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**PROPERTY SERVICE CHARGES (AMENDMENT) ACT  
2003**

**Chapter 3**

**Arrangement of sections**

1. Determination of reasonableness of service charges
2. Restriction on termination of tenancy for failure to pay service charge
3. Right to appoint surveyor
4. Transfer of certain functions to Commissioners
5. Appointment of manager of flats
6. Charging order
7. Short title etc.



Signed in Tynwald: 18th March 2003  
Received Royal Assent: 19th March 2003  
Announced to Tynwald: 19th March 2003  
Passed: 19th March 2003

## AN ACT

to amend the Property Service Charges Act  
1989.

**W**E, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

### **1. Determination of reasonableness of service charges**

P1996/52/83

(1) In section 2 of the Property Service Charges Act 1989<sup>1</sup> ("the 1989 Act") (reasonableness of service charges), after subsection (2) insert —

"(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.

(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 —

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<sup>1</sup> 1989 c.14

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- (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.

(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."

(2) In the Schedule to the 1989 Act (rights of tenants with respect to insurance), for paragraph 8 substitute —

*"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."

(3) For section 5 of the 1989 Act substitute —

**"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."

(4) In section 13(1) of the 1989 Act (interpretation), after "In this Act —" insert —

"the Commissioners" means the Isle of Man Rent and Rating Appeal Commissioners;"

(5) In section 3(3) of the Rent and Rating Appeals Act 1986<sup>2</sup> (proceedings of Commissioners), at the end insert "in the exercise of their jurisdiction under any enactment".

## **2. Restriction on termination of tenancy for failure to pay service charge**

After section 9 of the 1989 Act insert the following sections —

### **"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<sup>3</sup>).

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<sup>2</sup> 1986 c.43

<sup>3</sup> 1976 c.24

(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<sup>4</sup> applies, or
- (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1969<sup>5</sup> in relation to which that Act applies.

(5) Nothing in this section affects the exercise of a right of re-entry or forfeiture on other grounds.

**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<sup>6</sup> (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."

**3. Right to appoint surveyor**

(1) After section 10 of the 1989 Act insert —

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<sup>4</sup> 1971 c.17

<sup>5</sup> XXI p.134

<sup>6</sup> XVIII p.467

**"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."

(2) In the Schedule to the 1989 Act, for "SCHEDULE" substitute "SCHEDULE 1", and at the end insert —

"Section 10A.

SCHEDULE 2

RIGHTS EXERCISABLE BY SURVEYOR APPOINTED BY TENANTS' ASSOCIATION

*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.

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### *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.

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(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 —



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- (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."

(3) In section 10 of the 1989 Act, for "The Schedule" substitute "Schedule 1".

**4. Transfer of certain functions to Commissioners**

(1) In section 3(1)(b) and (6) of the 1989 Act (estimates and consultation), after "the High Court" insert "or the Commissioners".

(2) In paragraph 7(2) of the Schedule to the 1989 Act (rights of tenants with respect to insurance) —

- (a) for "the High Court is" substitute "the Commissioners are"; and
- (b) "the court" substitute "they".

(3) Nothing in subsection (2) affects the powers of the High Court in any proceedings commenced before the coming into operation of this section.

(4) After section 10A of the 1989 Act insert —

**"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."

**5. Appointment of manager of flats**

(1) After section 10B of the 1989 Act insert —

**"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."

(2) After Schedule 2 to the 1989 Act insert —

"Section 10C.

SCHEDULE 3

APPOINTMENT OF MANAGERS OF FLATS

*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;

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"exempt landlord" means a Department, Statutory Board, local authority or joint board (within the meaning of the Local Government Act 1985<sup>7</sup>);

"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.

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<sup>7</sup> 1985 c.24

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(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 —

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- (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,

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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<sup>8</sup> (registration of encumbrances affecting unregistered land), and
- (b) section 31(4) of the Land Registration Act 1982<sup>9</sup> (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

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<sup>8</sup> XIX p.273

<sup>9</sup> 1982 c.7

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(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."

**6. Charging order**

After section 11 of the 1989 Act insert —

**"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."

**7. Short title etc.**

(1) This Act may be cited as the Property Service Charges (Amendment) Act 2003.

(2) In this Act "the 1989 Act" means the Property Service Charges Act 1989.

(3) This Act shall come into operation on such day or days as the Department of Local Government and the Environment may by order appoint.