
STATUTORY INSTRUMENTS

1994 No. 627

HOUSING, ENGLAND AND WALES

The Housing (Right to Manage) Regulations 1994

<i>Made</i>	- - - -	<i>7th March 1994</i>
<i>Laid before Parliament</i>		<i>11th March 1994</i>
<i>Coming in to force</i>	- -	<i>1st April 1994</i>

The Secretary of State for the Environment, in respect of England, and the Secretary of State for Wales, in respect of Wales, in exercise of the powers conferred on them by sections 27(3), (7) and 27AB of the Housing Act 1985(1) and of all other powers enabling them in that behalf, hereby make the following Regulations—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing (Right to Manage) Regulations 1994 and shall come into force on 1st April 1994.

(2) In these Regulations—

“approved person” means a member of a panel of persons approved by the Secretary of State for the purpose of conducting initial or full feasibility studies under these Regulations, and the Secretary of State may approve a person to act in a specified area only;

“dwelling-house” has the same meaning as in section 112 of the Housing Act 1985;

“full feasibility study” means, in relation to a particular proposal for a management agreement, a study carried out by an approved person to determine—

- (a) whether it is reasonable to proceed with the agreement; and
- (b) if so, the terms on which the agreement should be entered into;

“initial feasibility study” means, in relation to a particular proposal for a management agreement, a study carried out by an approved person to determine whether it is reasonable to proceed with a full feasibility study;

“proposal notice” means a notice served by a tenant management organisation on a local housing authority which complies with regulation 2 (and, in relation to a particular proposal for a management agreement, references to a proposal notice refer to the notice containing that proposal);

(1) 1985 c. 68; section 27(3) was amended by section 129(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) and sections 27(7) and 27AB were added by sections 129(3) and 132 of that Act, respectively.

“secure tenancy” has the same meaning as in section 79 of the Housing Act 1985;

“tenant” means a person who holds a secure tenancy or other tenancy of a dwelling-house from a local housing authority.

(3) For the purpose of these Regulations, two management agreements overlap when and to the extent that they contain provisions which relate to the exercise of the same management functions in relation to the same houses or land; and

“overlapping provisions” shall be construed accordingly.

(4) For the purpose of the definition of “tenant management organisation” in section 27AB(8) of the Housing Act 1985, the conditions which a body must satisfy are that its constitution—

- (a) specifies an area as being the area of the organisation in relation to which it may serve a proposal notice;
- (b) provides that any tenant of a dwelling-house in relation to which the organisation could serve a proposal notice may become a member of the organisation;
- (c) provides that in conducting its affairs the organisation shall avoid discrimination against any person on grounds of racial origin, gender, sexuality, disability or religion; and
- (d) provides either that the affairs of the organisation shall be conducted by the members of the organisation at general meeting, or that they shall be conducted by a committee or board of directors elected by the members of the organisation.

(5) Where a matter is referred to an arbitrator under these Regulations, the arbitrator shall be chosen by agreement between the parties to the proposed arbitration, or, in default of agreement, appointed by the Secretary of State.

(6) Subject to paragraph (7), where any person is required or permitted to exercise any function under these Regulations within a specified period, the tenant management organisation and local housing authority concerned may by agreement in writing before the expiry of that period extend the period for a further specified period.

(7) Paragraph (6) shall not apply to the period specified in paragraph (16) of regulation 4.

(8) Any ballot held under these Regulations shall be organised so that the vote cast by any individual is kept secret.

Proposal notice

2.—(1) Subject to paragraphs (2) and (4), a notice served by a tenant management organisation on a local housing authority complies with this regulation if it contains a proposal that the local housing authority should enter into a management agreement with the tenant management organisation in relation to such of the authority’s houses, including not less than 25 dwelling-houses which at the time the notice is served are let under tenancies, and such other land held by the authority for a related purpose as are identified in the notice and—

- (a) none of those houses or that land is outside the area of the tenant management organisation which has served the notice (as specified in the constitution of that organisation in accordance with regulation 1(4)); and
- (b) none of those houses or that land is identified in any notice which complies with this regulation and which has previously been served on the authority not withdrawn; and
- (c) if any of those houses or that land is already included in a management agreement with a tenant management organisation, all of those houses or that land are so included, and either—
 - (i) the tenant management organisation which has served the to that agreement; or
 - (ii) the number of dwelling-houses to which that agreement relates is greater than 2,500.

(2) A local housing authority may decline to accept a notice (a “further notice” served on them by a tenant management organisation proposing a management agreement if further notice contains a similar proposal to the proposal contained in a previous proposal notice which has been withdrawn within the two year period ending on the date on which the further notice is received, and where an authority decline to accept a further notice in accordance with this paragraph that notice shall not be treated as complying with this regulation.

(3) For the purpose of paragraph (2), a further notice contains a proposal contained in a previous proposal notice if at least half it were also identified in the previous proposal notice.

(4) Where paragraph (5) applies, the authority may decline to accept the notice, and where an authority decline to accept a notice in accordance with this paragraph, that notice shall not be treated as complying with this regulation.

