1. **Introduction & Background**
   1. Power to charge for certain enforcement action.

The Housing Act 2004 (hereinafter “the Act”) came into force in April 2006, and introduced significant changes to how the private rented residential sector was regulated.

The Act introduced a risk based approach to housing, through the Housing Health and Safety Rating System (HHSRS). All properties (privately rented, owner-occupied and Social Housing) can be inspected under this regime, which seeks to quantify the hazards within a property and give each hazard a score depending on its likelihood to cause harm, the presence of a vulnerable group in the property and the type and use of the property itself. It looks at a total of 29 housing hazards that are assessed, ranging from electrical safety to damp, hygiene, and entry by intruders.

Each hazard has a weighting which will help determine whether the property is rated as having category 1 (serious) or category 2 (other) hazard. This is based on the most vulnerable group that can be affected. A risk assessment looks at the likelihood of an incident arising from the condition of the property and the likely harmful outcome. For example, how likely is a fire to break out, and what would happen if it did.

The method of risk rating is set out in Government guidance to ensure national consistency of approach. This guidance can be found at [www.communities.gov.uk/publications/housing/housinghealth](http://www.communities.gov.uk/publications/housing/housinghealth)

A local authority is legally required to deal with any category 1 hazard when they have been identified, while it is at the discretion of the authority whether they take action in respect of category 2 hazards. Most councils deal with category 2 hazards where possible as they still affect the health and safety of the occupants.

As stated above, it is a legal duty on the Local Authority to take action when any Category 1 hazard is identified. The Act provides for a range of enforcement notices that can be served to address hazards, especially those that fall within Category 1.

1. **The Housing Act 2004 Formal Notices**

Part 1 of the Act introduced a range of notices and orders that can be issued dependant on the premises, risk involved, and the category of the risk. These are:

* Hazard Awareness Notices (section 28 or 29) – A legal notice that simply advises of the hazards present and the action that should be taken, these notices do not carry a time limit for compliance
* Improvement Notices (Section 11 or 12) – A notice that requires repairs to be undertaken within a set amount of time
* Prohibition orders (Section 20 or 21) – Restrict the use of whole or part of a dwelling due to serious hazards
* Emergency Prohibition Orders (Section 43) – Restrict the use of all or part of dwelling in an emergency
* Emergency Remedial Action Notice (Section 40) – Allows the authority to take emergency remedial action where a category 1 hazard causes an imminent risk of serious harm.
* Demolition Order – Allows the making of an order requiring the demolition of the property. The Act amends the provisions of s.265 of the Housing Act 1985 in this regard.

Owner Occupied premises can be subject to Hazard Awareness Notices, by virtue of s.28(1)(a) of the Act.

Further, a reasonable charge can be applied for reviewing

* Suspended Improvement Notices and
* Prohibition Orders

The service of any aforementioned notice requires an officer to assess the premise in line with the Act, follow the HHSRS process and determine the risk category. Remedial works are then required to be identified that would rectify the hazard or, in those cases where it cannot be removed / reduced to a sufficient level, prohibit the use of all or part of the premises affected by the hazard

The process to serve an enforcement notice is time consuming. It involves, undertaking an Inspection, rating hazards, drafting the notice and its schedules of work, identifying relevant person etc and serving the enforcement notice. This is made more time consuming when the premise has a large number of identified hazards and deficiencies that need addressing. It is for this time, in line with Section 49 described below, that a charging scheme is required to ensure any financial burden is carried by the person responsible for the premises, rather than the Local Housing Authority.

1. **Options considered**

3.1 Charging for Notices

1. Charge for Notices (Hourly Rate) – allowing cost recovery by the Council for time taken to ensure compliance. It should be noted that such costs are only incurred by those that do not comply, and do not impact on those landlords that comply with recommendations made by the Council’s officers before the service of a notice is required.

Imposing a charge is likely to encourage compliance to avoid further costs relating to enforcement.

