



**Isle of Man**

*Ellan Vannin*

AT 14 of 1989

**PROPERTY SERVICE CHARGES ACT 1989**





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## PROPERTY SERVICE CHARGES ACT 1989

<i>Received Royal Assent:</i>	<i>12 December 1989</i>
<i>Passed:</i>	<i>12 December 1989</i>
<i>Commenced:</i>	<i>12 December 1989</i>

AN ACT to amend the law relating to service charges payable by tenants of dwellings.

**GENERAL NOTE:** The maximum fines in this Act are as increased by the *Criminal Justice (Penalties, Etc.) Act 1993 s 1*.

### 1 Meaning of 'service charge' etc

[P1985/70/18]

- (1) For the purposes of this Act, a "service charge" is an amount payable by the tenant of a dwelling as part of or in addition to the rent —
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord's expenses of management; and
  - (b) the whole or part of which varies or may vary according to the relevant expenses.
- (2) In this Act "relevant expenses" are the expenses or estimated expenses (including overheads) incurred or to be incurred in any period by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable whether they are incurred or to be incurred in the period for which the service charge is payable or an earlier or later period.

### 2 Reasonableness of service charges

[P1985/70/19; P1996/52/83]

- (1) Relevant expenses shall be taken into account in determining the amount of a service charge payable for a period —
  - (a) only to the extent that they are reasonably incurred; and

- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
- and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant expenses are incurred, no greater amount than is reasonable is so payable, and after the relevant expenses have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.
- (2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to the Commissioners for a determination —
- (a) whether expenses incurred for services, repairs, maintenance, insurance or management were reasonably incurred,
  - (b) whether services or works for which expenses were incurred are of a reasonable standard, or
  - (c) whether an amount payable before expenses are incurred is reasonable.<sup>1</sup>
- (2B) An application may also be made to the Commissioners by a tenant by whom, or a landlord to whom, a service charge may be payable for a determination —
- (a) whether if expenses were incurred for services, repairs, maintenance, insurance or management of any specified description they would be reasonable,
  - (b) whether services provided or works carried out to a particular specification would be of a reasonable standard, or
  - (c) what amount payable before expenses are incurred would be reasonable.<sup>2</sup>
- (2C) No application under subsection (2A) or (2B) may be made in respect of a matter which —
- (a) has been agreed or admitted by the tenant,
  - (b) under an arbitration agreement to which the tenant is a party is to be referred to arbitration, or
  - (c) has been the subject of determination by a court or arbitrator.<sup>3</sup>
- (3) An agreement by the tenant of a dwelling (other than an agreement to submit differences to arbitration) is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question —
- (a) whether expenses incurred for services, repairs, maintenance, insurance or management were reasonably incurred,
  - (b) whether services or works for which expenses were incurred are of a reasonable standard, or

- (c) whether an amount payable before expenses were incurred is reasonable.

### 3 Estimates and consultation

[P1985/70/20]

- (1) Where relevant expenses incurred in the carrying out of any works (whether on a building or elsewhere), to the expenses of which the tenant may be required under the terms of his lease to contribute by the payment of a service charge, exceed the limit specified in subsection (2), the excess shall not be taken into account in determining the amount of a service charge unless —
- (a) the relevant requirements as to estimates and consultation have been complied with, or
- (b) those requirements have been dispensed with by the High Court or the Commissioners in accordance with subsection (6).<sup>4</sup>
- (2) The limit is whichever is the greater of —
- (a) £50 (or such other amount as may be prescribed by order of the Department) multiplied by the number of dwellings let to the tenants concerned, or
- (b) £1,000 (or such other amount as may be so prescribed).
- (3) The relevant requirements, in the case of such of the tenants concerned as are not represented by a recognised tenants' association, are —
- (a) at least 2 estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord;
- (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 of them;
- (c) the notice shall describe the works to be carried out and invite representations on them and on the estimates, and shall state the name and address in the Island of the person to whom the representations 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 it is given or displayed as required by paragraph (b);
- (e) the landlord shall have regard to any representations received in pursuance of the notice and, unless the works are urgently required, they shall not be begun earlier than the date stated in the notice.
- (4) The relevant requirements, in the case of 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 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 2 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 who are represented by the association —
    - (i) describing briefly the works to be carried out and informing the tenant that he has the right to inspect and take copies of a detailed specification of the works;
    - (ii) (unless it is accompanied by a copy of the estimates) summarising the estimates and informing the tenant that he has the right to inspect and take copies of them;
    - (iii) inviting representation on those works and on the estimates, and
    - (iv) specifying the name and address in the Island of the person to whom the representations 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 it 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 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 representations received in pursuance of the notice and, unless the works are urgently required, they shall not be begun earlier than the date stated in the notice.
- (5) In this section the tenants concerned are all the landlord's tenants who may be required under the terms of their leases to contribute to the expenses of the works in question by the payment of service charges.
- (6) In any proceedings relating to a service charge the High Court or the Commissioners, if satisfied that the landlord acted reasonably, may dispense with all or any of the relevant requirements.<sup>5</sup>
- (7) An order under subsection (2)(a) or (b) shall not have effect unless it is approved by Tynwald.





**4 Time-limit for demands**

[P1985/70/20B; P1987/31/2/4]

- (1) If any of the relevant expenses to be 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, the tenant shall not be liable to pay so much of the service charge as reflects the expenses so incurred.
- (2) Subsection (1) does not apply if, within the period of 18 months beginning with the date when the expenses in question were incurred, the tenant was notified in writing that they 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.

