

EXPLANATORY MEMORANDUM TO THE ADMINISTRATION CHARGES (SUMMARY OF RIGHTS AND OBLIGATIONS) (WALES) REGULATIONS 2007

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing and is laid before the National Assembly for Wales.

Description

1. The regulations prescribe the content and the form of the summary of rights and obligations in relation to administration charges which must accompany any demand for administration charges made by a landlord to a tenant.

Matters of special interest to the Subordinate Legislation Committee

2. None.

Legislative Background

3. Administration charges are payable to landlords by tenants. They cover matters such as charges for granting consent or approval which is required under the lease. The Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'), Schedule 11, defines "administration charges" and introduces a number of rights for any party to a lease to apply to a leasehold valuation tribunal ("LVT").(in paragraphs 3 and 5 of Schedule 11 to the 2002 Act). Paragraph 4(1) of Schedule 11 to the 2002 Act provides that a demand for payment of an administration charge must be accompanied by a summary of rights and obligations of tenants of dwellings in relation to administration charges. Paragraph 4(2) of Schedule 11 to the 2002 Act provides that the 'appropriate national authority' may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations. The 'appropriate national authority' is now the Welsh Ministers by virtue of the Government of Wales Act 2006. The summary will be bilingual. Section 26 of the Welsh Language Act 1993 provides that where an Act confers a power to specify a form of words, that power shall include the power to prescribe bilingual form of words. The legislation will be made using the negative resolution procedure.

Purpose and intended effect of the legislation

4. The purpose of prescribing the content of the summary is to ensure that both tenants and landlords are clear as to what the summary should include and to ensure that all tenants are treated equally and consistently.

5. Minor matters relating to the form have been prescribed in the Regulations. The summary must be legible in printed or typewritten form and must be at least 10 point. Only prescribing minor matters relating to the form will, it is hoped enable landlords to incorporate the summary into their current administration systems without too much difficulty thereby avoiding costly changes which would probably be passed on to tenants.

6. An LVT may, determine-
on application, whether an administration charge is unreasonable;

whether the charge is payable;
the person by whom and to whom it is payable;
the amount which is payable;
the date at or by which it is payable;
and the manner in which it is payable.

7. A party to a lease may also apply to an LVT for a variation of the lease on the grounds that any administration charge specified in the lease is unreasonable or that any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

8. Paragraph 4 of Schedule 11 to the 2002 Act provides that a demand for payment of an administration charge must be accompanied by a summary of the rights and obligations of the tenant in relation to administration charges. Where a demand for payment is made and a summary does not accompany it, a tenant may withhold payment without breaching the terms of the lease relating to non-payment or late payment of administration charges.

9. The purpose of the summary is to ensure that the tenant is made aware of the rights available to them where they receive a demand for payment of an administration charge, and their obligations in relation to the demand.

10. The Welsh Ministers have the power to make regulations prescribing the form and content of summaries under paragraph 4(2) of Schedule 11 to the 2002 Act. Schedule 11 was commenced on 30 September 2004, by virtue of SI 2004/669. It is the intention to use this power to prescribe the content of the summary in order to ensure summaries are accurate and consistent.

11. The effect of the Regulations is to set out what the summary, which is to be provided with a demand for administration charges under paragraph 4 of Schedule 11, must contain.

12. Prior to the 2002 Act there was widespread concern and complaint about landlords who imposed administration charges which were unreasonable in relation to any costs involved, but which were pitched at a level which discouraged leaseholders from incurring the risk of costs in court proceedings. To deter such abuses and give tenants a more cost effective remedy, provision was made in the 2002 Act for LVTs to deal with disputes about administration charges.

13. Provision was also made in the 2002 Act requiring landlords to inform their tenants of their rights and obligations in relation to administration charges by way of a summary which must accompany any demand for payment of administration charges.

14. In order to avoid unnecessary disputes and to ensure that all parties are clear in what the summary should include, the content of summary has been prescribed by these regulations. Two public consultation exercises took place on the content of the summary. The majority of responses to both exercises indicated support for the need to prescribe the content of the summary.