1. Charge for Notices (Fixed Charge) – while a lot of Councils have chosen this option, the issue is that it is reliant on “averages” in terms of costs rather than the actual true cost of the specific enforcement on a case by case basis. This can lead to not recovering full costs or being seen to be making a profit. In line with legislation, the Council should be recovering the actual cost it incurs in taking the action in question.
2. Not charging for Notices – (maintain the status quo) As it currently stands, the Council does not charge for the serving of Notices under the Act, resulting in those landlords that are failing to comply with officer requests and statutory requirements having no financial

incentive to comply quickly or any financial penalty for non-compliance.

1. Not serving Notices – not a viable option, as enforcement of the legislation under the Act falls to the Council. The Council would be susceptible to legal challenge if it failed to meet its statutory obligations.

Over the years, Housing Notices have been served by the Council, with no ability to reclaim costs. As can be seen in the pricing table (table 1) below, each Notice is time consuming for the Council and redirects resources away from conducting other duties.

Based on the above, not to charge for enforcement notices makes no operational or financial sense. By setting a fee that is based on the actual cost per Notice, the Council meets the spirit of the legislation and can justify its costs if challenged. Charging also encourages early compliance in rectifying any hazard identified by the party liable to pay the charge.

1. **Cost Recovery of Housing Enforcement Notices**

4.1 Charging for Enforcement Notices

Section 49 of the Housing Act 2004 sets out what work can be charged for, depending on the type of notice/order being issued.

For the purposes of Improvement Notices and Hazard Awareness Notices, this includes expenses incurred in determining whether to serve the notice, identifying any action to be specified in the notice, and the actual service of the notice

For the purposes of emergency remedial action notice, this includes expenses incurred determining whether to take such action and the serving of the notice

For the purposes of prohibition notices, emergency prohibition orders and demolition orders, this includes expenses incurred for determining whether to make the order and serving copies of the order on persons as owners of premises

The Council can also make a reasonable charge as they consider appropriate as a mean of recovering expenses incurred by them for carrying out a review of suspended improvement and prohibition notices, as well as serving copies of the authority’s decision of such a review. This is allowed under Section 49(5) of the Act.

A demand for payment of charges becomes operative, if no appeal is brought against the underlying notice or order, at the end of a period of 21 days, beginning with the date of service of the demand. From the time when the demand becomes operative, the sum recoverable by the Council is, until recovered, a charge on the premises concerned.

In line with the principles of good enforcement, officers will always seek compliance through informal methods, when and where appropriate.

However, clear information will be given in writing to the landlord, that should the council be required to use its duty or power to serve an enforcement notice, a charge will apply. When formal enforcement becomes necessary for the purpose of addressing risk, despite attempts to prevent having to use its duty/power to serve an notice, it should not be a financial burden on the Council.

4.2 Process of Determining Enforcement

See the Private Sector Enforcement Policy and Complaint Procedure for full information.

*In line with legislation, a minimum of 24 hours warning is formally given in writing under Section 239 - Notification of intended entry to properties of the Act. This notice invites and informs all parties that the council intend to enter the property to formally inspect it. The council will endeavour to contact all interested party including;*

* *The Landlord(s)/Owner(s)/Agent(s)*
* *The tenant(s)/Occupier(s) and*
* *Any other person having legal responsibilities and/or interest to the property*

of the time and date that the inspection will take place (exceptions would be where there is an emergency situation, where immediate access will be sought) and invites any person whom have a legal responsibility to take part of the assessment process.

Within 14 days, Officers will endeavour to issue an informal written notice of any hazard identified and remedial work required. An appropriate time period to undertake works will be stated as detailed in a written schedule, and will be agreed with the responsible person where possible. The informal notice will set out the fact an enforcement notice shall be issued if works are not carried out, and that such notices incur a charge to recover costs. Each unit of accommodation that attracts a notice will be charged separately.

