “how they have been or will be reflected in demands for service charges and, in addition, shall summarise each of the following items, namely—
- (a) any of the costs in respect of which no demand for payment was received by the landlord within the period referred to in subsection (1)(a) or (b),
 - (b) any of the costs in respect of which—
 - (i) a demand for payment was so received, but
 - (ii) no payment was made by the landlord within that period, and
 - (c) any of the costs in respect of which—
 - (i) a demand for payment was so received, and
 - (ii) payment was made by the landlord within that period,
 and specify the aggregate of any amounts received by the landlord down to the end of that period on account of service charges in respect of relevant dwellings and still standing to the credit of the tenants of those dwellings at the end of that period.
- (5A) In subsection (5) "relevant dwelling" means a dwelling whose tenant is either—
- (a) the person by or with the consent of whom the request was made, or
 - (b) a person whose obligations under the terms of his lease as regards contributing to relevant costs relate to the same costs as the corresponding obligations of the person mentioned in paragraph (a) above relate to.”
- (4) In subsection (6)—
- (a) for the words from the beginning to "another building" substitute "If the service charges in relation to which the costs are relevant costs as mentioned in subsection (1) are payable by the tenants of more than four dwellings"; and
 - (b) for "requirement" substitute "requirements".

Request to inspect supporting accounts etc.

- 6 In section 22 of the 1985 Act, after subsection (4) add—
- “(5) The landlord shall—

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

- (a) where such facilities are for the inspection of any documents, make them so available free of charge;
- (b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.”

Effect of assignment on request

7 In section 24 of the 1985 Act, for "flat" substitute "dwelling".

Exception where rent is registered and not entered as variable

8 In section 27 of the 1985 Act, for "flat" substitute "dwelling".

Meaning of "qualified accountant"

9 (1) Section 28 of the 1985 Act shall be amended as follows.

(2) In subsection (4)—

- (a) in paragraph (b), for "or employee" substitute ", employee or partner"; and
- (b) after paragraph (c) add—

“(d) an agent of the landlord who is a managing agent for any premises to which any of the costs covered by the summary in question relate;

(e) an employee or partner of any such agent.”

(3) After subsection (5) insert—

“(5A) For the purposes of subsection (4)(d) a person is a managing agent for any premises to which any costs relate if he has been appointed to discharge any of the landlord's obligations relating to the management by him of the premises and owed to the tenants who may be required under the terms of their leases to contribute to those costs by the payment of service charges.”

Meaning of 'recognised tenants' association'

10 (1) Section 29 of the 1985 Act shall be amended as follows.

(2) In subsection (1), for "tenants of flats in a building" substitute "qualifying tenants (whether with or without other tenants)".

(3) In subsection (4), for "the building is situated" substitute "the dwellings let to the qualifying tenants are situated, and for the purposes of this section a number of tenants are qualifying tenants if each of them may be required under the terms of his lease to contribute to the same costs by the payment of a service charge."

(4) For subsection (5) substitute—

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

“(5) The Secretary of State may by regulations specify—

- (a) the procedure which is to be followed in connection with an application for, or for the cancellation of, a certificate under subsection (1)(b);
- (b) the matters to which regard is to be had in giving or cancelling such a certificate;
- (c) the duration of such a certificate; and
- (d) any circumstances in which a certificate is not to be given under subsection (1)(b).”

Definitions

11 In section 30—

- (a) omit the definition of "flat"; and
- (b) in the definition of "tenant", for "flat" substitute "dwelling".