Housing Finance (Special Provisions) Act 1975

1975 CHAPTER 67

An Act to prevent surcharges under the Local Government Act 1933 arising out of the Housing Finance Act 1972; to substitute other means of making good losses or deficiencies in respect of which such surcharges would fall to be made; and for connected purposes.

[12th November 1975]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

General

Surcharges arising out of Housing Finance Act 1972. 1972 c. 47.

1.—(1) Where at an audit of a council's accounts the district auditor is satisfied that they show an item of account, or a loss or deficiency, attributable to the council's failure to implement the Housing Finance Act 1972, and that he would be under a duty to make a disallowance or surcharge in respect of it, he shall neither disallow it nor make a surcharge in respect of it.

(2) Where subsection (1) above applies, the district auditor shall certify the sum which and the persons whom he would have surcharged in respect of any loss of rent attributable to the failure.

(3) In any case where a district auditor has made a disallowance or surcharge before the passing of this Act but on or after 7th March 1975, and subsection (1) above would have prevented the disallowance or surcharge if this Act had been

passed before the date on which it was made, the disallowance or surcharge shall be treated as not having been made; and where in any such case there is a loss of rent to which subsection (2) above would have applied, the district auditor shall certify the sum which and the persons whom he surcharged in respect of it.

(4) In this Act "rent loss certificate" means a certificate issued under subsection (2) or (3) above.

(5) In any case where subsection (3) above applies, any right of appeal against the disallowance or surcharge and any decision on such an appeal shall abate, but without prejudice to the right of appeal conferred by subsection (6) below.

1933 c. 51.

(6) In the Local Government Act 1933—

section 226(2) (auditor's duty to give reasons for decisions);

section 229 (appeals against decisions); and

section 234 (expenses of auditors),

shall apply in relation to a rent loss certificate as they apply in relation to a surcharge, but with the omission from section 229(2) of the words from "and if" to the end of the subsection.

(7) A rent loss certificate shall become effective upon the date (in this Act referred to as "the effective date") upon which there expires the ordinary period allowed under section 229 of the Local Government Act 1933 for making an appeal against a surcharge, or, if an appeal is made under that section, as applied by subsection (6) above, upon the date on which the appeal is finally disposed of or abandoned or fails by reason of non-prosecution.

Recovery of certified amounts.

2.—(1) Subject to subsection (5) below, a council who on 1st April 1974 held any dwellings to which a rent loss certificate relates shall recover, except as permitted by a direction under subsection (4) below, the certified sum or, where more than one council held such dwellings on that date, an appropriate part of it (as certified by the district auditor) by the end of the recovery period and at the appropriate rate.

(2) In subsection (1) above—

"the appropriate rate" means a rate of not less than one-fifth of the sum which it falls to the council to recover by the end of each year of the recovery period, except that, if the effective date of the rent loss certificate falls in February or March, the council shall not be obliged to recover one-fifth by the end of the first year; and

"the recovery period" means a period of five years commencing on the 1st April following the effective date of the certificate.

(3) A council shall perform their duty under this section either by a general increase of the rents of those of their Housing Revenue Account dwellings in the part or parts of their area to which the certificate relates or by a general increase of the rents of their Housing Revenue Account dwellings in the whole of their area; and a council may make any such increase notwithstanding section 111 of the Housing Act 1957 (charges for local authority's houses). 1957 c. 56.

(4) The Secretary of State may direct, upon the application of a council, that the period during which recovery is to be completed shall in their case be such longer period as may be specified in the direction, and may give a consequential direction about the rate at which they are to recover.

(5) If the Secretary of State is satisfied, on the application of a council, that they have recovered all except a negligible part of the sum which it falls to them to recover, he may, if he thinks fit, authorise them not to recover that part.

(6) If the Secretary of State gives a council an authorisation under subsection (5) above, it shall be his duty, as soon as may be after the end of the year in which he gave it, to lay before each House of Parliament a statement of the amount which the council have recovered and of the amount which he has authorised them not to recover.

(7) For the purposes of any determination of the extent to which a council have performed their duty under this section such addition shall be made to the amount received by them as is appropriate to take account of any remission, by way of rebate under the Housing Finance Act 1972, of the whole or part of a rent increase under subsection (3) above. 1972 c. 47.

Power to charge rates.

3.—(1) Subject to subsection (2) below, a council—

(*a*) may elect to charge the sum which it would otherwise fall to them to recover under section 2 above, either wholly or partially, to their general rate fund, and

(*b*) may declare that any sum charged to their general rate fund by virtue of paragraph (*a*) above shall be chargeable separately on the area of any former council to whose account the rent loss certificate relates, and

(*c*) may elect that any sum so charged (whether or not paragraph (*b*) above applies to it) shall be charged to the general rate fund in appropriate annual portions.