On expiry of any timescales set, a further visit to the premises in question will take place to determine compliance. Officers will keep full notes of such a visit. Determination will be made whether enforcement notices are required to address any outstanding works

At the time any formal notice (or order) is issued, a written request for payment shall be made. Details of the reasons for the charge, payment methods and means of appeal shall be set out. There is a 21-day appeal period against the notice before the demand becomes operable. The charge shall be up to and including the point of service of the notice/order, as any works in default or non-compliance would be recovered through other, existing means. The Officer shall record, on a set template, time spent per activity that the legislation allows a charge to be made against.

While the above describes the general rule, there will be times when informal notice is not given, and immediate issuing of a Notice is carried out (for example, when a hazard needs to be addressed without delay). These notices shall also incur a charge for cost recovery.

There will be circumstances where a charge is not levied on serving a notice, for instance when the works are to be carried out by the landlord, but the nature of the hazard are such that a notice is served to ensure liability is covered. Such a decision will be on a case by case basis, in agreement with Private Sector Housing Team Leader and in line with the concession policy.

Where a charge is not to be made, this shall be communicated by written notice.

The Housing Health and Safety Rating System Enforcement Guidance suggests authorities should take account of the personal circumstances of the person or persons against whom the enforcement action is being taken. The degree to which authorities consider personal circumstances is at their discretion, having regard to the resources available to the person being served. This leaves room for a suitably delegated officer to take exceptional circumstances into account to vary or quash a charge. It is proposed that the Private Sector Housing Management overseeing the Officer is therefore delegated to make such an operational decision.

4.3 Calculation of Costs - Notices

Section 49 of the Housing Act 2004 allows for the recovery of reasonable fees for certain administrative and other costs. The cost has been calculated based on the mid-point grade hourly rate of an Officer and/or Officers dealing with the case, which is currently (see table below) set in the Councils agreed fees and charges. This is reviewed annually.

4.4 Table 1 – Hourly Cost per Job Title

|  |  |  |
| --- | --- | --- |
| Job Description | Grade | Cost per hours |
| Support Officer | E | £18.28 |
| Private Sector Housing Officer | F | £23.34 |
| Environmental Health officer | H | £33.29 |
| Private Sector Housing Team Leader | I | £37.01 |
| Environmental Health Manager | K | £45.61 |
| Legal Officer | I | £37.01 |

The Case Officer is to record accurately time taken and cost incurred on each case on acolaid, broken down into each category of work (e.g. inspection, HHSRS assessment, drawing plans, considering action etc.). For the purposes of transparency, this breakdown would be made available in any appeal or internal review upon request.

No maximum amount is set under legislation, but any charge set will be based on the time taken in the process of the enforcement notice. Legislation is clear in that charging can only be for the purpose of cost recovery and not to generate income.

For the purpose of this policy, based on the average (as shown in table 2 below) a decision was made that this Authority would charge a flat **£650.00** per enforcement notice (except Hazard Awareness Notice, where no charge will apply) (to be reviewed yearly in line with the Fees and Charges). Table 3 below shows the charge to be applied for all actions allowed under the Act

* 1. Table 2 – Breakdown of Actions per Officer

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Support Team** | **PSHO** | **EHO** | **Team Leader** | **PSH Manager** | **Legal** |  |
| **Task** | **Grade E** | **Grade F** | **Grade H** | **Grade I** | **Grade K** | **Grade I** | **Total** |
| BaPS | 2 |  |  |  |  |  | 2 |
| Section 239 Letter |  | 0.5 |  |  |  |  | 0.5 |
| Formal Inspection |  | 1.5 | 1.5 |  |  |  | 3 |
| HHSRS rating |  | 3 |  |  |  |  | 3 |
| Drafting Report |  | 6 |  |  |  |  | 6 |
| Drafting Notice |  | 4 |  |  |  |  | 4 |
| Review of Documentation |  | 1 | 0.5 | 1 |  |  | 2.5 |
| Final Report |  | 0.5 |  |  |  |  | 0.5 |
| Final Notice |  | 0.5 |  |  |  |  | 0.5 |
| Signing of |  | 0.5 |  | 1 |  |  | 1.5 |
| Service of Notice |  | 0.5 |  |  |  |  | 0.5 |
| S16 |  |  |  |  |  |  | 0 |
| S49 |  | 1.5 |  |  | 0.5 |  | 2 |
| S235 |  |  |  |  |  |  | 0 |
| **Total Hours per job** | **2** | **19.5** | **2** | **2** | **0.5** | **0** | **26** |
| Hourly Recharge Rate | £18.28 | £23.34 | £33.29 | £37.01 | £45.61 | £37.01 | £196.26 |
| **Total Cost** | **£36.56** | **£455.00** | **£66.58** | **£74.02** | **£22.81** | **£0.00** | **£654.97** |