(5) This paragraph applies where a local housing authority has, within one month of receiving a notice served on them by a tenant management organisation proposing a management agreement, requested the organisation to demonstrate to the authority that—

- (a) before the notice was served, the organisation had used its best endeavours to secure that a copy of the notice was delivered to every dwelling-house to which the notice relates; and
- (b) before the notice was served, both a majority of tenants and a majority of secure tenants of the houses to which the notice relates who were at the time members of the organisation and who voted (either in a ballot or poll of all members, or on a resolution put before a properly constituted general meeting of the organisation) voted in favour of a proposal to serve the notice; and
- (c) at the time the notice was served, the membership of the organisation included both at least 20% of the tenants and at least 20% of the secure tenants of the houses to which the notice relates;

and the organisation has failed within one month to comply with that request in relation to one or more of the matters described in sub-paragraphs (a) to (c).

(6) An authority shall not be treated as having declined to accept a notice in accordance with paragraphs (2) or (4) unless they have, within the period specified in paragraph (7), informed the tenant management organisation concerned in writing that they have not accepted the notice and of the reason for their decision not to accept the notice.

(7) The period referred to in paragraph (6) is, where paragraph (5) applies, six weeks from the date on which the authority made the request under paragraph (5), and, where paragraph (5) does not apply, one month from the date on which the notice was served.

Local authority support following proposal notice

3.—(1) A tenant management organisation which has served a proposal notice on a local housing authority may, at any time after the service of the notice, request the authority to provide or finance the provision of such office accommodation and facilities, and such training, as the organisation reasonably requires at the time of the request for the purpose of pursuing the proposal contained in the notice.

(2) A request under paragraph (1) shall be in writing and shall specify the provision which the tenant management organisation considers it reasonably requires at that time for that purpose.

(3) On receipt of a request under paragraph (1), the authority shall—

- (a) determine the provision which they consider the organisation reasonably requires at that time for that purpose; and
- (b) notify the organisation of their determination within two months of receipt of the request.

(4) Subject to paragraph (8), the authority shall provide support in accordance with the determination notified under paragraph (3)(b).

(5) If a tenant management organisation is dissatisfied with an authority's determination under paragraph (3) it may, within 28 days of being notified of the determination, refer the request to an arbitrator.

(6) A tenant management organisation which refers a request to an arbitrator under paragraph (5) shall, at the same time, give notice of that referral to the authority.

(7) Where a request is referred to an arbitrator under paragraph (5), the arbitrator shall—

- (a) determine the provision which he considers the organisation reasonably requires for the purpose of pursuing the proposal at the time of the request; and
- (b) notify the authority and the organisation of his determination within two months of the request being referred to him.

(8) Where a request has been referred to an arbitrator under paragraph (5), the authority shall provide support in accordance with the determination notified under paragraph (7)(b).

(9) Where a proposal notice is withdrawn any requirement on an authority to make provision under this regulation shall cease.

Procedure following proposal notice

- (a) **4.** (1) (a) If a tenant management organisation has not, within three months of serving a proposal notice, appointed an approved person to carry out an initial feasibility study and notified the Secretary of State and the authority of the appointment, the proposal notice shall be deemed to have been withdrawn.
- (b) The authority shall arrange for an initial feasibility study to be conducted by the approved person appointed under sub-paragraph (a).

(2) The approved person appointed under paragraph (1) shall, within 9 months of his appointment, send a report of the study to the Secretary of State, the authority and the tenant management organisation, which shall include his conclusion as to whether or not it is reasonable to proceed with a full feasibility study.

(3) Where the approved person concludes that it is not reasonable to proceed with a full feasibility study, the proposal notice shall be deemed to have been withdrawn.

(4) Where the approved person concludes that it is reasonable to proceed with a full feasibility study, the authority shall, within one month of the approved person submitting his report to the authority under paragraph (2)—

- (a) give to the tenants of each house identified in the proposal notice a description prepared by the approved person of the proposal; and
- (b) arrange for a ballot or poll to be carried out within that period of those tenants with a view to establishing their opinion about the proposal.

(5) If it appears from a ballot or poll carried out in accordance with paragraph (4)(b) that either a majority of the tenants or a majority of the secure tenants who, on that ballot or poll, express an opinion about the proposal are opposed to it, the authority shall notify the tenant management organisation accordingly, and the proposal notice shall be deemed to have been withdrawn.

(6) If it does not appear as mentioned in paragraph (5), the authority shall notify the Secretary of State and the tenant management organisation accordingly.

(7) Where all of the houses which are identified in a proposal notice are already included in a management agreement to which the tenant management organisation which has served the notice is a party, an approved person shall be deemed to have been appointed in accordance with paragraph (1) (a), and shall be deemed to have concluded that it is reasonable to proceed with a full feasibility

study, and the authority shall be deemed to have complied with the requirements of sub-paragraphs (a) and (b) of paragraph (4), and with the requirements of paragraph (6).

