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## SCHEDULES

### SCHEDULE 18

Section 456.

#### PROVISIONS WITH RESPECT TO ADVANCES UNDER THE SMALL DWELLINGS ACQUISITION ACTS 1899 TO 1923

##### Modifications etc. (not altering text)

C1 Sch. 18 amended by S.I. 1986/148, art. 10(1)

#### *Repayment of advance*

- 1 (1) The advance shall be repaid with interest within such period not exceeding 30 years as may be agreed upon.
- (2) The rate of interest is per cent, in excess of the rate of interest which, one month before the date on which the terms of the advance were settled, was the rate fixed by the Treasury in respect of loans to local authorities for the purposes of Part V of the <sup>M1</sup>Housing Act 1957 (provision of housing), as follows—
  - (a) where the time referred to is before 27th February 1964, the rate so fixed under section 1 of the <sup>M2</sup>Public Works Loans Act 1897;
  - (b) where the <sup>M3</sup>time referred to is on or after 27th February 1964 and before 1st April 1968, the rate so fixed under section 2 of the Public Works Loans Act 1964 in respect of loans made on the security of local rates, or, where there was more than one rate so fixed, such of those rates as the Treasury have directed in that behalf under that section;
  - (c) where the <sup>M4</sup>time referred to is on or after 1st April 1968, the rate determined under section 6(2) of the National Loans Act 1968 in respect of local loans of that class made on the security of local rates, subject to any relevant direction given by the Treasury under that subsection.
- (3) The repayment may be made either by equal instalments of principal or by an annuity of principal and interest combined; and all payments on account of principal or interest shall be made either weekly or at such other periods not exceeding half a year as may be agreed.
- (4) The proprietor of a house in respect of which an advance has been made may at any of the usual quarter days, after one month's written notice, and on paying all sums due on account of interest, repay to the local authority—
  - (a) the whole of the outstanding principal of the advance, or
  - (b) any part of it, being £10 or a multiple of £10;and where the repayment is made by an annuity of principal and interest combined, the amount so outstanding, and the amount by which the annuity will be reduced where a part of the advance is paid off, shall be determined by a table annexed to the instrument securing the repayment of the advance.

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#### **Marginal Citations**

- M1** 1957 c. 56.
- M2** 1897 c. 51.
- M3** 1964 c. 9.
- M4** 1968 c. 13.

#### *The statutory conditions*

- 2 (1) The house of which the ownership was acquired by means of the advance shall be held subject to the following conditions (in this Schedule referred to as “the statutory conditions”):—
- (a) Every sum for the time being due in respect of principal or interest for the advance shall be punctually paid:
  - (b) The proprietor shall reside in the house:
  - (c) The house shall be kept insured against fire to the satisfaction of the local authority, and the receipts for the premiums produced when required by them:
  - (d) The house shall be kept in good sanitary condition and good repair:
  - (e) The house shall not be used for the sale of intoxicating liquors, or in such a manner as to be a nuisance to adjacent houses:
  - (f) The local authority shall have power to enter the house by any person, authorised by them in writing for the purpose, at all reasonable times for the purpose of ascertaining whether the statutory conditions are complied with.
- (2) The statutory condition as to residence has effect for a period of three years from the date when the advance is made, or from the date on which the house is completed, whichever is the later.
- (3) The other statutory conditions have effect until the advance has been fully repaid, with interest, or the local authority have taken possession or ordered a sale under this Schedule.

#### *Condition as to residence may be dispensed with or suspended*

- 3 (1) The statutory condition as to residence may at any time be dispensed with by the local authority.
- (2) The local authority may allow a proprietor to permit, by letting or otherwise, a house to be occupied as a furnished house by some other person—
- (a) during a period not exceeding four months in all in any twelve months, or
  - (b) during his absence from the house in the performance of any duty arising from or incidental to any office, service or employment held or undertaken by him;
- and the statutory condition as to residence is suspended while the permission continues.
- (3) Where the proprietor of a house subject to the statutory conditions dies, the condition requiring residence is suspended until the expiration of twelve months from the death, or any earlier date at which the personal representatives transfer the ownership or interest of the proprietor in the course of administration.

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- (4) Where the proprietor of any such house becomes bankrupt, or his estate [<sup>F1</sup>falls to be administered in accordance with an order under section [<sup>F2</sup>421 of the Insolvency Act 1986]], and in either case an arrangement under this Schedule is made with the trustee in bankruptcy, the local authority may, if they think fit, suspend the condition as to residence during the continuance of the arrangement.
- (5) Where an advance has been made in pursuance of section 7(1) of the <sup>M5</sup>Small Dwellings Acquisition Act 1899 (power to make advance on strength of undertaking to begin residence), the statutory condition requiring residence is suspended during the period allowed before residence must be begun.

#### Textual Amendments

- F1** Words substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1)(2), Sch. 8 para. 39(2), **Sch. 9 para. 11(2)**
- F2** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), **Sch. 14**

#### Marginal Citations

- M5** 1899 c. 44.

#### *Personal liability and powers of the proprietor*

- 4 (1) The proprietor of the house of which the ownership was acquired by means of the advance is personally liable for the repayment of any sum due in respect of the advance until he ceases to be proprietor by reason of a transfer made in accordance with this paragraph.
- (2) The proprietor of the house may with the permission of the local authority (which shall not be unreasonably withheld) at any time transfer his interest in the house, but any such transfer shall be made subject to the statutory conditions.
- (3) The provisions of sub-paragraph (2) requiring the consent of the local authority to the transfer of the proprietor's interest in the house do not apply to a charge on that interest made by the proprietor, so far as the charge does not affect any rights or powers of the local authority under this Schedule.