* 1. Table 3 – Cost per Notice

|  |  |
| --- | --- |
| **Type of Enforcement** | **Charge (£)** |
| Hazard Awareness Notice | 0.00 |
| Improvement Notice | 650.00 |
| Prohibition Order | 650.00 |
| Emergency Prohibition Order | 650.00 |
| Emergency Remedial Action | 650.00 |
| Clearance Area | Hourly Officer’s Cost + Fees |
| Demolition Order | Hourly Officer’s Cost + Fees |
| Review of Suspended Improvement Notice | Hourly Officer’s Cost + Fees |
| Review of Prohibition Order | Hourly Officer’s Cost + Fees |

When works in default are required because the landlord/person in control has not made suitable progress, then the Council will charge professional and administrative fees as well as the cost of the work and the hourly rate for each officer involved on a case by case basis and using figures at Table1.

The charge will be a local land charge on the premises if not paid within the permitted time and, if not paid within one month, will be recovered in accordance with the powers available under the Law of Property Act 1925

4.7 Exemptions - Charges

The purpose of the legislation is to address hazards faced by occupiers who are not the owners and where the owner is failing to carry out repairs. In the case of owner occupiers, these hazards will only affect themselves. It is therefore likely only a hazard awareness notice would be served in such circumstances.

This does not exempt them from enforcement action where appropriate, or the recovery the Council’s costs in any prosecution proceedings.

1. **Implications of the Recommendation**

5.1 Resources, costs and risks

Notices

Charging for notices must not be seen as a potential source of generating income. Enforcement action must only be taken where it is appropriate to do so. The Council is at risk of being challenged where a disproportionate number of notices have been served inappropriately to generate income.

The recipient of the notice has a right to appeal against the notice and the charge. A tribunal may make an order to reduce, quash or vary any charges made.

No additional resources, including staffing, are required by the introduction of such a scheme as charging can be applied to the existing regime already in place. Approving charging does add a cost recovery element to the work officers are already carrying out, with a slight bureaucratic process to record time.

Ultimately the introduction of charging aids in recovery of costs, which helps better protect services in the important role of identifying and addressing serious hazards in residential premises. This in itself protects tenants, especially those of a vulnerable nature.

It is important to ensure that landlords are advised at the outset of the charging for any enforcement notices served. All informal letters will be updated to ensure that this is clear

As previously mentioned, the introduction of a charging regime will aid in getting early compliance from landlords, and encourage early engagement with Officers in achieving the set standards. It is therefore the intention and aim of this policy that speedy compliance will increase without the need the serve an enforcement notice.

1. **Staffing and workforce**

This area of work is currently carried out within the service, and no additional staffing is proposed as a result of this scheme

1. **Equalities Impact considerations**

A separate equalities impact screening assessment has been completed for this report. The screening assessment followed the screening methodology recommended in the Council’s Equalities Impact Assessment. The screening assessment did not conclude any adverse effect on any particular or recognised minority group and did not require a full assessment to be carried out.

Ultimately any scheme that aids in achieving basic level of compliance to remove residential hazards will be of benefit across all characteristics affected.

The Housing Charity Shelter has previously estimated that 60% of enforcing Officers said more than half their cases involving rogue landlords also involved vulnerable groups. It is essential therefore that enforcement is targeted, and carried out to assist those most in need.

It is likely an argument will be made by landlords that they are being targeted as a group. By being consistent with the principles of enforcement, and giving opportunity to comply prior to a Notice being served (where reasonable), there is ample opportunity to avoid any charge.

