WELSH STATUTORY INSTRUMENTS

2004 No. 678 (W.66)

LANDLORD AND TENANT, WALES

The Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2004

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

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 78(2)(d) and (3), 80(8) and (9), 84(2), 92(3) and (7) and 178(1) of the Commonhold and Leasehold Reform Act 2002(**1**) and section 26(3) of the Welsh Language Act 1993(**2**), hereby makes the following Regulations:

Name, commencement and application

1.—(1) These Regulations may be cited as the Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2004 and shall come into force on 31st March 2004.

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

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(**3**);

"RTM premises" ("*mangre RTM*") means premises as regards which a RTM company intends to acquire the right to manage(**4**);

(**1**) 2002 c. 15. The powers are exerciseable by the appropriate national authority. "The appropriate national authority" is defined in section 179(1) as the National Assembly for Wales as respects Wales and the Secretary of State as respects England. *See* section 178(3) as to the power to make Regulations.

(**2**) 1993 c. 38. Functions of the Minister under section 26 of the 1993 Act are exerciseable concurrently by the National Assembly for Wales with any Minister of the Crown by whom they are exercisable, by virtue of the entry in relation to the 1993 Act in Schedule 1 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) and section 22(1) of the Government of Wales Act 1998 (c. 38).

(**3**) As to "landlord" *see* section 112, (3) and (5) of the Commonhold and Leasehold Reform Act 2002. As to "lease" *see* section 112(2) of that Act.

(**4**) As to "RTM company", *see* sections 71(1) and 73 of the Commonhold and Leasehold Reform Act 2002. As to "the right to manage" see section 71(2) of that Act. As to premises to which the right to manage applies *see* section 72 of the Commonhold and Leasehold Reform Act 2002.

"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(**5**).

Additional content of notice of invitation to participate

3.—(1) A notice of invitation to participate(**6**) shall contain (in addition to the statements and invitation referred to in paragraphs (a) to (c) of subsection (2) of section 78 (notice inviting participation) of the 2002 Act), 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 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 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 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 within the meaning of section 30B(8) of the Landlord and Tenant Act 1985(**10**); 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 be 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;

(**5**) As to "tenant" *see* section 112(2), (3) and (5) of the Commonhold and Leasehold Reform Act 2002.
(**6**) *See* section 78(2) of the Commonhold and Leasehold Reform Act 2002.
(**7**) *See* section 705(1) of the Companies Act 1985 (c. 6). Section 705 was substituted by the Companies Act 1989 (c. 40), Schedule 19, paragraph 14.
(**8**) As to "untransferred tenant covenants" *see* section 100(4) of the Commonhold and Leasehold Reform Act 2002.
(**9**) As to premises to which Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 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**) 1985 c. 70. Section 30B was inserted by the Landlord and Tenant Act 1987 (c. 31), section 44.

(h) a statement that, where the company gives a claim notice(**11**), 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;

(i) a statement that, if the recipient of the notice (of invitation to participate) does not fully understand its purpose or implications, he 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(**12**) shall contain (in addition to the particulars required by subsections (2) to (7) of section 80 (contents of claim notice) of the 2002 Act)—

(a) a statement that a person who—

(i) does not dispute the RTM's company's entitlement to acquire the right to manage(**13**); and

(ii) is the manager party under a management contract(**14**) subsisting immediately before the date specified in the claim notice under section 80(6) of the 2002 Act,

must, in accordance with section 92 (duties to give notice of contracts) of the 2002 Act, give a notice in relation to the contract to the person who is the contractor party(**15**) in relation to the contract and to the RTM company;

(b) a statement that, from the acquisition date(**16**), 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 shall contain (in addition to the statement referred to in paragraph (a) or (b) of subsection (2) of section 84 (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 paragraph (b) of subsection (2) of section 84 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;

(**11**) As to "claim notice" *see* section 79(1) of the Commonhold and Leasehold Reform Act 2002.
(**12**) *See* section 79(1) of the Commonhold and Leasehold Reform Act 2002.
(**13**) As to the circumstances in which there is no dispute about entitlement, see section 90(3) of the Commonhold and Leasehold Reform Act 2002.
(**14**) As to "manager party" see section 91(2) and (4) of the Commonhold and Leasehold Reform Act 2002. As to "management contract" see section 91(2) of that Act.
(**15**) As to "contractor party" see section 91(2)(b) of the Commonhold and Leasehold Reform Act 2002.
(**16**) See sections 74(1)(b) and 90 of the Commonhold and Leasehold Reform Act 2002.

(b) a statement that, where the RTM company has been given one or more counter-notices containing such a statement as is mentioned in paragraph (b) of subsection (2) of section 84 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(**17**) that the company was entitled to acquire the right to manage the premises; or

(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. A contractor notice(**18**) shall contain (in addition to the particulars referred to in paragraphs (a) to (d) of subsection (3) of section 92 (duties to give notice of contracts) of the 2002 Act) —

(a) a 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(**19**) under the contract of which details are given in the notice, it is advised to contact the RTM company at the address given in the notice; and

(b) 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(**20**) shall contain (in addition to the particulars referred to in paragraph (a) of subsection (7) of section 92 of the 2002 Act)—

(a) the address of the person who is the contractor party, or sub-contractor party(**21**), 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 and where dates are inserted in the notices they must be inserted using numbers and not words.

(2) Claim notices must be in the form set out in Schedule 2 to these Regulations and where dates are inserted in the notices they must be inserted using numbers and not words.

(3) Counter-notices must be in the form set out in Schedule 3 to these Regulations and where dates are inserted in the notices they must be inserted using numbers and not words.

(4) Contractor notices must be in the form set out in Schedule 4 to these Regulations and where dates are inserted in the notices they must be inserted using numbers and not words.

(**17**) *See* section 84(7) and (8) of the Commonhold and Leasehold Reform Act 2002.
(**18**) *See* section 92(1)(a) of the Commonhold and Leasehold Reform Act 2002.
(**19**) As to "manager party" *see* section 91(2)(a) of the Commonhold and Leasehold Reform Act 2002.
(**20**) *See* section 92(1)(b) of the Commonhold and Leasehold Reform Act 2002.
(**21**) As to "sub-contractor party" *see* section 92(4) of the Commonhold and Leasehold Reform Act 2002.

(5) Contract notices must be in the form set out in Schedule 5 to these Regulations and where dates are inserted in the notices they must be inserted using numbers and not words.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**22**).

John Marek
The Deputy Presiding Officer of the National Assembly

9th March 2004

(**22**) 1998 c. 38.