**5 Limitation of service charges: costs of proceedings**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before the High Court or the Commissioners, or in connection with arbitration proceedings, are not to be regarded as relevant expenses 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.
- (2) The application shall be made —
  - (a) in the case of proceedings in the High Court, to the court;
  - (b) in the case of proceedings before the Commissioners, to the Commissioners;
  - (c) in the case of arbitration proceedings, to the arbitrator or, if the application is made after the proceedings are concluded, to the High Court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.<sup>6</sup>

**6 Request for summary of expenses**

[P1985/70/21; P1987/31/2/5]

- (1) A tenant may request the landlord in writing to supply him with a written summary of the expenses incurred —
  - (a) if the relevant accounts are made up for periods of 12 months, the last such period ending not later than the date of the request; and
  - (b) if the accounts are not so made up, in the period of 12 months ending with the date of the request,

and which are relevant expenses in relation to the service charges payable or demanded as payable in that or any other period.

- (2) If the tenant is represented by a recognised tenants' association and he consents, the request may be made by the secretary of the association instead of by the tenant, and may then be for the supply of the summary to the secretary.
- (3) A request is duly served on a landlord if it is served on —
  - (a) any 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 a request is so served shall forward it as soon as may be to the landlord.
- (4) The landlord shall comply with the request within one month of the request or within 6 months of the end of the period referred to in subsection (1)(a) or (b), whichever is the later.
- (5) The summary shall set out those expenses in a way showing how they have been or will be reflected in demands for service charges and, in addition, shall summarise each of the following items —
  - (a) any of the expenses 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 expenses in respect of which a demand for payment was so received, but no payment was made by the landlord within that period, and
  - (c) any of the expenses in respect of which a demand for payment was so received and payment was made by the landlord within that period,

and specify the total 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 their tenants at the end of that period.

- (6) In subsection (5) 'relevant dwellings' means the dwellings whose tenants are obliged by the terms of their leases to contribute to the same relevant expenses as those to which the tenant by whom or with whose consent the request was made is obliged to contribute.
- (7) If the service charges in relation to which the expenses are relevant expenses as mentioned in subsection (1) are payable by the tenants of more than 4 dwellings, the summary must be certified by a qualified accountant —
  - (a) as in his opinion a fair summary complying with the requirements of subsection (5), and

- (b) as being sufficiently supported by accounts, receipts and other documents which have been produced to him.

## 7 Request to inspect accounts etc

[P1985/70/22; P1987/31/2/6]

- (1) This section applies where a tenant or the secretary of a recognised tenants' association has obtained such a summary as is referred to in section 6(1) (whether in pursuance of section 6(1) or (2) or otherwise).
- (2) The tenant, or the secretary with the consent of the tenant, may within 6 months of obtaining it require the landlord in writing to afford him, or a person authorised by him in writing on his behalf, reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary, and for taking copies or extracts from them.
- (3) A request under this section is duly served on a landlord if it is served on —
  - (a) any 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 a request is so served shall forward it as soon as may be to the landlord.
- (4) The landlord shall make such facilities available to the tenant or secretary or authorised person for a period of 2 months beginning not later than one month after the request is made and —
  - (a) in the case of facilities for inspecting documents, free of charge, and
  - (b) in the case of facilities for taking copies or extracts, on payment of such reasonable charge (if any) as the landlord determines.
- (5) Subsection (4)(a) does not prevent the landlord treating the expense of providing the facilities as part of his expenses of management.

## 8 Information held by superior landlord

[P1985/70/23]

- (1) If a request under section 6 relates in whole or in part to relevant expenses incurred by or on behalf of a superior landlord, and the landlord to whom the request is made is not in possession of the relevant information —
  - (a) he shall in turn make a written request for the relevant information to the person who is his landlord (and so on if that person is not himself the superior landlord) and the superior landlord shall then comply with the request within a reasonable time; and

- (b) the immediate landlord shall comply with the tenant's or secretary's request, or that part of it which relates to the relevant expenses incurred by or on behalf of the superior landlord, within the time allowed by section 6 or within such further time, if any, as is reasonable in the circumstances.
- (2) If a request made under section 7 relates to a summary of expenses incurred or to be incurred by or on behalf of a superior landlord, the landlord to whom the request is made shall forthwith inform the tenant or secretary of that fact and of the name and address of the superior landlord, and section 7 shall then apply as if the superior landlord were the immediate landlord.

## 9 Effect of assignment

[P1985/70/24]

The assignment of a tenancy shall not affect the validity of a request made under section 6, 7 or 8 before the assignment, but a person is not obliged to provide a summary or make facilities available more than once for the same dwelling and for the same period.

## 9A Restriction on termination of tenancy for failure to pay service charge

[P1996/52/81]

- (1) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure to pay a service charge unless the amount of the service charge —
  - (a) is agreed or admitted by the tenant, or
  - (b) has been the subject of determination by a court or by an arbitrator in proceedings pursuant to an arbitration agreement (within the meaning of the *Arbitration Act 1976*).
- (2) Where the amount is the subject of determination, the landlord may not exercise any such right of re-entry or forfeiture until after the end of the period of 14 days beginning with the day after that on which the decision of the court or arbitrator is given.
- (3) For the purposes of this section the amount of a service charge shall be taken to be determined when the decision of the court or arbitrator is given, notwithstanding the possibility of an appeal or other legal challenge to the decision.
- (4) The reference in subsection (1) to premises let as a dwelling does not include premises let on —
  - (a) a tenancy to which the *Tenancy of Business Premises Act 1971* applies, or