1. **Legal Implications**

Section 49 of the Housing Act 2004 provides that the Council may make such reasonable charge as it considers appropriate as a means of recovering administrative and other expenses occurred.

The legislation is clear about what these charges relate to. The Council may only recover the costs it has incurred and may not make any profit.

Any setting of a fee is subject to a review and appeal process, set out in the Act, and must be clearly set out how the fee is reached to clearly show cost recovery. It is therefore imperative that Officers accurately record their time in line with the restrictions set out under the legislation.

1. **Financial Implications**

As stated, the introduction of such charging is clearly set out within legislation as a means to recover cost, and not to raise additional income. The charging will allow the service to recover costs that would otherwise have not been recoverable apart from taking a prosecution case and applying for costs.

Fees will be set at the mid-grade standard officer hourly charge which is already in place in 2019/20 for other services charged for based on time spent by the Officer investigating and help, review from others. This figure is reviewed annually as part of the Council’s fees and charges setting process.

It may be appropriate for the council to determine that in certain circumstances a reduced charge or no charge at all should be applied in line with guidance. Any reduction, changes or waivers of the set fee shall be in line with a concession policy.

This report recommends that final sign off to such a policy is delegated to the Portfolio Holder.

Due to the nature of the charges in terms of Notices being one to seek compliance, it is anticipated that the fees received will become minimal over time as the level of compliance by landlords rises to avoid being served a notice.

1. **Performance Issues**

The introduction of charging will encourage early compliance with addressing hazards within premises, to the benefit of residents as well as the reduced involvement of Officers

Formal enforcement notices are a result of informal methods not being successful in achieving compliance. Therefore, early compliance can be assessed by the annual assessment of category 1 hazards identified during the course of the year and the number of enforcement notices that were served. This will also allow an assessment to determine the most common enforced hazards, to allow focused work to raise awareness in the private rented sector.

As with any aspect of legislative compliance, education will play a key role. While the onus under legislation is for the landlord to know and comply with the legislation, the Council does seek to promote awareness to maximise compliance.

If charging for Enforcement Notices is passed, the fees and relevant documents shall be placed on the Respective Council’s Website and all relevant correspondence (e.g. inspection letters to landlords) from the officers, a section shall contain information about the charging regime.

This will set out clearly what must be done to avoid charge, as well as the charging regime should enforcement be required.

There will lead to some additional bureaucracy and work for Officers from the completion of the costing element of Notices. Over time, the charging element will aim to improve compliance and prevent the need for formal action to be needed to achieve early compliance, leading to a reduction on Officers time overall.

1. **Environmental Impact**

The policy is not expected to have any direct impact on the environment, but improve the situation faced in terms of residential premises.

Approving this policy does not require an Environmental Impact Assessment.

1. **Risk Implications**

This policy is not included on the Directorate or any other corporate risk register

1. **Corporate Priorities**

The cost recovery of enforcement action aids in meeting the priorities of the Council including:

13.1 Making a difference to communities:

It allows appropriate action to be taken to improve those living in the community without placing a burden on the Council, or on those that comply with the legislation

13.2 Making a difference to the most vulnerable:

The use of enforcement tools is essential to tackle the highest risk hazards in premises that many vulnerable occupy. The charging of such action means the decision to serve notice is based on those affected rather than cost to the Council.

13.3 Making a difference to families:

The ability to recover costs helps ensure a minimum housing standard family can expect in the housing market

**Monitoring and Review**

The service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters.

Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

**Application of the Policy**

All Private Sector Housing Officers must have regard to this policy when making enforcement decisions.

