



Housing Act 2004 Charges for enforcement action.

Effective from 1st April 2015

Charging for enforcement action under The Housing Act 2004

The Council has a duty to address sub-standard housing conditions. This is normally done through discussion and co-operation with the landlord; however it is sometimes necessary to enforce improvements through the service of statutory notices. In such cases it may be necessary to complete the works required at the owners default, the cost arising being recoverable from the owner.

The Housing Act 2004 gives the Council the power to charge for enforcement action under Section 49 and to recover those costs.

Action is taken to reduce or eliminate identified hazards as defined by the Housing Health and Safety Rating System (HHSRS). The HHSRS is the enforcement tool used to identify matters which adversely affect the health and safety of occupiers in their home.

Enforcement action may arise as a result of a complaint, usually by the occupier of residential premises.

Landlords are always notified in advance of all pending visits and the outcomes of those inspections so they may take the opportunity to attend to any identified hazards.

If enforcement action becomes necessary and a statutory notice served, the notice will not only require you as the landlord to formally carry out all identified and necessary repairs but it will also carry a charge which will cover expenses incurred by the council in the inspection, consideration of action to be taken and service of the Notice. The cost of this notice will then be registered as a local land charge against your property until the costs have been repaid.

Charging Structure

Mid Sussex District Council will recover all of their enforcement costs.

Landlords will be charged an hourly rate for the enforcement costs incurred.

The average cost of enforcement will range between £150 to £350.

Landlords will be advised in writing what works are necessary to their property and given the opportunity to act.

Landlords will be charged once the officer starts formulating the notices etc.

This charging structure seeks to recover the cost of administration and compliance only.

Charging will apply for taking enforcement action in the following circumstances:-

- serving an improvement notice under section 11 or 12
- making a prohibition order under section 20 or 21
- serving a hazard awareness notice under section 28 or 29
- taking emergency remedial action under section 40
- making an emergency prohibition order under section 43 or
- making a demolition order under section 265 of the Housing Act 1985
- carrying out a review under section 17 (review of suspended improvement notices) or
- section 26 (review of suspended prohibition orders) or
- serving copies of the Council's decision on such a review

Expenses will be recovered in accordance with Section 50 of the Housing Act 2004, via a demand for payment of the charge. As from the time that the demand becomes operative until recovered the sum recoverable, will be registered as a local land charge on the premises concerned. **(Refer to Appendix A)** below.

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:-
 - a. serving an improvement notice under section 11 or 12;
 - b. making a prohibition order under section 20 or 21;
 - c. serving a hazard awareness notice under section 28 or 29;
 - d. taking emergency remedial action under section 40;
 - e. making an emergency prohibition order under section 43; or
 - f. 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:-
 - a. determining whether to serve the notice,
 - b. identifying any action to be specified in the notice, and
 - c. serving the notice.
3. The expenses are, in the case of emergency remedial action under section 40, the expenses incurred in:-
 - a. determining whether to take such action, and
 - b. 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:-
 - a. determining whether to make the order, and
 - b. 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:-
 - a. carrying out any review under section 17 or 26, or
 - b. 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:-
 - a. an improvement notice under section 11 or 12, or
 - b. (b) a hazard awareness notice under section 28 or 29, the charge may be recovered from the person on whom the notice is served.
 - c. 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:-
 - a. a prohibition order under section 20 or 21,
 - b. (b) an emergency prohibition order under section 43, or
 - c. (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:-
 - a. the period within which an appeal to the Lands Tribunal may be brought expires without such an appeal having been brought, or
 - b. (b) a decision is given on such an appeal which confirms the notice or order.
7. For the purposes of subsection 7 :-
 - a. the withdrawal of an appeal has the same effect as a decision which confirms the notice or order, and
 - b. 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:-
 - a. that sub-paragraph (2) applies, and
 - b. 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:-
 - a. 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;

- b. 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:-

- a. the withdrawal of an appeal has the same effect as a decision which confirms the demand, and
- b. 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:-

- a. 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
- b. 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:-

- a. stating the amount of expenses recoverable by the local housing authority; and
- b. 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:-
 - a. the expenses and interest have not been and are unlikely to be recovered; and
 - b. 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.