- (b) a tenancy of an agricultural holding within the meaning of the *Agricultural Holdings Act 1969* in relation to which that Act applies; or<sup>7</sup>
  - (c) a farm business tenancy (within the meaning of the *Agricultural Tenancies Act 2008*).<sup>8</sup>
- (5) Nothing in this section affects the exercise of a right of re-entry or forfeiture on other grounds.<sup>9</sup>

## 9B Notice under s 11 of 1954 Act

[P1996/52/82]

- (1) Nothing in section 9A affects the power of a landlord to serve a notice under section 11(1) of the *Conveyancing (Leases and Tenancies) Act 1954* (notice of breach of covenant or condition), but such a notice in respect of premises let as a dwelling and failure to pay a service charge is ineffective unless it complies with the following requirements —
- (a) it must state that section 9A applies and set out the effect of section 9A(1);
  - (b) the information or words required must be in characters not less conspicuous than those used in the notice —
    - (i) to indicate that the tenancy may be forfeited, or
    - (ii) to specify the breach complained of,whichever is the more conspicuous.
- (2) In this section ‘premises let as a dwelling’ has the same meaning as in section 9A.<sup>10</sup>

## 10 Insurance

[P1985/70/30A; P1987/31/43]

Schedule 1 shall have effect for the purpose of conferring rights on tenants with respect to the insurance of their dwellings.<sup>11</sup>

## 10A Right to appoint surveyor to advise on matters relating to service charges

[P1996/52/84]

- (1) A recognised tenants’ association may appoint a surveyor for the purposes of this section to advise on any matters relating to, or which may give rise to, service charges payable to a landlord by one or more members of the association.
- (2) Schedule 2 shall have effect for the purpose of conferring on a surveyor so appointed rights of access to documents and premises.
- (3) A person shall not be so appointed unless —

- (a) he is a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers, or
  - (b) he satisfies such other requirement or requirements as may be prescribed by regulations made by the Department.
- (4) The appointment shall take effect for the purposes of this section upon notice in writing being given to the landlord by the association stating the name and address of the surveyor, the duration of his appointment and the matters in respect of which he is appointed.
- (5) An appointment shall cease to have effect for the purposes of this section if the association gives notice in writing to the landlord to that effect or if the association ceases to exist.
- (6) A notice is duly given under this section to a landlord of any tenants if it is given to a person who receives on behalf of the landlord the rent payable by those tenants; and a person to whom such a notice is so given shall forward it as soon as may be to the landlord.
- (7) Regulations under subsection (3)(b) shall not have effect unless they are approved by Tynwald.<sup>12</sup>

### 10B Transfer of cases from High Court

[P1985/70/31C; P1996/52/83]

- (1) Where in any proceedings before the High Court there falls for determination a question falling within the jurisdiction of the Commissioners under this Act, the court —
- (a) may by order transfer to the Commissioners so much of the proceedings as relate to the determination of that question, and
  - (b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any of such proceedings, pending the determination of that question by the Commissioners, as it thinks fit.
- (2) When the Commissioners have determined the question, the High Court may give effect to the determination in an order of the court.
- (3) Any such order shall be treated as a determination by the court for the purposes of section 9A.<sup>13</sup>

### 10C Appointment of manager of flats

Schedule 3 shall have effect for the purpose of conferring rights on tenants of flats to apply for the appointment of a manager of the premises of which the flats form part.<sup>14</sup>



**11 Contributions to be held in trust**

- (1) This section applies where the tenants of 2 or more dwellings ('the contributing tenants') may be required under the terms of their leases to contribute to the same expenses by the payment of service charges ('relevant service charges').
- (2) Any sums paid to or on account of the landlord by way of such charges, and any investments representing those sums, shall (together with any income accruing thereof) be held either as a single fund or, if the landlord thinks fit, in two or more separate funds.
- (3) Any fund mentioned in subsection (2) shall be held —
  - (a) on trust to defray expenses incurred in connection with the matters for which the relevant service charges were payable (whether incurred by the landlord or any other person), and
  - (b) subject to that, on trust for the persons who are the contributing tenants for the time being.
- (4) Subject to subsections (6) to (8), the contributing tenants shall be treated as entitled by virtue of subsection (3)(b) to such shares in the residue of any such fund as are proportionate to their respective liabilities to pay the relevant service charges.
- (5) If the Department by order so provides, any sums standing to the credit of any such fund may, instead of being invested in any other manner prescribed by law, be invested in such manner as may be specified in the order.
- (6) On the termination of the lease of a contributing tenant, he shall not be entitled to any part of such fund, and (except where subsection (7) applies) any part of any such fund which is attributable to relevant service charges paid under the lease shall accordingly continue to be held on the trusts referred to in subsection (3).
- (7) If after the termination of any such lease there are no longer any contributing tenants, any such funds shall be dissolved as at the date of the termination of the lease, and any assets comprised in the fund immediately before its dissolution shall be held for the use and benefit of the landlord.
- (8) Subsections (4), (6) and (7) have effect in relation to a contributing tenant subject to any express terms of his lease which relate to the distribution, either before or at the termination of the lease, as the case may be, of amounts attributable to relevant service charges paid under its terms, whether the lease was granted before or after the commencement of this Act.
- (9) Subject to subsection (8), this section prevails over the terms of any express or implied trust created by a lease so far as inconsistent with

those provisions, other than an express trust so created before the commencement of this Act.