If you have any comments or queries on this policy, please contact: Mr David Fitzgerald

Environmental Health Manager

By email: for the attention of Mr David Fitzgerald at: [EHealth@havant.gov.uk](mailto:EHealth@havant.gov.uk)

By telephone: 02392 446670

Or at this address:

Havant Borough Council: The Plaza, Civic Centre Road, Havant, Hampshire, PO9 2AX

Havant Borough Council’s Corporate Enforcement Policy

Available at:

**Useful links**

Home England

Available at: <https://www.gov.uk/government/organisations/homes-england>

Regulator of Social Housing

Available at: <https://www.gov.uk/government/organisations/regulator-of-social-housing>

Homes (Fitness for Human Habitation) Act 2018

Available at: <http://www.legislation.gov.uk/ukpga/2018/34/enacted>

Guide for tenants: Homes (Fitness for Human Habitation) Act 2018

Available at: <https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-tenants-homes-fitness-for-human-habitation-act-2018>

Guide for landlords: Homes (Fitness for Human Habitation) Act 2018

Available at: <https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-landlords-homes-fitness-for-human-habitation-act-2018>

The Housing Act 2004

Available at: <http://www.legislation.gov.uk/ukpga/2004/34/contents>

Housing and Planning Act 2016

Available at: <http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted>

Civil penalties under the Housing and Planning Act 2016, Guidance for Local Housing Authorities

Available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf>

Housing health and safety rating system (HHSRS) enforcement guidance: housing conditions

Available at: <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-enforcement-guidance-housing-conditions>

Housing Act 1985

Available at: <http://www.legislation.gov.uk/ukpga/1985/68/contents>

Rent repayment orders under the Housing and Planning Act 2016

Available at: <https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>

Environmental Protection Act 1990

Available at: <http://www.legislation.gov.uk/ukpga/1990/43/contents>

Public Health Act 1936

Available at: <http://www.legislation.gov.uk/ukpga/Geo5and1Edw8/26/49/contents>

Public Health Act 1961

Available at: <https://www.legislation.gov.uk/ukpga/Eliz2/9-10/64/contents>

Police and Criminal Evidence Act 1984

Available at: <http://www.legislation.gov.uk/ukpga/1984/60/contents>

Criminal Procedure and Investigations Act 1996

Available at: <http://www.legislation.gov.uk/ukpga/1996/25/contents>

Regulation of Investigatory Powers Act 2000

Available at: <http://www.legislation.gov.uk/ukpga/2000/23/contents>

Law of Property Act 1925

Available at: <http://www.legislation.gov.uk/ukpga/Geo5/15-16/20>

Deregulation Act 2015

Available at: <http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>

Landlord and Tenant Act 1985

Available at: <http://www.legislation.gov.uk/ukpga/1985/70>

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

Available at: <http://www.legislation.gov.uk/ukdsi/2014/9780111116821/contents>

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Available at: <http://www.legislation.gov.uk/uksi/2015/1693/contents/made>

The Regulators’ Compliance Code

Available at: [www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code)

**APPENDIX A**

**Chapter 5 General and miscellaneous provisions relating to enforcement action Recovery of expenses relating to enforcement action**

**49 Power to charge for certain enforcement action**

1. A local housing authority may make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them in:-

1. serving an improvement notice under section 11 or 12;
2. making a prohibition order under section 20 or 21;
3. serving a hazard awareness notice under section 28 or 29;
4. taking emergency remedial action under section 40;
5. making an emergency prohibition order under section 43; or
6. making a demolition order under section 265 of the Housing Act 1985 (c. 68)

2. The expenses are, in the case of the service of an improvement notice or a hazard awareness notice, the expenses incurred in:-

1. determining whether to serve the notice,
2. identifying any action to be specified in the notice, and
3. serving the notice.

3. The expenses are, in the case of emergency remedial action under section 40, the expenses incurred in:-

1. determining whether to take such action, and
2. serving the notice required by subsection (7) of that section.

4. The expenses are, in the case of a prohibition order under section 20 or 21 of this Act, an emergency prohibition order under section 43 or a demolition order under section 265 of the Housing Act 1985, the expenses incurred in:-

1. determining whether to make the order, and
2. serving copies of the order on persons as owners of premises.

5. A local housing authority may make such reasonable charge as they consider appropriate as a means of recovering expenses incurred by them in:-

1. carrying out any review under section 17 or 26, or
2. serving copies of the authority’s decision on such a review.