15. The first consultation exercise in November 2002 consulted on the possibility of a few, very general statements being provided by way of a summary. Briefly, these statements set out that a liability to pay an administration charge may be set out in the lease; that the liability to pay and reasonableness of an administration charge can be determined by a LVT; and that while most leases provide the landlord with a right of re-entry or forfeiture the law provides a number of restrictions on this.

16. However, it was felt that a brief summary would not properly comply with the requirements of the primary legislation which requires a summary of **the rights and obligations** rather than only some of the rights and obligations. A second consultation therefore took place in summer 2004, setting out all rights and obligations more specifically, including reference to forfeiture. Again, the majority of respondents agreed with the basic content but a number of respondents also put forward their own suggestions as to what the Regulations should (or should not) contain.

17. Respondents to the exercises put forward a number of different views and suggestions. These were of a more general nature however, rather than specific examples of what should or should not be included. Briefly, the main comments received to these exercises are set out below, together with our comments in italics:

- That there needs to be a definition of an administration charge. *We agree and have included a definition.*
- They (landlords) were not in favour of a summary or it was too lengthy. *We do not agree that a summary of rights and obligations is not needed. This is because tenants were in some cases being asked to pay large sums of money without knowing their rights. However, we agreed to look at the summary's length to minimise it where possible.*
- That providing the summary would lead to an increase in costs for the tenants. *We accept the potential for additional cost but believe the benefits outweigh these and, are creating as much flexibility as is felt reasonable for the landlord. We see no reason why the costs of providing this should be prohibitive (See RIA).*
- There should be no need to issue the summary with every demand. *The legislation does not allow the e the ability to specify circumstances when the summary need not be sent. Such a provision could in any case be abused where, for example, 'reminders' are sent, alleging the summary was sent with an original demand when in fact it was not.*
- It should include reference points for advice. *We agree that the need to seek advice should be mentioned.*
- That it sets out the tenant's rights, but not the obligations, and will also encourage non-payment. *There are relatively few obligations specific to the payment of administration charges, save those set out in the lease or resulting from a determination by a LVT or court in the event of a dispute etc. These are covered in the prescribed summary. We do not believe a culture of non-payment or abuse should arise as a result of tenants being informed of their rights.*
- That the summary should be clear and in large print, and there should be a minimum size of lettering. *We have made the summary as clear as possible bearing in mind the legislative requirements, and have required*

it to be legible in a printed or typewritten form with a minimum font size of 10.

- *The summary should state the landlord's obligation to render a fair and reasonable administration charge. This is neither a right nor an obligation that refers to the tenant, and cannot be included. The landlord's right to recover a charge would in any case be set out in the lease, though we have referred to an administration charge being payable only to the extent that it is reasonable.*
- *Examples of when charges are to be made should be cited. We disagree. There is no legislative power to cite examples in the summary, and it could be misinterpreted were a definitive list not produced.*
- *Landlords should be able to edit the summary to remove sections not applicable or relevant to their tenants. We do not wholly agree. The summary covers the rights relating to administration charges and advises that advice should be sought if in doubt. We have chosen to prescribe the content as one statement rather than individual statements that can be chopped and changed, and a standardised and consistent summary should make it easier for landlords, who will not have to concern themselves with ensuring different versions of the summary are sent to different tenants.*
- *That the section on re-entry and forfeiture was not needed. We disagree. Forfeiture is a powerful right (of last resort) for landlords that can be used for non-payment of administration charges.*
- *The language used needs to be understandable to those receiving the document. We agree, and have further simplified the language used while trying to ensure the summary contains information that will be useful to the tenants.*
- *Information about potential costs that can be awarded on appeal to the Lands Tribunal, and about when a landlord may seek forfeiture should be omitted. We disagree. This is information that we feel tenants should be made aware of because it has serious consequences.*
- *That a LVT can determine liability appeared to be missing from the statement referring to LVTs. We agree. The particular statement has been amended accordingly.*
- *The statement about seeking advice before being bound to use an alternative dispute resolution procedure that may be provided for in the lease will be omitted by landlords because they will not read the leases to establish this. It should be automatically provided. We disagree having revisited this statement, concluding that the statement itself may serve to confuse tenants. We have removed the statement from the summary.*
- *The ability to provide the summary in formats other than typewritten or printed and in a minimum font are not allowed because of the restriction in regulation 2, which will not comply with the Disability Discrimination Act ("DDA"). We disagree. Concern has been raised that without setting a minimum requirement, small print may be used to keep information on to a single page. We have therefore set a minimum requirement, which in itself does not in our opinion, prevent a 'service provider' (the landlord) from having to comply with the requirements under the DDA where a request is made.*