### 11A Charging order in respect of property liable for service charge

- (1) Where a service charge is or will become payable to a landlord in respect of a dwelling, the landlord may apply to the High Court for an order (a 'charging order') in respect of the dwelling, imposing on the interest in the dwelling of the tenant by whom it is or will become payable ('the tenant') a charge for securing the payment thereof to the landlord.
- (2) The High Court shall not make a charging order unless it is satisfied that the service charge cannot otherwise be recovered from the tenant without unreasonable difficulty or expense.
- (3) A charging order may be made subject to such conditions as the court thinks fit, including conditions as to the time when the charge is to become effective.
- (4) A charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the tenant.
- (5) On an application made by any person affected by it, the High Court may make an order discharging or varying a charging order.
- (6) This section is without prejudice to any other remedy for recovery of a service charge.<sup>15</sup>

## 12 Offences

[P1985/70/24 and 33]

- (1) If any person without reasonable excuse fails to perform any duty imposed on him by section 6, 7 or 8 or paragraph 2, 3 or 4 of the Schedule, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,500.
- (2) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished accordingly.
- (3) Where the affairs of a body corporate are managed by its members, subsection (2) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if he were a director of the body corporate.





### 13 Interpretation

[P1985/70/28-30]

(1) In this Act —

“**the Commissioners**” means the Isle of Man Rent and Rating Appeal Commissioners;<sup>16</sup>

“**the Department**” means the Department of Social Care;<sup>17</sup>

“**landlord**” includes any person who has a right to enforce payment of a service charge;

“**managing agent**”, in relation to any premises to which any expenses relate, means a person appointed to discharge any of the landlord’s obligations relating to the management by him of the premises and owed to the tenant who may be required under the terms of their leases to contribute to those expenses by the payment of service charges;

“**qualified accountant**” means a member of one of the bodies for the time being specified in section 14(1)(a) of the *Companies Act 1982*, but does not include —

- (i) an officer, employee or partner of the landlord or, where the landlord is a company, of a company which is the landlord’s holding company or subsidiary (within the meaning of section 1 of the *Companies Act 1974*) or a subsidiary of the landlord’s holding company; or
- (ii) a person who is a partner or employee of any such officer or employee;
- (iii) an agent of the landlord who is a managing agent for any premises to which any of the expenses covered by the summary in question relate;
- (iv) an employee or partner of any such agent;

“**recognised tenants’ association**” has the meaning given by subsection (2);

“**relevant expenses**” has the meaning given by section 1(2);

“**service charge**” has the meaning given by section 1(1);

“**tenant**”, where the whole or any part of a dwelling is sublet, includes the sub-tenant.

- (2) A recognised tenants’ association is an association of, or of persons who include, tenants of dwellings each of whom may be required under the terms of his lease to contribute to the same expenses by the payment of service charges, which is recognised for the purposes of this Act either —
  - (a) by a notice in writing given by the landlord to the secretary of the association; or
  - (b) by a certificate of the Department.

- (3) A notice given under subsection (2) may be withdrawn by the landlord by a notice in writing given to the secretary of the association not less than 6 months before the date on which it is to be withdrawn; and a certificate under subsection (2) may be cancelled by the Department.

#### **14 Short title and commencement**

- (1) This Act may be cited as the Property Service Charges Act 1989.
- (2) This Act shall come into operation on such day as the Department may by order appoint.<sup>18</sup>
- (3) An order under subsection (2) may make such transitional, incidental, supplemental or consequential provision as appears to the Department to be necessary or expedient in connection with the coming into operation of this Act.



**SCHEDULE 1<sup>19</sup>****RIGHTS OF TENANTS WITH RESPECT TO INSURANCE**

## Section 10

*Relevant policy'*

1. In this Schedule “**relevant policy**”, in relation to a dwelling, means any policy of insurance under which the dwelling or, in the case of a flat, the dwelling or the building containing it, is insured.

*Request for summary of cover*

2. (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 require the landlord in writing to supply him with a written summary of the insurance for the time being effected in relation to the dwelling.

(2) If the tenant is represented by a recognised tenants' association and he consents, the request may be made by the secretary of the association instead of by the tenant and may then be for the supply of the summary to the secretary.

(3) A request 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 a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall comply with the request within one month of the request, and shall be taken to have complied with it if within that period he instead supplies to the tenant or secretary a copy of every relevant policy.

(5) The summary shall include —

- (a) the amount for which the dwelling is insured under any relevant policy or, in the case of a flat, the amount for which the building containing it is insured under any relevant policy and, if specified in the policy, the amount for which the flat is insured under it, and
- (b) the name of the insurer under any such policy, and
- (c) the risks in respect of which the dwelling or the building containing it (as the case may be) is insured under the policy.

(6) Where 2 or more buildings are insured under any relevant policy, the summary or copy supplied under sub-paragraph (4), so far as relating to that policy,

need only be of such parts of the policy as relate to the dwelling and, if it is a flat, to the building containing it.

*Request to inspect policy etc.*

3. (1) This paragraph applies where a tenant, or the secretary of a recognised tenants' association, has obtained a summary or copy of a relevant policy or of any parts of it as relate to the premises referred to in paragraph 2(6), whether in pursuance of paragraph 2 or otherwise.

(2) The tenant, or the secretary with the consent of the tenant, may within 6 months of obtaining any such summary or copy require the landlord in writing to afford him, or a person authorised in writing on his behalf, reasonable facilities —

- (a) for inspecting any relevant policy under which the dwelling in question is insured when the request is made or under which it was insured for a period of insurance immediately preceding that current when the request is made,
- (b) for inspecting any accounts, receipts or other documents which provide evidence of payment of any premiums due under any such policy, and
- (c) for taking copies of or extracts from any of the documents referred to in paragraphs (a) and (b).

