WELSH STATUTORY INSTRUMENTS

# 2011 No. 2684 (W.287)

# LANDLORD AND TENANT, WALES

## The Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2011

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| *Made - - - -* | *5 November 2011* |
| *Laid before the National Assembly for Wales - -* | *8 November 2011* |
| *Coming into force - -* | *30 November 2011* |

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon the National Assembly for Wales by sections 78(2)(d) and (3), 80(8) and (9), 84(2), 92(3) and (7) and 178 (1) (a), (b), (c) and 179(1) of the Commonhold and Leasehold Reform Act 2002(**1**) and section 26(3) of the Welsh Language Act 1993(**2**) and now vested in them(**3**).

### Title, commencement and application

**1.**—(1) The title of these Regulations is the Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2011 and they come into force on 30 November 2011.

(2) These Regulations apply in relation to premises in Wales.

### Interpretation

**2.** In these Regulations—

"the 2002 Act" ("*Deddf 2002*") means the Commonhold and Leasehold Reform Act 2002;

"landlord", ("*landlord*") in relation to RTM premises, means a person who is landlord under a lease of the whole or any part of the premises(**4**);

(**1**) 2002 c. 15.
(**2**) 1993 c. 38.
(**3**) By virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32) the functions formerly exercised by the National Assembly for Wales as the "appropriate national authority" under section 179(1) of the Commonhold and Leasehold Reform Act 2002 are now vested in the Welsh Ministers. The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2(b), Schedule 1, directed that the power in section 26(3) of the Welsh Language Act 1993 be exercisable, in relation to Wales, by the National Assembly for Wales concurrently with any Minister of the Crown by whom the power was exercisable. The power was transferred to the Welsh Ministers by virtue of section 162(3) of, and paragraph 30(1) of Schedule 11 to, the Government of Wales Act 2006.
(**4**) For the definition of "landlord" see also section 112(2), (3) and (5) of the 2002 Act.

"RTM premises" ("*mangre RTM*") means premises as regards which a Right to Manage company ("RTM company") intends to acquire the right to manage(**5**);

"third party" ("*trydydd parti*"), in relation to RTM premises, means a person who is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant(**6**).

**Additional content of notice of invitation to participate**

**3.**—(1) A notice of invitation to participate must contain, in addition to the statements and information referred to in section 78(2)(a) to (c) of the 2002 Act (notice inviting participation), the particulars mentioned in paragraph (2).

(2) The particulars referred to in paragraph (1) are—

(a) the RTM company's registered number(**7**), the address of its registered office and the names of its directors and, if applicable, secretary;

(b) the names of the landlord and any third party;

(c) a statement that, subject to the exclusions mentioned in sub-paragraph (e), if the right to manage is acquired by the RTM company, the company will be responsible for—

(i) the discharge of the landlord's duties under the lease; and

(ii) the exercise of his or her powers under the lease,

with respect to services, repairs, maintenance, improvements, insurance and management;

(d) a statement that, subject to the exclusion mentioned in sub-paragraph (e)(ii), if the right to manage is acquired by the RTM company, the company may enforce untransferred tenant covenants(**8**);

(e) a statement that, if the right to manage is acquired by the RTM company, the company will not be responsible for the discharge of the landlord's duties or the exercise of his or her powers under the lease—

(i) with respect to a matter concerning only a part of the premises consisting of a flat or other unit not subject to a lease held by a qualifying tenant(**9**); or

(ii) relating to re-entry or forfeiture;

(f) a statement that, if the right to manage is acquired by the RTM company, the company will have functions under the statutory provisions referred to in Schedule 7 to the 2002 Act;

(g) a statement that the RTM company intends or, as the case may be, does not intend, to appoint a managing agent; and—

(i) if it does so intend, a statement—

(aa) of the name and address of the proposed managing agent (if known); and

(bb) if it is the case, that the person is the landlord's managing agent; or

(ii) if it does not so intend, the qualifications or experience (if any) of the existing members of the RTM company in relation to the management of residential property;

(h) a statement that, where the RTM company gives a claim notice(**10**), a person who is or has been a member of the company may be liable for costs incurred by the landlord and others in consequence of the notice;

(**5**) *See* sections 71(1) and 73 of the 2002 Act. As to "right to manage" *see* section 71(2) of the 2002 Act.
(**6**) *See* section 112(2), (3) and (5) of the 2002 Act.
(**7**) *See* section 1066 of the Companies Act 2006 (c. 46).
(**8**) *See* section 100(4) of the 2002 Act.
(**9**) As to premises to which Chapter 1 of Part 2 of the 2002 Act applies, *see* section 72 (and Schedule 6). As to "flat" and "unit" see section 112(1). As to "lease" see section 112(2). As to "qualifying tenant" see sections 75 and 112(4) and (5).
(**10**) *See* section 79(1) of the 2002 Act.

(i) a statement that, if the recipient of the notice (of invitation to participate) does not fully understand its purpose or implications, he or she is advised to seek professional help; and

(j) the information provided in the notes to the form set out in Schedule 1 to these Regulations.

