

REGULATORY APPRAISAL

LANDLORD AND TENANT, WALES

THE SERVICE CHARGES (CONSULTATION REQUIREMENTS) (AMENDMENT) (WALES) REGULATIONS 2005

Purpose and intended effect of the measure

1. These Regulations amend regulation 4 of the Service Charges (Consultation Requirements) (Wales) Regulations 2004. Regulation 4 provides for the application of section 20 of the Landlord and Tenant Act 1985 by defining “accounting period” and the relevant date for the first accounting period.
2. Section 20 of the 1985 Act imposes limitations on the amount of tenants’ contributions to service charges in respect of qualifying long term agreements unless the consultation requirements in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 have been complied with or dispensed with by a Leasehold Valuation Tribunal.
3. These amendments will clarify circumstances under which landlords, wishing to enter into long-term agreements of more than 12 months, will be required to carry out formal service charge consultation procedures with tenants. The amendments affect any landlord who intends to enter into a qualifying long term agreement on or after 31 May 2005 where appropriate accounts have not been made up before.
4. Regulation 4 of The Service Charges (Consultation Requirements) (Wales) Regulations 2004, (the principal Regulations - which came into force on 31 March 2004), amends section 20 of the Landlord and Tenant Act 1985, in relation to agreements about the amount that tenants can be required to contribute, by the payment of service charges, to relevant costs incurred by landlords in carrying out works to a building or other premises or under certain agreements. Unless a landlord complies with the consultation requirements prescribed in the principal Regulations, or obtains a dispensation from a leasehold valuation tribunal in respect of any, or all of those requirements, the tenants’ contributions by way of service charges are limited.
5. Regulation 4 of the principal Regulations imposes a limit of £100 in any accounting period in respect of service charges attributable to the provision of goods or services, or the carrying out of works, under a qualifying long term agreement. That limit will apply unless the landlord complies with the consultation requirements prescribed by regulation 5 or obtains a dispensation from a leasehold valuation tribunal. For this purpose, the first accounting period relevant to the principal Regulations is defined as a period of twelve months from the “relevant date”. The “relevant date” is defined in different ways according to whether or not the landlord’s accounts relating to service charges are made up for periods of

twelve months and Regulation 4(4) provides that subsequent accounting periods run from the end of the previous accounting period.

6. When the principal Regulations were drafted, the policy intention at the Office of the Deputy Prime Minister (ODPM) was that, on commencement of section 152 of the Commonhold and Leasehold Reform Act 2002, which substitutes section 21 of the Landlord and Tenant 1985, the principal Regulations would be amended so as to bring the accounting period for section 20 purposes of that Act, into line with that for section 21 purposes (section 21 defines “accounting period” for the purposes of that section only).
7. On reflection, the view has been taken that it would be unduly burdensome for landlords to have to adjust their accounting system in this way. For landlords who made up their accounts for periods of 12 months, the principal Regulations aligned the period for the purposes of section 20 with those 12-month accounting periods. Such periods will generally be in line with the relevant accounting provisions contained in the lease of the tenant concerned.
8. Landlords who did not make up their accounts on this basis were required to adopt a specified 12-month accounting period, and it would be more convenient for such landlords to be able to continue to operate these for the purposes of section 20. Enquiries made by ODPM have established that landlords would, indeed, prefer that the accounting period applicable for the purposes of section 20 is not brought into line with that which will be introduced (timetable unknown).
9. It has therefore been decided, that accounting periods already established for the purposes of section 20 should be allowed to continue, which the amending regulation will allow.
10. It has also been decided that, where landlords make up service charge accounts on or after the date of the amending regulation for the first time, then the accounting periods for the purpose of section 20 should be 12-month periods. The policy therefore, is that the accounting period for section 20 purposes should match that which the landlord uses in practice; and the date that best reflects this policy as regards the first accounting period for section 20 purposes, is the date that begins the period for which service charges are first payable under the lease.

Risk assessment

11. Confusion is likely to arise for both landlords and leaseholders as to what is the appropriate accounting period for the purposes of service charge consultation periods where the landlord intends to enter into a qualifying long term agreement. This could lead to disputes between the parties.

Options

12. The following options were identified:

Option 1: Do nothing.

13. If the current Regulations are not amended landlords will be unclear as to which period they should use for accounting purposes. This could lead to disputes where tenants challenge the period and the right of the landlord to recover costs.

Option 2: Make the Legislation.

14. The new Regulations will clarify the dates to be used by landlords for the appropriate accounting period.

Benefits

Option 1

15. There are no benefits resulting from this option; leaving the current Regulations will cause confusion for landlords and lead to unnecessary disputes.

Option 2

16. This will ensure that the Regulations work more effectively, and help landlords to identify the correct accounting period when considering whether or not they need to consult with tenants before entering into a long-term agreement, thus avoiding disputes with leaseholders.

Costs

17. There will be no additional costs to the Assembly, landlords or leaseholders.

Consultation

With Stakeholders

18. No consultation has taken place on these Regulations as they are necessary because other accounting provisions of the Commonhold and Leasehold Reform Act 2002 have not yet been brought into force, which, if they had, would have negated the need for this amendment.

With Subject Committee

19. These Regulations have not been scrutinised by the Social Justice and Regeneration Committee. However, the Regulations have been notified to the Committee via the list of forthcoming legislation put to the Committee on 23 February 2005 (SJR-03-05(p.5) (Annex 1)). The Regulations were not identified for detailed scrutiny.

Review

20. The Welsh Assembly Government will monitor the new system by feedback in correspondence provided by leaseholders and landlords.

Summary

21. Two options were considered. Option 1 would achieve nothing and Option 2 will ensure that the Regulations work more effectively, and help landlords to identify the correct accounting period when considering whether or not they need to consult with tenants before entering into a long-term agreement.