(3) Subsections (3) to (5) of section 7 apply in relation to a request under this paragraph as they apply in relation to a request under that section.

*Insurance effected by superior landlord*

4. (1) If a request is made under paragraph 2 in a case where a superior landlord has effected, in whole or in part, the insurance of the dwelling in question and the landlord to whom the request is made is not in possession of the relevant information —

- (a) he shall in turn make a written request for the relevant information to the person who is his landlord (and so on, if that person is not himself the superior landlord), and the superior landlord shall comply with that request within a reasonable time, and
- (b) the immediate landlord shall then comply with the tenant's or secretary's request as provided by paragraph 2(4) to (6) within the time allowed by that paragraph or such further time (if any) as is reasonable in the circumstances.

(2) If, in a case where a superior landlord has effected, in whole or in part, the insurance of the dwelling in question, a request under paragraph 3 relates to any policy of insurance effected by the superior landlord —

- (a) the landlord to whom the request is made shall forthwith inform the tenant of that fact and of the name and address of the superior landlord, and
- (b) paragraph 3 then applies to the superior landlord in relation to that policy as if he were the immediate landlord.

*Effect of assignment*

5. The assignment of a tenancy does not affect the validity of a request made under paragraph 2, 3 or 4 before the assignment; but a person is not obliged to provide a summary or make facilities available more than once for the same dwelling and for the same period.

*Right to notify insurers of possible claim*

6. (1) This paragraph applies to any dwelling in respect of which the tenant pays to the landlord a service charge consisting of or including an amount payable directly or indirectly for insurance.

(2) Where —

- (a) it appears to the tenant of the dwelling that damage has been caused to the dwelling or, if it is a flat, to any part of the building containing it, in respect of which a claim could be made under the terms of a policy of insurance, and
- (b) it is a term of the policy that the person insured under the policy should give notice of any claim under it to the insurer within a specified period,

the tenant may, within that period, serve on the insurer a notice in writing stating that it appears to him that damage has been caused as mentioned in paragraph (a) and describing briefly the nature of the damage.

(3) Where such a notice is served on an insurer, and the period referred to in sub-paragraph (2)(b) would expire earlier than the period of 6 months beginning with the date on which the notice is served, the policy in question shall have effect, as regards any claim subsequently made in respect of the damage in question by the person insured under the policy, as if for that period there were substituted that period of 6 months.

(4) Where the tenancy of the dwelling is held by 2 or more persons, a single notice under this paragraph may be given by any one or more of them.

(5) The Department may by regulations prescribe the form of notices under this paragraph and the particulars which such notices must contain.

*Right to challenge cover*

7. (1) This paragraph applies 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.

(2) Where, on an application made by the tenant, the Commissioners are satisfied in relation to the dwelling that the insurance afforded by the relevant policy is, as respects the sum insured or otherwise, either excessive or inadequate, they may make an order that the landlord or superior landlord by whom the insurance is effected shall take such steps as may be specified in the order to reduce or increase the sum insured or otherwise to alter the insurance afforded by the relevant policy.<sup>20</sup>

*Right to challenge choice of insurers*

8. (1) This paragraph applies to a tenancy of a dwelling which requires the tenant to insure the dwelling with an insurer nominated by the landlord.

(2) The tenant or landlord may apply to the Commissioners for a determination whether —

- (a) the insurance which is available from the nominated insurer for insuring the tenant's dwelling is unsatisfactory in any respect, or
- (b) that the premiums payable in respect of any such insurance are excessive.

(3) No such application may be made in respect of a matter which —

- (a) has been agreed or admitted by the tenant,
- (b) under an arbitration agreement to which the tenant is a party is to be referred to arbitration, or
- (c) has been the subject of determination by a court or arbitrator.

(4) On an application under this paragraph the Commissioners may make an order requiring the landlord to nominate either —

- (a) such other insurer as is specified in the order, or
- (b) another insurer who satisfies such requirements in relation to the insurance of the dwelling as are specified in the order.

(5) Any such order may, with the leave of the High Court, be enforced in the same way as an order of the High Court to the same effect.

(6) An agreement by the tenant of a dwelling (other than an arbitration agreement) is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question which may be the subject of an application under this paragraph.<sup>21</sup>

**SCHEDULE 2<sup>22</sup>****RIGHTS EXERCISABLE BY SURVEYOR APPOINTED BY  
TENANTS' ASSOCIATION**

## Section 10A

*Introductory*

1. (1) A surveyor appointed for the purposes of section 10A has the rights conferred by this Schedule.
- (2) In this Schedule —
- (a) 'the tenants' association' means the association by whom the surveyor was appointed, and
  - (b) the surveyor's 'functions' are his functions in connection with the matters in respect of which he was appointed.

*Appointment of assistants*

2. (1) The surveyor may appoint such persons as he thinks fit to assist him in carrying out his functions.
- (2) References in this Schedule to the surveyor in the context of —
- (a) being afforded any such facilities as are mentioned in paragraph 3, or
  - (b) carrying out an inspection under paragraph 4, include a person so appointed.

*Right to inspect documents, etc*

3. (1) The surveyor has a right to require the landlord or any other relevant person —
- (a) to afford him reasonable facilities for inspecting any documents sight of which is reasonably required by him for the purposes of his functions, and
  - (b) to afford him reasonable facilities for taking copies of or extracts from any such documents.
- (2) In sub-paragraph (1) 'other relevant person' means a person other than the landlord who is or, in relation to a future service charge, will be —
- (a) responsible for applying the proceeds of the service charge, or
  - (b) under an obligation to a tenant who pays the service charge in respect of any matter to which the charge relates.
- (3) The rights conferred on the surveyor by this paragraph are enforceable by him by notice in writing given by him to the landlord or other person concerned.

