WELSH STATUTORY INSTRUMENTS

2004 No. 684 (W.72)

LANDLORD AND TENANT, WALES

The Service Charges (Consultation Requirements) (Wales) Regulations 2004

Made - - - -	*9th March 2004*
Coming into force - -	*31st March 2004*

The National Assembly for Wales makes the following Regulations, in exercise of the powers conferred by sections 20(4) and (5) and 20ZA(3) to (6) of the Landlord and Tenant Act 1985(**1**), which are now vested in the National Assembly for Wales so far as exercisable in relation to Wales(**2**).

Name, commencement and application

1.—(1) These Regulations are called the Service Charges (Consultation Requirements) (Wales) Regulations 2004 and shall come into force on 31st March 2004.

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

(3) These Regulations apply where a landlord—

(a) intends to enter into a qualifying long term agreement to which section 20 of the Landlord and Tenant Act 1985 applies(**3**) on or after the date on which these Regulations come into force; or

(b) intends to carry out qualifying works to which that section(**4**) applies on or after that date.

Interpretation

2.—(1) In these Regulations—

"the 1985 Act" ("*Deddf 1985*") means the Landlord and Tenant Act 1985(**5**);

(**1**) 1985 c. 70. Section 20 was substituted, and section 20ZA inserted, by section 151 of the Commonhold and Leasehold Reform Act 2002 (c. 15). *See also* paragraph 4 of Schedule 7 to that Act for modifications relevant to sections 20 and 20ZA associated with the right to manage under Chapter 1 of Part 2 of that Act. The functions of the Secretary of State under sections 20 and 20ZA are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2; *see* the entry in Schedule 1 for the Landlord and Tenant Act 1985. *See also* section 177 of the Commonhold and Leasehold Reform Act 2002.

(**2**) *See* the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

(**3**) *See* section 20ZA(2) and regulations 3 and 4 of these Regulations.

(**4**) *See* section 20(3) and regulation 6 of these Regulations. For the application of section 20, as originally enacted, in transitional cases, see article 3 of the Commonhold and Leasehold Reform Act 2002 (Commencement No. 2 and Savings) (Wales) Order 2004 (S.I. 2004/669 (W.62) (C.25)).

(**5**) 1985 c. 70.

"close relative" ("*perthynas agos*"), in relation to a person, means a spouse or cohabitee, a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, step-parent, step-son or step-daughter of that person;

"cohabitee" ("*un sy'n cyd-fyw*"), in relation to a person, means—

(a) a person of the opposite sex who is living with that person as husband or wife; or

(b) a person of the same sex living with that person in a relationship which has the characteristics of the relationship between husband and wife;

"nominated person" ("*person a enwebwyd*") means a person whose name is proposed in response to an invitation made as mentioned in paragraph 1(3) of Schedule 1 or paragraph 1(3) of Part 2 of Schedule 4; and "nomination" ("*enwebiad*") means any such proposal;

"public notice" ("*hysbysiad cyhoeddus*") means notice published in the Official Journal of the European Union pursuant to the Public Works Contracts Regulations 1991(**6**), the Public Services Contracts Regulations 1993(**7**) or the Public Supply Contracts Regulations 1995(**8**);

"relevant matters" ("*materion perthnasol*"), in relation to a proposed agreement, means the goods or services to be provided or the works to be carried out (as the case may be) under the agreement;

"relevant period" ("*cyfnod perthnasol*"), in relation to a notice, means the period of 30 days beginning with the date of the notice;

"RTB tenancy" ("*tenantiaeth RTB*") means the tenancy of an RTB tenant;

"RTB tenant" ("*tenant RTB*"), in relation to a landlord, means a person who has become a tenant of the landlord by virtue of section 138 of the Housing Act 1985(**9**) (duty of landlord to convey freehold or grant lease), section 171A of that Act (cases in which right to buy is preserved), or section 16 of the Housing Act 1996(**10**) (right of tenant to acquire dwelling)(**11**) under a lease whose terms include a requirement that the tenant shall bear a reasonable part of such costs incurred by the landlord as are mentioned in paragraphs 16A to 16D of Schedule 6 to that Act (service charges and other contributions payable by the tenant)(**12**);

"section 20" ("*adran 20*") means section 20 (limitation of service charges: consultation requirements) of the 1985 Act;

"section 20ZA" ("*adran 20ZA*") means section 20ZA (consultation requirements: supplementary) of that Act.

(2) For the purposes of any estimate required by any provision of these Regulations to be made by the landlord—

(a) value added tax shall be included where applicable; and

(b) where the estimate relates to a proposed agreement, it shall be assumed that the agreement will terminate only by effluxion of time.