**Additional content of claim notice**

**4.** A claim notice must contain, in addition to the particulars required by section 80(2) to (7) (contents of claim notice) of the 2002 Act—

(a) a statement that a person who—

(i) does not dispute the RTM company's entitlement to acquire the right to manage(**11**); and

(ii) is the manager party under a management contract(**12**) subsisting immediately before the date specified in the claim notice,

must, in accordance with section 92 of the 2002 Act (duties to give notice of contracts), give a notice to the RTM company and to the person who is the contractor party(**13**);

(b) a statement that, from the acquisition date(**14**), landlords under leases of the whole or any part of the premises to which the claim notice relates are entitled to be members of the RTM company;

(c) a statement that the notice is not invalidated by any inaccuracy in any of the particulars required by section 80(2) to (7) of the 2002 Act or this regulation, but that a person who is of the opinion that any of the particulars contained in the claim notice are inaccurate may—

(i) identify the particulars in question to the RTM company by which the notice was given; and

(ii) indicate the respects in which they are considered to be inaccurate;

(d) a statement that a person who receives the notice but does not fully understand its purpose, is advised to seek professional help; and

(e) the information provided in the notes to the form set out in Schedule 2 to these Regulations.

**Additional content of counter-notice**

**5.** A counter-notice must contain (in addition to the statement referred to in section 84(2(a) and (b) (counter-notices) of the 2002 Act)—

(a) a statement that, where the RTM company has been given one or more counter-notices containing such a statement as is mentioned in section 84(2)(b) of the 2002 Act, the company may apply to a leasehold valuation tribunal for a determination that, on the date on which notice of the claim was given, the company was entitled to acquire the right to manage the premises specified in the claim notice;

(b) a statement that, where the RTM company has been given one or more counter-notices containing such a statement as is mentioned in section 84(2)(b) of the 2002 Act, the company does not acquire the right to manage the premises specified in the claim notice unless—

(i) on an application to a leasehold valuation tribunal, it is finally determined(**15**) that the company was entitled to acquire the right to manage the premises; or

(**11**) As to the circumstances in which there is no dispute about entitlement, *see* section 90(3) of the 2002 Act.
(**12**) *See* section 91(2) and (4) of the 2002 Act..
(**13**) *See* section 91(2)(b) of the 2002 Act.
(**14**) *See* section 90 of the 2002 Act.
(**15**) *See* section 84(7) and (8) of the 2002 Act.

(ii) the person by whom the counter-notice was given agrees, or the persons by whom the counter-notices were given agree, in writing, that the company was so entitled; and

(c) the information provided in the notes to the form set out in Schedule 3 to these Regulations.

**Additional content of contractor notice**

**6.**—(1) A contractor notice(**16**) must contain (in addition to the particulars referred to in paragraphs (a) to (d) of section 92(3) (duties to give notice of contracts) of the 2002 Act) the statement that, should the person to whom the notice is given wish to provide to the RTM company services which, as the contractor party, it has provided to the manager party under the contract, it is advised to contact the RTM company at the address given in the notice; and

(2) the information provided in the notes to the form set out in Schedule 4 to these Regulations.

**Additional content of contract notice**

**7.** A contract notice(**17**) must contain (in addition to the particulars referred to in section 92(7)(a) of the 2002 Act)—

(a) the address of the person who is the contractor party, or sub-contractor party(**18**), under the contract of which particulars are given in the notice;

(b) a statement that, should the RTM company wish to avail itself of the services which the contractor party, or sub-contractor party, has provided to the manager party under that contract, it is advised to contact the contractor party, or sub-contractor party, at the address given in the notice; and

(c) The information provided in the notes to the form set out in Schedule 5 to these Regulations.

**Form of notices**

**8.**—(1) Notices of invitation to participate must be in the form set out in Schedule 1 to these Regulations or a form to the like effect provided that it contains all of the prescribed particulars as set out in regulation 3.

(2) Claim notices must be in the form set out in Schedule 2 to these Regulations or a form to the like effect provided that it contains all of the prescribed particulars as set out in regulation 4.

(3) Counter-notices must be in the form set out in Schedule 3 to these Regulations or a form to the like effect provided that it contains all of the prescribed particulars as set out in regulation 5.

(4) Contractor notices must be in the form set out in Schedule 4 to these Regulations or a form to the like effect provided that it contains all of the prescribed particulars as set out in regulation 6.

(5) Contract notices must be in the form set out in Schedule 5 to these Regulations or a form to the like effect provided that it contains all of the prescribed particulars as set out in regulation 7.

**Revocations and transitional provisions**

**9.**—(1) The Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2004(**19**) ("the 2004 Regulations") are revoked.

(2) Any notice served under the 2004 Regulations will be treated on or after the coming into force of these Regulations as if it had been served under them.

(**16**) *See* section 92(1)(a) of the 2002 Act.
(**17**) *See* section 92(1)(b) of the 2002 Act.
(**18**) *See* section 92(4) of the 2002 Act.
(**19**) S.I. 2004/678 (W.66).

*Huw Lewis*
Minister for Housing, Regeneration and Heritage, one of the Welsh Ministers

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