Where a notice is given to a person other than the landlord, the surveyor shall give a copy of the notice to the landlord.

(4) The landlord or other person to whom notice is given shall, within the period of one week beginning with the date of the giving of the notice or as soon as reasonably practicable thereafter, either —

- (a) afford the surveyor the facilities required by him for inspecting and taking copies or extracts of the documents to which the notice relates, or
- (b) give the surveyor a notice stating that he objects to doing so for reasons specified in the notice.

(5) Facilities for the inspection of any documents required under sub-paragraph (1)(a) shall be made available free of charge.

This does not mean that the landlord cannot treat as part of his expenses of management any reasonable expenses incurred by him in connection with making the facilities available.

(6) A reasonable charge may be made for facilities for the taking of copies or extracts required under sub-paragraph (1)(b).

(7) A notice is duly given under this paragraph to the landlord of a tenant if it is given to a person who receives on behalf of the landlord the rent payable by that tenant.

A person to whom such a notice is so given shall forward it as soon as may be to the landlord.

#### *Right to inspect premises*

4. (1) The surveyor also has the right to inspect any common parts comprised in relevant premises or any appurtenant property.

(2) In sub-paragraph (1) —

‘common parts’, in relation to a building or part of a building, includes the structure and exterior of the building or part and any common facilities within it;

‘relevant premises’ means so much of —

- (i) the building or buildings containing the dwellings let to members of the tenants’ association, and
- (ii) any other building or buildings,

as constitute premises in relation to which management functions are discharged in respect of the expenses of which service charges are payable by members of the association; and

‘appurtenant property’ means so much of any property not contained in relevant premises as constitutes property in relation to which any such management functions are discharged.



For the purposes of the above definitions 'management functions' includes functions with respect to the provision of services, or the repair, maintenance or insurance of property.

(3) On being requested to do so, the landlord shall afford the surveyor reasonable access for the purposes of carrying out an inspection under this paragraph.

(4) Such reasonable access shall be afforded to the surveyor free of charge.

This does not mean that the landlord cannot treat as part of his expenses of management any reasonable expenses incurred by him in connection with affording reasonable access to the surveyor.

(5) A request is duly made under this paragraph to the landlord of a tenant if it is made to a person appointed by the landlord to deal with such requests or, if no such person has been appointed, to a person who receives on behalf of the landlord the rent payable by that tenant.

A person to whom such a request is made shall notify the landlord of the request as soon as may be.

#### *Enforcement of rights by the court*

5. (1) If the landlord or other person to whom notice was given under paragraph 3 has not, by the end of the period of one month beginning with the date on which notice was given, complied with the notice, the High Court may, on the application of the surveyor, make an order requiring him to do so within such period as is specified in the order.

(2) If the landlord does not, within a reasonable period after the making of a request under paragraph 4, afford the surveyor reasonable access for the purposes of carrying out an inspection under that paragraph, the High Court may, on the application of the surveyor, make an order requiring the landlord to do so on such date as is specified in the order.

(3) An application for an order under this paragraph must be made before the end of the period of 4 months beginning with the date on which notice was given under paragraph 3 or the request was made under paragraph 4.

(4) An order under this paragraph may be made in general terms or may require the landlord or other person to do specific things, as the court thinks fit.

#### *Documents held by superior landlord*

6. (1) Where a landlord is required by a notice under paragraph 3 to afford the surveyor facilities for inspection or taking copies or extracts in respect of any document which is in the custody or under the control of a superior landlord —

(a) the landlord shall on receiving the notice inform the surveyor as soon as may be of that fact and of the name and address of the superior landlord, and

- (b) the surveyor may then give the superior landlord notice in writing requiring him to afford the facilities in question in respect of the document.

(2) Paragraphs 3 and 5(1) and (3) have effect, with any necessary modifications, in relation to a notice given to a superior landlord under this paragraph.

*Effect of disposal by landlord*

7. (1) Where a notice under paragraph 3 has been given or a request under paragraph 4 has been made to a landlord, and at a time when any obligations arising out of the notice or request remain to be discharged by him —

- (a) he disposes of the whole or part of his interest as landlord of any member of the tenants' association, and
- (b) the person acquiring that interest ('the transferee') is in a position to discharge any of those obligations to any extent,

that person shall be responsible for discharging those obligations to that extent, as if he had been given the notice under paragraph 3 or had received the request under paragraph 4.

(2) If the landlord is, despite the disposal, still in a position to discharge those obligations, he remains responsible for doing so.

Otherwise, the transferee is responsible for discharging them to the exclusion of the landlord.

(3) In connection with the discharge of such obligations by the transferee, paragraphs 3 to 6 apply with the substitution for any reference to the date on which notice was given under paragraph 3 or the request was made under paragraph 4 of a reference to the date of the disposal.

(4) In this paragraph 'disposal' means a disposal whether by the creation or transfer of an estate or interest, and includes the surrender of a tenancy; and references to the transferee shall be construed accordingly.

*Effect of person ceasing to be a relevant person*

8. Where a notice under paragraph 3 has been given to a person other than the landlord and, at a time when any obligations arising out of the notice remain to be discharged by him, he ceases to be such a person as is mentioned in paragraph 3(2), then, if he is still in a position to discharge those obligations to any extent, he remains responsible for discharging them, and the provisions of this Schedule continue to apply to him, to that extent.

