

*Status: Point in time view as at 01/02/1991.*

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## SCHEDULES

### SCHEDULE 10

Section 113.

#### LANDLORD’S REPAIRING OBLIGATIONS

##### *Obligations to repair*

- 1 [F1(1) This paragraph applies to any contract (whether entered into before or after the coming into force of Schedule 8 to the Housing (Scotland) Act 1988) for letting a house for human habitation under which no rent is payable or the rent payable is less than that specified by order made by the Secretary of State.
- (1A) In determining whether this paragraph applies to any contract, there shall be disregarded such part (if any) of the sums payable by the tenant as is expressed (in whatever terms) to be payable in respect of services, repairs, maintenance or insurance unless it could not have been regarded by the parties to the tenancy as a part so payable.
- (1B) An order under sub-paragraph (1) above may specify different rents in relation to—
- (a) different kinds of houses;
  - (b) different areas.
- (1C) An order under sub-paragraph (1) above may specify rent by reference to such periods or such different periods or such other factors or such combinations thereof as may be specified in the order.
- (1D) An order under sub-paragraph (1) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (1E) This paragraph does not apply to a contract for the letting by a local authority of any house purchased or retained by the authority under section 121 or paragraph 5 of Schedule 8 for use for housing purposes.]
- (2) In any contract to which this paragraph applies there shall, notwithstanding any stipulation to the contrary, be implied a condition that the house is at the commencement of the tenancy, and an undertaking that the house will be kept by the landlord during the tenancy, in all respects reasonably fit for human habitation:
- Provided that that condition and the undertaking shall not be implied when a house is let for a period of not less than 3 years upon the terms that it will be put by the lessee into a condition in all respects reasonably fit for human habitation, and the lease is not determinable at the option of either party before the expiration of 3 years.
- (3) The landlord, or any person authorised by him in writing, may at reasonable times of the day, on giving 24 hours’ notice in writing to the tenant or occupier, enter any premises in respect of which this paragraph applies for the purpose of viewing their state and condition.

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- (4) In determining for the purposes of this paragraph whether a house is fit for human habitation, regard shall be had to the extent, if any, to which by reason of disrepair or sanitary defects the house falls short of the provisions of any building regulations in operation in the district.
- (5) In this paragraph—
- (a) the expression “landlord” means any person who lets to a tenant for human habitation any house under any contract to which this paragraph applies, and includes his successors in title; and
  - (b) the expression “house” includes part of a house; and
  - (c) the expression “sanitary defects” includes lack of air space or of ventilation, darkness, dampness, absence of adequate and readily accessible water supply or of sanitary arrangements or of other conveniences, and inadequate paving or drainage of courts, yards or passages.

#### Textual Amendments

- F1** Sch. 10 para. 1(1)–(1E) substituted for Sch. 10 para. 1(1) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), s. 72(1), [Sch. 8 para. 9\(a\)](#)

#### *Application of paragraph 1 to houses occupied by agricultural workers otherwise than as tenants*

- 2 —Notwithstanding any agreement to the contrary, where under any contract of employment of a workman employed in agriculture the provision of a house or part of a house for the occupation of the workman forms part of the remuneration of the workman, and the provisions of paragraph 1 are inapplicable by reason only of the house or part of the house not being let to the workman, there shall be implied as part of the contract of employment the like condition and undertaking as would be implied under those provisions if the house or part of the house were so let, and those provisions shall apply accordingly as if incorporated in this paragraph, with the substitution of “employer” for “landlord” and such other modifications as may be necessary:

Provided that this paragraph shall not affect the obligation of any person other than the employer to repair a house to which this section applies or any remedy for enforcing any such obligation.

#### *Repairing obligations in short leases of houses*

- 3 (1) In any lease of a house, being a lease to which this paragraph applies, there shall be implied a provision that the lessor will—
- (a) keep in repair the structure and exterior of the house (including drains, gutters and external pipes); and
  - (b) keep in repair and proper working order the installations in the house—
    - (i) for the supply of water, gas and electricity, and for sanitation (including basins, sinks, baths and sanitary conveniences but not, except as aforesaid, fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and
    - (ii) for space heating or heating water;

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and any provision that the lessee will repair the premises (including any that he will put in repair or deliver up in repair, or will paint, point or render the premises, or pay money in lieu of repairs by the lessee or on account of repairs by the lessor) shall be of no effect so far as it relates to any of the matters mentioned in paragraphs (a) and (b) of this paragraph.

[<sup>F2</sup>(1A) If a lease to which this paragraph applies is a lease of a house which forms part only of a building, then, subject to sub-paragraph (1B) of this paragraph, the provision implied by this paragraph (hereinafter referred to as “the implied repairs provision”) shall have effect as if—

- (a) the reference in paragraph (a) of sub-paragraph (1) of this paragraph to the house included a reference to any part of the building in which the lessor has an interest; and
- (b) any reference in paragraph (b) of sub-paragraph (1) of this paragraph to installations in the house included a reference to installations which, directly or indirectly, serve the house and in which the lessor has an interest.

