
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply only in relation to England, relate to 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 or under certain agreements. Unless a landlord complies with prescribed consultation requirements or obtains a dispensation from a leasehold valuation tribunal under section 20(9) of the Landlord and Tenant Act 1985 in respect of all or any of those requirements, his tenants' contributions by way of service charges are limited.

Regulation 3(1) exempts from the consultation requirements applicable to agreements for a term of more than 12 months (“qualifying long term agreements”):

- (a) contracts of employment;
- (b) agreements between a tenant management organisation or an arms length management organisation (a body established under section 2 of the Local Government Act 2000) and a local housing authority under section 27 of the Housing Act 1985 (management agreements);
- (c) agreements between a holding company and any of its subsidiaries or between two or more subsidiaries of the same holding company; and
- (d) agreements for a term of not more than five years relating to buildings or other premises which are untenanted when the agreement is entered into.

Regulation 3(2) provides that an agreement entered into before the coming into force of these Regulations is not a qualifying long term agreement even if more than 12 months of the term of the agreement remain when these Regulations come into force.

Regulation 3(3) provides that an agreement for a term of more than 12 months is not a qualifying long term agreement if it provides for the carrying out of works on a building or any other premises (“qualifying works”) for which notice has been published in the Official Journal of the European Union (“the Official Journal”) (to comply with EU procurement rules) before these Regulations come into force.

Regulation 4 imposes a limit of £100 in any accounting period (defined in regulation 4(2)) 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 in respect of all or any of those requirements.

Regulation 5 deals with the consultation requirements applicable to qualifying long term agreements. Except in the cases mentioned below, the consultation requirements are those specified in Schedule 1. Where, on or after the coming into force of these Regulations, notice is required to be published in the Official Journal (to comply with EU procurement rules) of goods or services to be provided or works to be carried out under the agreement, the consultation requirements are those set out in Schedule 2. Where a person becomes a tenant as the result of exercising the right to be granted a long lease under section 138 of the Housing Act 1985 (right to buy) (including that section as applied in relation to the preserved right to buy under section 171A of that Act or the right to acquire under section 16 of the Housing Act 1996) the landlord is only required to comply with such of the consultation requirements applicable to the agreement as remain to be complied with after the thirtieth day of that person’s tenancy.

Status: This is the original version (as it was originally made).

Regulation 6 imposes a limit of £250 as regards a tenant's contribution in respect of service charges attributable to qualifying works. That limit will apply unless the landlord complies with the consultation requirements prescribed by regulation 7 or obtains a dispensation from a leasehold valuation tribunal in respect of all or any of those requirements.

Regulation 7 deals with the consultation requirements relevant to qualifying works of the descriptions specified in that regulation. In relation to other qualifying works, the consultation requirements under section 20 of the Landlord and Tenant Act 1985, as it stood immediately before the substitution effected by section 151 of the Commonhold and Leasehold Reform Act 2002, continue to apply by virtue of article 3 of the Commonhold and Leasehold Reform Act 2002 (Commencement No.2 and Savings)(England) Order 2003 (S.I.2003/1986 (c. 82)).

Paragraph (1) of regulation 7 relates to qualifying works that are the subject of a qualifying long term agreement. Subject to the exception for which paragraph (5) provides ("the paragraph (5) exception"), the consultation requirements are those set out in Schedule 3 to the Regulations.

Paragraphs (2) to (4) relate to qualifying works that are not the subject of a qualifying long term agreement.

Paragraph (2) deals with the consultation requirements in a case to which paragraph (3) applies. Subject to the paragraph (5) exception, the consultation requirements in such a case are those set out in Schedule 3 (the same requirements as apply to qualifying works under qualifying long term agreements).

Paragraph (3) applies where qualifying works are carried out:

- (a) on or after the date that falls two months after the date on which these Regulations come into force under an agreement entered into before these Regulations come into force; or
- (b) under an agreement for more than 12 months where notice of those works was published in the Official Journal before these Regulations come into force .

Paragraph (4) applies to cases to which paragraph (3) does not apply. Where notice of the qualifying works is required to be published in the Official Journal (to comply with EU procurement rules), and subject to the paragraph (5) exception, the consultation requirements are those set out in Part 1 of Schedule 4. Where notice is not required to be published in the Official Journal, and subject to the paragraph (5) exception, the consultation requirements are those set out in Part 2 of Schedule 4.

The paragraph (5) exception applies where a person becomes a tenant as the result of exercising the right to be granted a long lease under section 138 of the Housing Act 1985 (including that section as applied in relation to the preserved right to buy under section 171A of that Act or the right to acquire under section 16 of the Housing Act 1996). In that case, and in relation to that person and particular qualifying works, the landlord is only required to comply with such of the consultation requirements applicable to those works as remain to be complied with after the thirtieth day of that person's tenancy.

A Regulatory Impact Assessment has been prepared in connection with these Regulations. A copy may be obtained from the Office of the Deputy Prime Minister, Leasehold Reform Branch, Zone 2/J6, Eland House, Bressenden Place, London, SW1E 5DU (Tel 020 7944 3462).