## SCHEDULE 3<sup>23</sup>

### APPOINTMENT OF MANAGERS OF FLATS

#### Section 10C

*Interpretation*

1. (1) In this Schedule —
- “**charitable purposes**”, in relation to a charity, means charitable purposes whether of that charity or of that charity and other charities;
- “**common parts**”, in relation to any building or part of a building, includes the structure and exterior of that building or part and any common facilities within it;
- “**the court**” means the High Court;
- “**exempt landlord**” means a Department, Statutory Board, local authority or joint board (within the meaning of the Local Government Act 1985);
- “**flat**” means a separate set of premises, whether or not on the same floor, which —
- (a) forms part of a building, and
  - (b) is divided horizontally from some other part of that building, and
  - (c) is constructed or adapted for use for the purposes of a dwelling;
- “**functional land**”, in relation to a charity, means land occupied by the charity, or by trustees for it, and wholly or mainly used for charitable purposes;
- “**landlord**” means the immediate landlord;
- “**purpose-built block of flats**” means a building which contained as constructed, and contains, 2 or more flats;
- “**resident landlord**” shall be construed in accordance with sub-paragraph (2).
- (2) For the purposes of this Schedule the landlord of any premises consisting of the whole or part of a building is a resident landlord of those premises at any time if —
- (a) the premises are not, and do not form part of, a purpose-built block of flats; and
  - (b) at that time the landlord occupies a flat contained in the premises as his only or principal residence; and
  - (c) he has so occupied such a flat throughout a period of not less than 12 months ending with that time.
- (3) References in this Schedule to a tenant do not include references to a tenant under a tenancy to which the *Tenancy of Business Premises Act 1971* applies.

*Application of this Schedule*

2. (1) Subject to sub-paragraph (2), this Schedule applies to premises consisting of the whole or part of a building if the building or part contains 2 or more flats.
- (2) This Schedule does not apply to any such premises at a time when —

- (a) the interest of the landlord in the premises is held by an exempt landlord or a resident landlord, or
- (b) the premises are included within the functional land of any charity.

*Tenant's right to apply for appointment of manager*

3. (1) The tenant of a flat contained in any premises to which this Schedule applies may, subject to the following provisions of this Schedule, apply to the Commissioners for an order under paragraph 6 appointing a manager to act in relation to those premises.

(2) An application for an order under paragraph 6 may be made —

- (a) jointly by tenants of 2 or more flats if they are each entitled to make such an application by virtue of this section, and
- (b) in respect of 2 or more premises to which this Schedule applies;

and, in relation to any such joint application as is mentioned in (a), references in this Schedule to a single tenant shall be construed accordingly.

(3) Where the tenancy of a flat contained in any such premises is held by joint tenants, an application for an order under paragraph 6 in respect of those premises may be made by any one or more of those tenants.

(4) An application to the High Court for it to exercise in relation to any premises any power to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under paragraph 6 appointing a manager to act in relation to those premises.

*Preliminary notice by tenant*

4. (1) Before an application for an order under paragraph 6 is made in respect of any premises to which this Schedule applies by a tenant of a flat contained in those premises, a notice under this section must (subject to sub-paragraph (4)) be served on the landlord by the tenant.

(2) A notice under this section must —

- (a) specify the tenant's name, the address of his flat and an address in the Island (which may be the address of his flat) at which the landlord may serve notices, including notices in proceedings, on him in connection with this Schedule;
- (b) state that the tenant intends to make an application for an order under paragraph 6 to be made by the Commissioners in respect of such premises to which this Schedule applies as are specified in the notice, but (if sub-paragraph (3) is applicable) that he will not do so if the landlord complies with the requirement specified in pursuance of that sub-paragraph;



- (c) specify the grounds on which the Commissioners would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds; and
- (d) contain such information (if any) as the Department may by regulations prescribe.

(3) Where the matters referred to in sub-paragraph (2)(c) are capable of being remedied by the landlord, the notice must also require the landlord, within such reasonable period as is specified in the notice, to take steps for the purpose of remedying them as are so specified.

(4) The Commissioners may (whether on the hearing of an application for an order under paragraph 6 or not) by order dispense with the requirement to serve a notice under this paragraph in a case where they are satisfied that it would not be reasonably practicable to serve such a notice on the landlord, but the Commissioners may, when doing so, direct that such other notices are served, or such other steps are taken, as they think fit.

(5) In a case where —

- (a) a notice under this paragraph has been served on the landlord, and
- (b) his interest in the premises specified in pursuance of sub-paragraph (2)(b) is subject to a mortgage,

the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

*Application to Commissioners for appointment of manager*

5. (1) No application for an order under paragraph 6 shall be made to the Commissioners unless —

- (a) in a case where a notice has been served under paragraph 4, either —
  - (i) the period specified in pursuance of paragraph 4(3) has expired without the landlord having taken the steps that he was required to take in pursuance of that provision, or
  - (ii) paragraph 4 was not applicable in the circumstances of the case; or
- (b) in a case where the requirement to serve such a notice has been dispensed with by an order under paragraph 4(4), either —
  - (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken, or
  - (ii) no direction was given by the Commissioners when making the order.

(2) Rules under section 3(3) of the *Rent and Rating Appeals Act 1986* shall make provision —

- (a) for requiring notice of an application for an order under paragraph 6 in respect of any premises to be served on such descriptions of persons as may be specified in the rules; and
- (b) for enabling persons served with any such notice to be joined as parties to the proceedings.

*Appointment of manager*

6. (1) The Commissioners may, on an application for an order under this paragraph, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Schedule applies —

- (a) such functions in connection with the management of the premises, or
- (b) such functions of a receiver,

or both, as the Commissioners think fit.