(1B) Nothing in sub-paragraph (1A) of this paragraph shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee’s enjoyment of the house or of any common parts.

(1C) In sub-paragraph (1B) of this paragraph “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.]

(2) [<sup>F3</sup>The implied repairs provision] shall not be construed as requiring the lessor—

- (a) to carry out any works or repairs for which the lessee is liable by virtue of his duty to use the premises in a proper manner, or would be so liable apart from any express undertaking on his part;
- (b) to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident; or
- (c) to keep in repair or maintain anything which the lessee is entitled to remove from the house;

and sub-paragraph (1) of this paragraph shall not avoid so much of any provision as imposes on the lessee any of the requirements mentioned in head (a) or head (c) of this sub-paragraph.

(3) In determining the standard of repair required by the implied repairs provision in relation to any house, regard shall be had to the age, character and prospective life of the house and the locality in which it is situated.

[<sup>F4</sup>(3A) In any case where—

- (a) the implied repairs provision has effect as mentioned in sub-paragraph (1A) of this paragraph; and
- (b) in order to comply with the provision the lessor needs to carry out works or repairs otherwise than in, or to an installation in, the house; and
- (c) the lessor does not have sufficient right in the part of the building or the installation concerned to enable him to carry out the required works or repairs,

then, in any proceedings relating to a failure to comply with the implied repairs provision, so far as it requires the lessor to carry out the works or repairs in question, it shall be a defence for the lessor to prove that he used all reasonable efforts to obtain,

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but was unable to obtain, such rights as would be adequate to enable him to carry out the works or repairs.]

- (4) In any lease in which the implied repairs provision is implied there shall also be implied a provision that the lessor, or any person authorised by him in writing, may at reasonable times of the day, on giving 24 hours’ notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.
- (5) In this paragraph and in paragraphs 4 and 5, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—
- (a) “lease” includes a sublease, and “lessor” and “lessee”, in relation to a lease, include respectively any person for the time being holding the interest of lessor, and any person for the time being holding the interest of lessee, under the lease, and
  - (b) “lease of a house” means a lease whereby a building or part of a building is let wholly or mainly as a private dwelling and “house”, in relation to such a lease, means that building or part of a building.

#### Textual Amendments

- F2** Sch. 10 para. 3(1A)–(1C) inserted (with saving) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 8 para. 9\(b\)](#)
- F3** Words substituted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 8 para. 9\(c\)](#)
- F4** Sch. 10 para. 3(A) inserted (with saving) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 8 para. 9\(d\)](#)

#### *Application of paragraph 3*

- 4 (1) Subject to the provisions of this paragraph, paragraph 3 applies to any lease of a house granted on or after 3rd July 1962 being a lease for a period of less than 7 years.
- (2) For the purpose of this paragraph a lease—
- (a) shall be treated as a lease for a period of less than 7 years if it is determinable at the option of the lessor before the expiration of 7 years from the commencement of the period of the lease, and
  - (b) shall be treated as a lease for a period of 7 years or more if it confers on the lessee an option for renewal for a period which, together with the original period, amounts to 7 years or more, and it is not determinable as mentioned in head (a) of this sub-paragraph.
- (3) Where a lease (hereinafter referred to as “the new lease”) of a house is granted—
- (a) to a person who, when or immediately before the new lease is granted, is or was the lessee of the house under another lease, or
  - (b) to a person who was the lessee of the house under another lease which terminated at some time before the new lease is granted and who, between the termination of that other lease and the grant of the new lease, was continuously in possession of the house or entitled to the rents or profits thereof,

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paragraph 3 shall not apply to the new lease unless the other lease, if granted on or after 3rd July 1962, was a lease to which that paragraph applies, or, if granted before the said date, would have been such a lease if it had been granted on or after that date.

- (4) Paragraph 3 shall not apply to any lease of a house which is a tenancy of an agricultural holding.
- (5) In the application of this paragraph to a lease for a period part of which falls before the date of the granting of the lease, that part shall be left out of account and the lease shall be treated as a lease for a period commencing with the date of the granting.

*Restriction on contracting out*

- 5 (1) The sheriff may, on the application of either party to a lease, by order made with the consent of the other party concerned, authorise the inclusion in the lease, or in any agreement collateral to the lease, of provisions excluding or modifying in relation to the lease the provisions of paragraph 3 with respect to the repairing obligations of the parties if it appears to him, having regard to the other terms and conditions of the lease and to all the circumstances of the case, that it is reasonable to do so, and any provision so authorised shall have effect accordingly.
- (2) Subject to sub-paragraph (1) any provision, whether contained in a lease to which paragraph 3 applies or in any agreement collateral to such a lease, shall be void so far as it purports to exclude or limit the obligations of the lessor or the immunities of the lessee under that section, or to provide for an irritancy of the lease or impose on the lessee any penalty, disability or obligation, in the event of his enforcing or relying upon those obligations or immunities.

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