18. These Regulations have been produced following consideration of the responses received.

19. The content of the summary being prescribed in the Regulations will be bilingual. This will mean that each demand served must be accompanied by a bilingual statement setting out the rights and obligations of the tenant. Providing a bilingual statement will mean that both the landlord and tenant are able to send/receive the statement in their preferred language. This approach will not require any extra effort or inconvenience for the landlord or tenant and would not result in inequality for the Welsh speaking tenant or the non-Welsh speaking tenant. This approach sits with the Welsh Assembly Government's aim to make it effort free for the public, voluntary and private sector to produce and receive bilingual documentation.

Implementation

20. This Instrument was made on 5 November 2007 and is intended to come into force on 30 November. Similar legislation has been introduced in England and will come into force on 1 October 2007. Implementation in Wales is later than England due to pressures on legislative timetabling and Assembly elections.

Consultation

21. Consultation has been undertaken (see paragraph 14-17 above) and further details are given in the Regulatory Impact Assessment below.

REGULATORY IMPACT ASSESSMENT

Options

22. Three options have been considered.

1. **Option 1:** do nothing.
2. **Option 2:** prescribe in regulations the content only of the tenants' summary of rights and obligations with regard to administration charges (i.e. the wording that the landlord must use) and minor matters of form.
3. **Option 3:** prescribe in regulations the form and content of the tenant's summary of rights and obligations with regard to administration charges (i.e. both the wording and the specific format that the landlord must use).

Costs and Benefits

Sectors and groups affected

23. The following areas will be affected:

- Leaseholders and other tenants where administration charges are recoverable under a lease.

- Landlords.
- Leaseholder owned (or run) management companies.
- Managing Agents (acting for landlords and Leaseholder owned (or run) management companies.

24. Only those landlords and tenants who have leases which allow administration charges to be recovered are affected. Because leases are individual agreements, it is not possible to know the exact number affected. However, prescribing the content of the summary could affect the landlords of leasehold flats in Wales that are already required to provide a summary, as well as any agents that are employed by landlords to manage their leasehold properties. Leaseholder owned management companies would also be affected as would landlords and leaseholders of houses where administration charges can be recovered.

25. While the landlord/management sector raised some concerns about the costs of providing the summary if a specific form were prescribed, no such concerns were raised by tenants responding to the consultation exercises, nor was there any significant disagreement with the proposals from this group. Given that it has been a requirement for a summary to be provided since March 2004, we do not believe prescribing the actual content will have a significant impact. Where landlords are able under the terms of the lease to recover from tenants any additional costs that may result from prescribing the content of the summary (if any), and if they are believed to be unreasonable, tenants may have the right to challenge the reasonableness of the service charges at a leasehold valuation tribunal.

Costs and Benefits

Option 1: do nothing.

Economic benefits

26. Landlords: none. The summary already has to be provided by law, though landlords could continue to keep any costs incurred in producing the summary to a minimum, depending on the content they choose to use for the summary.

27. Tenants: no discernable benefits. As the summary is already required by law, they may already be contributing towards its costs; though not exercising the power to prescribe anything would avoid the potential for any additional costs, if any were otherwise incurred.

Economic costs

28. Landlords: none.

29. Tenants: none.

Environmental costs and benefits

30. None identified.

Social costs and benefits

31. Doing nothing leaves the content of the summary about a tenant's rights and obligations entirely at a landlord's discretion. This could mean incorrect or incomplete information being provided to tenants, as a result of which tenants (particularly the vulnerable) may continue to be at best unsure, at worst unaware about their rights.

Option 2: prescribe content of summary only and minor matters of form.

Economic benefits

32. **Landlords:** landlords would be able to keep costs to a minimum because of the flexibility allowed them by prescribing the content in regulations. Landlords are already required to provide a summary and minimal, if any; additional costs should therefore be incurred.