(2) The Commissioners may only make an order under this section where they are satisfied —

- (a) that unreasonable service charges have been made, or are proposed or likely to be made, and
- (b) that it is just and convenient to make the order in all the circumstances of the case.

(3) For the purposes of sub-paragraph (2)(a) a service charge shall be taken to be unreasonable —

- (a) if the amount is unreasonable having regard to the items for which it is payable,
- (b) if the items for which it is payable are of an unnecessarily high standard, or
- (c) if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred.

(4) The premises in respect of which an order is made under this section may, if the Commissioners think fit, be either more or less extensive than the premises specified in the application on which the order is made.

(5) An order under this paragraph may make provision with respect to —

- (a) such matters relating to the exercise by the manager of his functions under the order, and
- (b) such incidental or ancillary matters,

as the Commissioners think fit; and, on any subsequent application made for the purpose by the manager, the Commissioners may give him directions with respect to any such matters.

(6) Without prejudice to the generality of sub-paragraph (5), an order under this paragraph may provide —

- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
- (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
- (c) for remuneration to be paid to the manager by the landlord, or by the tenants of the premises in respect of which the order is made or by all or any of those persons;
- (d) for the manager's functions to be exercisable by him (subject to paragraph 7(1)) either during a specified period or without limit of time.

(7) Any such order may be granted subject to such conditions as the Commissioners think fit, and in particular its operation may be suspended on terms fixed by the Commissioners.

(8) In a case where an application for an order under this paragraph was preceded by the service of a notice under paragraph 4, the Commissioners may, if they think fit, make such an order even though —

- (a) any period specified in the notice in pursuance of paragraph 4(3) was not a reasonable period, or
- (b) the notice failed in any other respect to comply with any requirement contained in paragraph 4(2) or (3) or in any regulations applying to the notice under paragraph 4(2)(d).

(9) An order under this paragraph shall be enforceable against any person deriving title from the landlord in respect of his interest in the premises to which the order relates.

(10) Sub-paragraph (9) is without prejudice to —

- (a) section 29 of the *Registration of Deeds Act 1961* (registration of encumbrances affecting unregistered land), and
- (b) section 31(4) of the *Land Registration Act 1982* (effect of transfer of registered land).

(11) References in this paragraph to the management of any premises include references to the repair, maintenance or insurance of those premises.

*Variation and discharge of orders*

7. (1) The Commissioners may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order under paragraph 6; and if the order has been protected by an entry on the title register under the *Land Registration Act 1982*, the Commissioners may by order direct that the entry shall be cancelled.

(2) The Commissioners shall not vary or discharge an order under paragraph 6 on a landlord's application unless they are satisfied —

- (a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
- (b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(3) The Commissioners shall not discharge an order under this paragraph by reason only that, by virtue of paragraph 2(2), the premises in respect of which the order was made have ceased to be premises to which this Schedule applies.



## ENDNOTES

## Table of Legislation History

Legislation	Year and No	Commencement

## Table of Renumbered Provisions

Original	Current

## Table of Endnote References

- <sup>1</sup> Subs (2A) inserted by Property Service Charges (Amendment) Act 2003 s 1.
- <sup>2</sup> Subs (2B) inserted by Property Service Charges (Amendment) Act 2003 s 1.
- <sup>3</sup> Subs (2C) inserted by Property Service Charges (Amendment) Act 2003 s 1.
- <sup>4</sup> Para (b) amended by Property Service Charges (Amendment) Act 2003 s 4.
- <sup>5</sup> Subs (6) amended by Property Service Charges (Amendment) Act 2003 s 4.
- <sup>6</sup> S 5 substituted by Property Service Charges (Amendment) Act 2003 s 1.
- <sup>7</sup> Para (b) amended by Agricultural Tenancies Act 2008 Sch.
- <sup>8</sup> Para (c) added by Agricultural Tenancies Act 2008 Sch.
- <sup>9</sup> S 9A inserted by Property Service Charges (Amendment) Act 2003 s 2.
- <sup>10</sup> S 9B inserted by Property Service Charges (Amendment) Act 2003 s 2.
- <sup>11</sup> S 10 amended by Property Service Charges (Amendment) Act 2003 s 3.
- <sup>12</sup> S 10A inserted by Property Service Charges (Amendment) Act 2003 s 3.
- <sup>13</sup> S 10B inserted by Property Service Charges (Amendment) Act 2003 s 4.
- <sup>14</sup> S 10C inserted by Property Service Charges (Amendment) Act 2003 s 5.
- <sup>15</sup> S 11A inserted by Property Service Charges (Amendment) Act 2003 s 6.
- <sup>16</sup> Definition of 'the Commissioners' inserted by Property Service Charges (Amendment) Act 2003 s 5.
- <sup>17</sup> Definition of 'the Department' amended by SD155/10 Sch 6.
- <sup>18</sup> ADO (whole Act) 12/12/1989, with saving for a 3 month period (GC436/89).
- <sup>19</sup> Sch 1, previously Schedule, renumbered by Property Service Charges (Amendment) Act 2003 s 3.
- <sup>20</sup> Subpara (2) amended by Property Service Charges (Amendment) Act 2003 s 4 with saving.

<sup>21</sup> Para 8 substituted by Property Service Charges (Amendment) Act 2003 s 1.

<sup>22</sup> Sch 2 inserted by Property Service Charges (Amendment) Act 2003 s 3.

<sup>23</sup> Sch 3 inserted by Property Service Charges (Amendment) Act 2003 s 5.