6. The amount of the charge may not exceed such amount as is specified by order of the appropriate national authority.

7. Where a tribunal allows an appeal against the underlying notice or order mentioned in subsection (1), it may make such order as it considers appropriate reducing, quashing, or requiring the repayment of, any charge under this section made in respect of the notice or order.

**50 Recovery of charge under section 49**

1. This section relates to the recovery by a local housing authority of a charge made by them under section 49.

2. In the case of:-

* 1. an improvement notice under section 11 or 12, or
  2. (b) a hazard awareness notice under section 28 or 29, the charge may be recovered from the person on whom the notice is served.
  3. In the case of emergency remedial action under section 40, the charge may be recovered from the person served with the notice required by subsection (7) of that section.

3. In the case of:-

* 1. a prohibition order under section 20 or 21,
  2. (b) an emergency prohibition order under section 43, or
  3. (c) a demolition order under section 265 of the Housing Act 1985 (c. 68),the charge may be recovered from any person on whom a copy of the order is served as an owner of the premises.

4. A demand for payment of the charge must be served on the person from whom the authority seek to recover it.

5. The demand becomes operative, if no appeal is brought against the underlying notice or order, at the end of the period of 21 days beginning with the date of service of the demand.

6. If such an appeal is brought and a decision is given on the appeal which confirms the underlying notice or order, the demand becomes operative at the time when:-

* 1. the period within which an appeal to the Lands Tribunal may be brought expires without such an appeal having been brought, or
  2. (b) a decision is given on such an appeal which confirms the notice or order.

7. For the purposes of subsection 7 :-

* 1. the withdrawal of an appeal has the same effect as a decision which confirms the notice or order, and
  2. references to a decision which confirms the notice or order are to a decision which confirms it with or without variation.

8. As from the time when the demand becomes operative, the sum recoverable by the authority is, until recovered, a charge on the premises concerned.

9. The charge takes effect at that time as a legal charge which is a local land charge.

10. For the purpose of enforcing the charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

11. The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

12. The appropriate national authority may by regulations prescribe the form of, and the particulars to be contained in, a demand for payment of any charge under section 49.

**Part 3 Recovery of certain expenses**

Introductory (paragraph 7)

This Part of this Schedule applies for the purpose of enabling a local housing authority to recover expenses reasonably incurred by them in taking action under paragraph 3.

**Recovery of expenses (paragraph 8)**

1. The expenses are recoverable by the local housing authority from the person on whom the improvement notice was served (“the relevant person”).

2. Where the relevant person receives the rent of the premises as agent or trustee for another person, the expenses are also recoverable by the local housing authority from the other person, or partly from him and partly from the relevant person.

3. Sub-paragraph (4) applies where the relevant person proves in connection with a demand under paragraph 9:-

* 1. that sub-paragraph (2) applies, and
  2. that he has not, and since the date of the service on him of the demand has not had, in his hands on behalf of the other person sufficient money to discharge the whole demand of the local housing authority.

4. The liability of the relevant person is limited to the total amount of the money which he has, or has had, in his hands as mentioned in sub-paragraph 3b.

5. Expenses are not recoverable under this paragraph so far as they are, by any direction given by a residential property tribunal on an appeal to the tribunal under paragraph 11, recoverable under an order of the tribunal.

**Service of demand (paragraph 9)**

1. 1 A demand for expenses recoverable under paragraph 8, together with interest in accordance with paragraph 10, must be served on each person from whom the local housing authority are seeking to recover them.

2. If no appeal is brought, the demand becomes operative at the end of the period of 21 days beginning with the date of service of the demand.

3. A demand which becomes operative under sub-paragraph (2) is final and conclusive as to matters which could have been raised on an appeal.

4. Paragraph 11 deals with appeals against demands.

**Interest (paragraph 10)**

Expenses in respect of which a demand is served carry interest, at such reasonable rate as the local housing authority may determine, from the date of service until payment of all sums due under the demand.

**Appeals (paragraph 11)**

1. A person on whom a demand for the recovery of expenses has been served may appeal to a residential property tribunal against the demand.