33. **Tenants:** will benefit from the landlord's ability to keep any additional costs incurred to a minimum.

Economic costs

34. **Landlords:** additional costs may be incurred by some landlords where they are not already providing the appropriate or correct information. **A range of costs has been suggested for producing the summary, between 50 pence and £2.50.** However, it is expected that the summary will be no longer than 2 sheets of A4 size paper when printed back to back using the minimum font prescribed and, given that landlords are already obliged to provide a summary when demanding administration charges, the landlord should only have to amend the wording used in their existing summary where it does not conform to the prescribed wording and the font size. No significant additional costs should be incurred as a result. However, if additional costs are incurred as a result of these regulations they should be minimal and amount to a matter of a few pence only per summary.

35. It has not been possible to determine, with any degree of certainty, how many leaseholders would be liable to pay administration charges because it would depend on the terms of each individual tenancy (or lease). It is also not possible to determine, with any certainty, how many times a year a charge would be sought because it would depend on a number of variables, including whether the leaseholder wanted to do something where an administration charge might be payable (make improvements or sell the property for example), how many times this would occur during any year, and whether the landlord chooses to seek a charge even though he may not be entitled to. If any such costs were incurred they would be an increased administrative burden.

36. **Tenants:** where they already contribute towards the landlord's costs of producing the summary any additional costs that may be passed on to them by the landlord for having to change the wording currently used should be minimal.

Environmental costs and benefits

37. A summary must already be provided by landlords. Prescribing the content of the summary should not therefore create additional environmental costs. Possible benefits are the potential saving of paper when compared to Option 3 below.

Social costs and benefits

38. All tenants receiving a demand for administration charges will be provided with consistent information about their rights and obligations, and landlords will be clear on what information must be provided by them. This will remove any doubts or confusion that may currently exist in the minds of both landlords and tenants.

Option 3: prescribe content and form.

Economic benefits

39.. **Landlords and tenants:** none compared with Options 1 and 2.

Economic costs

40. **Landlords:** some cost will already be incurred in sending the required summary, but prescribing the precise form to be used as well as the content may increase these costs further. This is because while the summary is expected to be no longer **than 2 sides of A4 size paper when printed back to back** using the minimum font prescribed it restricts any flexibility the landlord would otherwise have to more easily incorporate the summary into existing administrative systems.

41. It has not been possible to determine with any degree of certainty how many leaseholders would be liable to pay administration charges because it would depend on the terms of each individual tenancy (or lease). It is also not possible to determine how many times a year a charge would be sought because it would depend on a number of variables, including whether the leaseholder wanted to do something where an administration charge might be payable (make improvements or sell the property for example), how many times this would occur during any year, and whether the landlord chose to seek a charge even though he may not be entitled to. Because of the need under this option to use a particular form as well as wording the total estimated annual cost would be higher than Option 2. If any such costs were incurred they would be an increased administrative burden, but it is not anticipated that these would amount to more than 50 pence per summary.

42. **Tenants:** where additional costs are incurred and a landlord is able to pass these costs on to tenants, these may increase because of the need for the landlord to comply with a prescribed form as well as the content.

Environmental costs and benefits

43. A summary must already be provided by landlords. Prescribing both the precise form and content of the summary may create additional environmental costs in respect of extra paper that may need to be used, though as a summary is already produced, this is not

expected to create a significant increase on any existing environmental costs incurred (if any). **Any prescribed form is expected to be the equivalent of approximately 2 sides of A4 size paper when printed back to back** using the minimum font prescribed. No environmental benefits are anticipated.

Social costs and benefits

44. All tenants receiving a demand for administration charges will be provided with consistent information about their rights and obligations in a specific form, and landlords will be clear on what information must be provided by them, and in what form. This would remove any doubts that may currently exist in the minds of both landlords and tenants.

Competition assessment

45. We have assessed the impact of the proposals against the Office of Fair Trading competition filter and there is unlikely to be a negative competition impact as a result. The provisions will apply to all landlords that are able to recover administration charges under the terms of the lease.