(**6**) S.I. 1991/2680, to which there are amendments not relevant to these Regulations.
(**7**) S.I. 1993/3228, to which there are amendments not relevant to these Regulations.
(**8**) S.I. 1995/201, to which there are amendments not relevant to these Regulations.
(**9**) 1985 c. 68.
(**10**) 1996 c. 52.
(**11**) Section 138 of the Housing Act 1985 (c. 68) is applied in relation to section 171A by section 171C. Sections 171A and 171C were inserted by the Housing and Planning Act 1986 (c. 63), section 8. *See also* the Housing (Extension of Right to Buy) Order 1993 (S.I. 1993/2240) and the Housing (Preservation of Right to Buy) Regulations 1993 (S.I. 1993/2241). Section 138 is applied in relation to section 16 of the Housing Act 1996 (c. 52) by section 17 of that Act. *See also* the Housing (Right to Acquire) Regulations 1997 (S.I. 1997/619).
(**12**) *See also* section 139 and Parts 1 and 3 of Schedule 6 to the Housing Act 1985. Paragraphs 16A to 16D in Part 3 of Schedule 6 were inserted by the Housing and Planning Act 1986 (c. 63), section 4(4).

Agreements that are not qualifying long term agreements

3.—(1) An agreement is not a qualifying long term agreement(**13**)—

(a) if it is a contract of employment; or

(b) if it is a management agreement made by a local housing authority(**14**) and—

(i) a tenant management organisation; or

(ii) a body established under section 2 of the Local Government Act 2000(**15**);

(c) if the parties to the agreement are—

(i) a holding company and one or more of its subsidiaries; or

(ii) two or more subsidiaries of the same holding company;

(d) if—

(i) when the agreement is entered into, there are no tenants of the building or other premises to which the agreement relates; and

(ii) the agreement is for a term not exceeding five years.

(2) An agreement entered into, by or on behalf of the landlord or a superior landlord—

(a) before the coming into force of these Regulations; and

(b) for a term of more than twelve months,

is not a qualifying long term agreement, notwithstanding that more than twelve months of the term remain unexpired on the coming into force of these Regulations.

(3) An agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, which provides for the carrying out of qualifying works for which public notice has been given before the date on which these Regulations come into force, is not a qualifying long term agreement.

(4) In paragraph (1)—

"holding company" and "subsidiaries" have the same meaning as in the Companies Act 1985(**16**);

"management agreement" has the meaning given by section 27(2) of the Housing Act 1985(**17**); and

"tenant management organisation" has the meaning given by section 27AB(8) of the Housing Act 1985(**18**).

Application of section 20 to qualifying long term agreements

4.—(1) Section 20 shall apply to a qualifying long term agreement if relevant costs(**19**) incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.

(2) In paragraph (1), "accounting period" means the period—

(a) beginning with the relevant date, and

(**13**) *See* the definition in section 20ZA(2) of the Landlord and Tenant Act 1985, inserted by section 151 of the Commonhold and Leasehold Reform Act 2002.
(**14**) *See* section 38 of the Landlord and Tenant Act 1985 and section 1 of the Housing Act 1985.
(**15**) 2000 c. 22.
(**16**) 1985 c. 6. Definitions of "holding company" and "subsidiary" are in section 736. That section and section 736A were substituted for the original section 736 by the Companies Act 1989 (c. 40), section 144(1).
(**17**) 1985 c. 68. Section 27(2) was substituted by S.I. 2003/940.
(**18**) Section 27AB was inserted by the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28), section 132. *See also* regulation 1(4) of the Housing (Right to Manage) Regulations 1994 (S.I. 1994/627).
(**19**) *See* section 18(2) of the Landlord and Tenant Act 1985.

(b) ending with the date that falls twelve months after the relevant date.

(3) In the case of the first accounting period, the relevant date is—

(a) if the relevant accounts are made up for periods of twelve months, the date on which the period that includes the date on which these Regulations come into force ends, or

(b) if the accounts are not so made up, the date on which these Regulations come into force.

(4) In the case of subsequent accounting periods, the relevant date is the date immediately following the end of the previous accounting period.

The consultation requirements: qualifying long term agreements

5.—(1) Subject to paragraphs (2) and (3), in relation to qualifying long term agreements to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA are the requirements specified in Schedule 1.

(2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.

(3) In relation to a RTB tenant and a particular qualifying long term agreement, nothing in paragraph (1) or (2) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

Application of section 20 to qualifying works

6. For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.

The consultation requirements: qualifying works

7.—(1) Subject to paragraph (5), where qualifying works are the subject (whether alone or with other matters) of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works, are the requirements specified in Schedule 3.

(2) Subject to paragraph (5), in a case to which paragraph (3) applies the consultation requirements for the purposes of sections 20 and 20ZA, as regards qualifying works referred to in that paragraph, are those specified in Schedule 3.

(3) This paragraph applies where—

(a) under an agreement entered into, by or on behalf of the landlord or a superior landlord, before the coming into force of these Regulations, qualifying works are carried out at any time on or after the date that falls two months after the date on which these Regulations come into force; or

(b) under an agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, qualifying works for which public notice has been given before the date on which these Regulations come into force are carried out at any time on or after that date.

(4) Except in a case to which paragraph (3) applies, and subject to paragraph (5), where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works—

(a) in a case where public notice of those works is required to be given, are those specified in Part 1 of Schedule 4;

(b) in any other case, are those specified in Part 2 of that Schedule.

(5) In relation to a RTB tenant and particular qualifying works, nothing in paragraph (1), (2) or (4) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**20**)

John Marek
The Deputy Presiding Officer of the National Assembly

9th March 2004

(**20**) 1998 c. 38.