2. An appeal must be made within the period of 21 days beginning with the date of service of the demand or copy of it under paragraph 9.

3. A residential property tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

4. Where the demand relates to action taken by virtue of paragraph 3(3), an appeal may be brought on the ground that reasonable progress was being made towards compliance with the improvement notice when the local housing authority gave notice under paragraph 4 of their intention to enter and take the action.

This does not affect the generality of sub-paragraph 1.

5. The tribunal may, on an appeal, make such order confirming, quashing or varying the demand as it considers appropriate.

6. A demand against which an appeal is brought becomes operative as follows:-

* 1. if a decision is given on the appeal which confirms the demand and the period within which an appeal to the Lands Tribunal may be brought expires without such an appeal having been brought, the demand becomes operative at end of that period;
  2. if an appeal to the Lands Tribunal is brought and a decision is given on the appeal which confirms the demand, the demand becomes operative at the time of that decision.

7. For the purposes of sub-paragraph 6:-

* 1. the withdrawal of an appeal has the same effect as a decision which confirms the demand, and
  2. references to a decision which confirms the demand are to a decision which confirms it with or without variation.

8. No question may be raised on appeal under this paragraph which might have been raised on an appeal against the improvement notice.

**Expenses and interest recoverable from occupiers (paragraph 12)**

1. Where a demand becomes operative by virtue of paragraph 9(2) or 11(6), the local housing authority may serve a recovery notice on any person:-

* 1. who occupies the premises concerned, or part of those premises, as the tenant or licensee of the person on whom the demand was served under paragraph 9(1); and
  2. who, by virtue of his tenancy or licence, pays rent or any sum in the nature of rent to the person on whom the demand was served.

2. A recovery notice is a notice:-

* 1. stating the amount of expenses recoverable by the local housing authority; and
  2. requiring all future payments by the tenant or licensee of rent or sums in the nature of rent (whether already accrued due or not) to be made direct to the authority until the expenses recoverable by the authority, together with any accrued interest on them, have been duly paid

3. In the case of a demand which was served on any person as agent or trustee for another person (“the principal”), sub-paragraph (1) has effect as if the references in paragraphs (a) and (b) to the person on whom the demand was served were references to that person or the principal.

4. The effect of a recovery notice, once served under sub-paragraph (1), is to transfer to the local housing authority the right to recover, receive and give a discharge for the rent or sums in the nature of rent.

5. This is subject to any direction to the contrary contained in a further notice served by the local housing authority on the tenant or licensee.

6. In addition, the right to recover, receive and give a discharge for any rent or sums in the nature of rent is postponed to any right in respect of that rent or those sums which may at any time be vested in a superior landlord by virtue of a notice under section 6 of the Law of Distress Amendment Act 1908 (c. 53).

**Expenses and interest to be a charge on the premises (paragraph 13)**

1. Until recovered, the expenses recoverable by the local housing authority, together with any accrued interest on them, are a charge on the premises to which the improvement notice related.

2. The charge takes effect when the demand for the expenses and interest becomes operative by virtue of paragraph 9(2) or 11(6).

3. For the purpose of enforcing the charge, the local housing authority have the same powers and remedies, under the Law of Property Act 1925 (c. 20) and otherwise, as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

4. The power of appointing a receiver is exercisable at any time after the end of one month beginning with the date when the charge takes effect.

**Recovery of expenses and interest from other persons profiting from taking of action**

**(paragraph 14)**

1. Sub-paragraph (2) applies if, on an application to a residential property tribunal, the local housing authority satisfy the tribunal that:-

* 1. the expenses and interest have not been and are unlikely to be recovered; and
  2. a person is profiting by the taking of the action under paragraph 3 in respect of which the expenses were incurred in that he is obtaining rents or other payments which would not have been obtainable if the number of persons living in the premises was limited to that appropriate for the premises in their state before the action was taken.

2. The tribunal may, if satisfied that the person concerned has had proper notice of the application, order him to make such payments to the local housing authority as the tribunal considers to be just

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