#### *Circumstances in which local authority may take possession or order sale*

- 5 (1) Where default is made in complying with the statutory condition as to residence, the local authority may take possession of the house, and where default is made in complying with any of the other statutory conditions, whether the statutory condition as to residence has or has not been complied with, the local authority may either take possession of the house or order the sale of the house without taking possession.
- (2) In the case of the breach of any condition other than that of punctual payment of the principal and interest of the advance, the authority shall, previously to taking possession or ordering a sale, by notice in writing delivered at the house and addressed to the proprietor, call on the proprietor to comply with the condition, and if the proprietor—
  - (a) within 14 days after the delivery of the notice gives an undertaking in writing to the authority to comply with the notice, and
  - (b) within two months after the delivery of the notice complies with it,

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the authority shall not take possession or, as the case may be, order a sale.

- (3) In the case of the bankruptcy of the proprietor of the house, or in the case of a deceased proprietor's estate [<sup>F3</sup>falling to be administered in accordance with an order under section [<sup>F4</sup>421 of the Insolvency Act 1986]], the local authority may either take possession of the house or order the sale of the house without taking possession, and shall do so except in pursuance of some arrangement to the contrary with the trustee in bankruptcy.

#### Textual Amendments

- F3** Words substituted by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235(1)(2), [Sch. 8 para. 39\(3\)](#), [Sch. 9 para. 11\(2\)](#)
- F4** Words substituted by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), s. 439(2), [Sch. 14](#)

#### *Recovery of possession and disposal of house*

- 6 (1) Where a local authority take possession of a house, all the estate, right, interest and claim of the proprietor in or to the house shall vest in and become the property of the local authority, and the authority may either retain the house under their own management or sell or otherwise dispose of it as they think expedient.
- (2) Where a local authority take possession of a house, they shall pay to the proprietor either—
- (a) such sum as may be agreed upon, or
  - (b) a sum equal to the value of the interest in the house at the disposal of the local authority, after deducting the amount of the advance then remaining unpaid and any sum due for interest;
- and that value, in the absence of a sale and in default of agreement, shall be settled by a county court judge as arbitrator or, if the Lord Chancellor so authorises, by a single arbitrator appointed by the county court judge, <sup>F5</sup>. . . shall apply to any such arbitration.
- (3) The sum so payable to the proprietor if not paid within three months after the date of taking possession shall carry interest at the rate of three per cent. per annum from the date of taking possession.
- (4) All costs of or incidental to the taking possession, sale or other disposal of the house (including the costs of the arbitration, if any) incurred by the local authority, before the amount payable to the proprietor has been settled either by agreement or arbitration, shall be deducted from the amount otherwise payable to the proprietor.
- (5) Where the local authority are entitled under this Schedule to take possession of a house, possession may be recovered in a county court whatever the annual value of the house for rating.

#### Textual Amendments

- F5** Words in [Sch. 18 para. 6\(2\)](#) repealed (31.1.1997) by [1996 c. 23, s. 107\(2\)](#), [Sch. 4](#); [S.I. 1996/3146](#), [art. 3](#)

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**Modifications etc. (not altering text)**

**C2** Sch. 18 para. 6(5) amended by S.I. 1990/776, art. 4(1)(h)

*Procedure as to ordering sale*

- 7 (1) Where a local authority order the sale of a house without taking possession, they shall cause it to be put up for sale by auction and shall retain out of the proceeds of sale—
- (a) any sum due to them on account of the interest or principal of the advance, and
  - (b) all costs, charges and expenses properly incurred by them in or about the sale of the house,
- and shall pay over the balance (if any) to the proprietor.
- (2) If the local authority are unable at the auction to sell the house for such a sum as will allow of the payment out of the proceeds of sale of the interest and principal of the advance then due to the authority, and the costs, charges and expenses referred to above, they may take possession of the house in manner provided by this Schedule, but shall not be liable to pay any sum to the proprietor.

*List of advances and accounts to be kept*

- 8 (1) A local authority shall keep at their offices a book containing a list of the advances made by them containing—
- (a) a description of the house in respect of which the advance was made, and
  - (b) the amount advanced.
- (2) The authority shall enter in the book with regard to each advance—
- (a) the amount for the time being repaid,
  - (b) the name of the proprietor for the time being of the house, and
  - (c) such other particulars as the authority think fit to enter.
- (3) The book shall be open to inspection at the office of the local authority during office hours free of charge.
- (4) Separate accounts shall be kept by every local authority of their receipts and expenditure in relation to advances to which this Schedule applies.

*Meaning of “residence”, “ownership” and “proprietor”*

- 9 (1) A person shall not be treated for the purposes of this Schedule as resident in a house unless he is both the occupier of and resident in the house.
- (2) In this Schedule “ownership” means such interest, or combination of interests, in a house as, together with the interest of the purchaser of the ownership, will constitute either—
- (a) a fee simple in possession, or
  - (b) a leasehold interest in possession of which at least 60 years are unexpired at the date of the purchase.
- (3) Where the ownership of a house is acquired by means of an advance to which this Schedule applies, the purchase of the ownership or, in the case of any devolution or

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transfer, the person in whom the interest of the purchaser is for the time being vested, is the proprietor of the house for the purposes of this Schedule.

*Date of advance*

- 10 For the purposes of this Schedule an advance shall be deemed to have been made on the date on which the instrument securing the repayment of the advance was executed.

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