(2) The power conferred by subsection (1) above shall not be exercisable except on a resolution passed at a meeting specially convened for the purpose with notice of its object.

(3) In subsection (1) above " appropriate annual portions " means annual portions each of which is not less than one-fifth of the sum charged to the general rate fund, except that, if the effective date of the rent loss certificate falls in February or March, the council shall not be obliged to charge any amount in respect of the year commencing on the 1st April following the effective date.

Supplementary

Calculation for the purposes of transition subsidy. 1972 c. 47.

4. Where a rent loss certificate has become effective, the district auditor shall certify the amount which in his opinion the council's income from rents, as defined by subsection (5) of section 3 of the Housing Finance Act 1972 (transition subsidy), should have included in respect of the period during which the council failed to implement the said Act of 1972 and in relation to which the rent loss certificate was issued, and in any calculation required by that subsection the council's income from rents for the year in question shall be treated as including the amount so certified.

Accounts.

5.—(1) Where a rent loss certificate has become effective in respect of a council's accounts for any year, the certified sum shall be credited to the Housing Revenue Account for that year.

(2) Subject to any direction under subsection (3) below, there shall be made in the accounts of a council (including the Housing Revenue Account) such entries and adjustments as may be requisite in consequence of this Act.

(3) The Secretary of State may give such directions as to the making of entries and adjustments as appear to him to be appropriate for the purposes of this section.

Rates—supplementary.

6.—(1) Where a council's Housing Revenue Account shows an item of account, loss or deficiency to which section 1 above applies (whether by virtue of subsection (1) or (3) of that section) but to which a rent loss certificate does not relate, the appropriate amount shall be charged to the general rate fund account for the year in question, and any amount so charged shall be credited to the Housing Revenue Account for that year.

(2) In subsection (1) above " the appropriate amount " means an amount (as certified by the district auditor) equal to any expenditure represented by an item of account such as is mentioned in that subsection, or to a loss or deficiency such as is there mentioned.

(3) In any calculation of rate support grants, sums charged to any council's general rate fund under section 3 above shall not

be included in relevant expenditure as defined by section 1(4) of the Local Government Act 1974. 1974 c. 7.

(4) In any calculation of a council's entitlement to rate support grant—

(*a*) sums charged to their general rate fund and in respect of which, but for section 1 above, the district auditor would have been under a duty to make a disallowance or surcharge, and

(*b*) sums charged to that fund under section 3 above,

shall not be included in expenditure for the purposes of paragraph 10(3) of Part III of Schedule 2 to the Local Government Act 1974 or of paragraph 6 of Part II of Schedule 1 to the Local Government Act 1966. 1966 c. 42.

(5) Where—

(*a*) it appears to a new council that a former council failed to levy a rate sufficient for a rate fund contribution under the Housing Finance Act 1972, and 1972 c. 47.

(*b*) there was a deficit on 31st March 1974 in the general rate fund account of the former council,

the new council may, if they consider it appropriate, declare that an amount not greater than the amount which the former council failed to raise by levying a rate, or than the deficit, whichever is the less, shall be chargeable separately on the area of the former council over a period not exceeding five years.

7.—(1) In this Act, unless the context otherwise requires— Interpretation.

" audit " means an audit under Part X of the Local Government Act 1933; 1933 c. 51.

" effective date " has the meaning assigned to it by section 1(7) above;

" failure to implement ", in relation to the Housing Finance Act 1972, includes failure by a council (at any time after the passing of that Act) to comply with it or to exercise their powers under it or to perform any of their other functions in such a way as to enable them to comply with it or to exercise their powers under it, and includes any act or omission on the part of a council (before the passing of the said Act of 1972 or later) in contemplation or anticipation of such a failure, and " failed to implement " has a corresponding meaning; 1972 c. 47.

" former council " means a council which ceased to exist on 31st March 1974;

" Housing Revenue Account dwelling " has the meaning assigned to it by section 104(2) of the Housing Finance Act 1972;

" new council ", in relation to a former council, means a council constituted under the Local Government Act 1972 whose area includes the whole or part of the former council's area ;

1972 c. 70.

" rate fund contribution " means a contribution made by a council out of their general rate fund ;

" rent loss certificate " has the meaning assigned to it by section 1(4) above ;

" surcharge " means a surcharge under Part X of the Local Government Act 1933 ; and

1933 c. 51.

" year " means a financial year.

(2) Except where the context otherwise requires, any reference in this Act to any enactment is a reference to it as amended or applied by or under any other enactment, including this Act.

Citation, etc.

8.—(1) This Act may be cited as the Housing Finance (Special Provisions) Act 1975.

(2) This Act extends to England and Wales only.