Consultation

46. In November 2002 and summer 2004 consultation papers were sent to organisations and individuals known to have an interest, including landlords and representative bodies. They were also made available to the public in general having been placed on the Department for Local Governments and Communities website, and available in hard copy from the Department's free literature office. Leading up to these regulations meetings, phone calls and correspondence have also taken place, with comments being received prior to and throughout the consultation process from bodies representing the various leasehold interests, including landlords etc. Organisations consulted include:

- Association of Residential Managing Agents
- Federation of Private Residents Association
- The Leasehold Advisory Service
- Association of Retirement Housing Managers
- Council of Mortgage Lenders
- Housing Corporation
- Independent Housing Ombudsman
- Institute of Chartered Accountants in England and Wales
- Law Society
- Royal Institution of Chartered Surveyors
- British Property Federation
- Financial Services Authority
- Chartered Institute of Public Finance and Accountancy

47. Various banks and building societies were also consulted, as were various other leaseholder representative groups and individuals who had responded to previous consultation exercises on similar issues. A number of face to face meetings have also been held as well as visits to stakeholders.

48. As a result of the consultation exercises (see paragraph 24 above) and other comments received from stakeholders changes were made to the wording of the summary to reflect comments made. These include a definition of administration charges; keeping the summary as short as possible while maintaining it as a useful document; reflecting the need to seek advice if in doubt; requiring a clear minimum font size when in written or typed form; and including the possible consequences of a failure to pay what may be determined as a reasonable administration charge (forfeiture).

Enforcement, sanctions, monitoring and post implementation review

49. Enforcement would be primarily through the right for a tenant to withhold administration charges where the landlord fails to provide the summary of rights when demanding payment. In most cases, this sanction should lead to landlords or their managers complying in the first place, or rectifying matters quickly without the need to refer the matter to a court to determine whether or not a summary was sent in accordance with the legislation.

50. The new system would be monitored through feedback provided in correspondence from the public, stakeholders and others. We would also maintain dialogue with stakeholders on the effects of prescribing the wording of the summary. If appropriate, research could be commissioned to establish and review the impact of these provisions.

Implementation

51. It is intended that the prescribed wording for the summary should be used for demands for administration charges sent on or after 30 November 2007.

52.

Summary

| Option | Total cost per annum Economic, environmental, social | Total benefit per annum, Economic, environmental, social |
|---|--|---|
| 1: do nothing | <p>Economic None. A summary must already be provided.</p> <p>Environmental None.</p> <p>Social Where incomplete or incorrect information is currently being provided to tenants this option would perpetuate this.</p> | <p>Economic None. A summary must already be provided, though not exercising the power to prescribe anything would avoid the potential for any additional costs, if any were otherwise incurred.</p> <p>Environmental None.</p> <p>Social None.</p> |
| 2: prescribe content and minor matters of form only | <p>Economic If any such costs were incurred it is anticipated that these would amount to no more than 50 pence per summary</p> <p>Environmental None identified. The summary must already be provided.</p> <p>Social None identified.</p> | <p>Economic Landlords and tenants will benefit from the ability to keep down additional costs (if any) because of the flexibility created by prescribing only content and minor matters of form.</p> <p>Environmental None identified. The summary must already be provided</p> <p>Social Tenants will receive consistent information about their rights and obligations and it will remove any doubt for both landlords and tenants on what information the summary should contain.</p> |

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| <p>3: prescribe precise form and content</p> | <p>Economic If any such costs were incurred it is anticipated that these would amount to between 50 pence and £2.50 per summary.</p> <p>Environmental While not a certainty, having to use a particular form may increase the amount of paper used, though as a summary is already required this may not prove to be a significant increase.</p> <p>Social While likely to prove more costly for landlords to produce (and consequently tenants), no additional social costs are anticipated when compared with Option 2.</p> | <p>Economic None identified.</p> <p>Environmental None identified. The summary must already be provided.</p> <p>Social Tenants will receive consistent information about their rights and obligations and it will remove any doubt for both landlords and tenants on what information the summary should contain.</p> |
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Conclusion

53. In light of the above, the following conclusion was reached:

- Option 2 (paragraph 22.2 above) should be implemented. Prescribe the content and minor matters of form only.