(a) (8) (a) If the tenant management organisation has not, within six months of receiving the notification mentioned in paragraph (6), or, where paragraph (7) applies, within six months of serving a proposal notice, appointed an approved person to carry out a full feasibility study and notified the Secretary of State and the authority of the appointment, the proposal notice shall be deemed to have been withdrawn.

(b) The authority shall arrange for a full feasibility study to be conducted by the approved person appointed under sub-paragraph (a).

(9) The approved person appointed under paragraph (8) shall, within two years of his appointment, submit a report of the full feasibility study to the Secretary of State, the authority and the tenant management organisation, which shall include his conclusion as to whether it is reasonable to proceed with the proposed management agreement and, if so, on what terms the agreement should be entered into.

(10) The terms of a management agreement set out in a report submitted under paragraph (9) and the terms as modified in accordance with paragraph (14) shall be in such form as may be approved by the Secretary of State for the purpose of these Regulations.

(11) Where the approved person concludes that it is not reasonable to proceed with the proposed agreement, and this conclusion is not referred to an arbitrator under regulation 5, the proposal notice shall be deemed to have been withdrawn.

(12) Where the approved person concludes that it is reasonable to proceed with the proposed agreement, and neither this conclusion nor his conclusion as to the terms to be included in the agreement are referred to an arbitrator under regulation 5, the authority shall, within a period of two months beginning on the day on which the approved person submitted his report to the authority under paragraph (9)—

(a) serve a notice prepared by the approved person on the tenants of each house identified in the proposal notice which—

(i) summarises the terms of the proposed agreement set out in his report, and

(ii) contains the address of a place within the locality of the identified houses at which a copy of that report, containing those terms, may be inspected; and

(b) arrange for a ballot (using a ballot paper prepared by the approved person) to be carried out within such period of those tenants with a view to establishing their opinion about the proposal to enter into a management agreement on those terms.

(13) If it does not appear from a ballot carried out in accordance with paragraph (12)(b) that both a majority of the tenants and a majority of the secure tenants are in favour of the proposal the authority shall notify the Secretary of State and the tenant management organisation and the proposal notice shall be deemed to have been withdrawn.

(14) Subject to paragraph (15), if it does appear as mentioned in paragraph (13), the authority shall within one month notify the Secretary of State and the tenant management organisation, and within two months of that notification (or within one month of the registration of that organisation as mentioned in paragraph (15), if later) shall enter into a management agreement with the tenant management organisation on the terms made available for inspection pursuant to paragraph (12)(a)(ii), or on those terms subject to such modifications as may be agreed by the tenant management organisation.

(15) An authority shall not enter into a management agreement under paragraph (14) unless the tenant management organisation is registered as an Industrial and Provident Society under the Industrial and Provident Societies Act 1965(2) or as a company under the Companies Act 1985(3);

and where the organisation neither is so registered nor has applied to be so registered on the expiry of the two month period mentioned in that paragraph the proposal notice shall be deemed to have been withdrawn.

(16) An authority shall, within fourteen days of entering into a management agreement under paragraph (14), submit a copy of the agreement to the Secretary of State.

Determination of disputes under regulation 4

5.—(1) Subject to paragraph (6), where an approved person submits a report under regulation 4(9), the local housing authority or the tenant management organisation may refer any of the conclusions set out in the report with which they disagree to an arbitrator within two months of the report being submitted to the body making the reference.

(2) Where the approved person's conclusion as to whether it is reasonable to proceed with the proposed management agreement is referred to an arbitrator, the arbitrator shall decide whether it is reasonable so to proceed and notify the Secretary of State, the local housing authority, the tenant management organisation and the approved person of his decision within two months of the matter being referred to him.

(3) Where the arbitrator decides that it is not reasonable to proceed with the agreement, the proposal notice shall be deemed to have been withdrawn.

(4) Where the arbitrator decides that it is reasonable to proceed with the agreement, this decision accords with the approved person's conclusion, and the approved person's conclusion as to the terms on which the agreement should be entered into has not been referred to the arbitrator, the local authority shall comply with paragraphs (a) and (b) of regulation 4(12) within two months of being notified of the arbitrator's decision.

(5) Where the arbitrator decides that it is reasonable to proceed with the agreement and that decision does not accord with the approved person's conclusion, the matter shall be referred back to the approved person, who shall, within three months of the matter being referred back to him, resubmit his report under regulation 4(9), which report shall be in accordance with the decision of the arbitrator and shall include the terms on which the agreement should be entered into.

(6) Where a report is resubmitted in accordance with paragraph (5), the approved person's conclusion in the resubmitted report as to whether it is reasonable to proceed with the agreement shall not be referred to an arbitrator.

(7) Where the approved person's conclusion as to the terms on which the agreement should be entered into is referred to an arbitrator, the arbitrator shall, within two months of the matter being referred to him (or, where he has given notice under paragraph (2) of his decision that it is reasonable to proceed with the agreement, within two months of giving that notice)—

- (a) determine the terms on which the agreement should be entered into (which shall be in such form as may be approved by the Secretary of State for the purpose of these Regulations); and
- (b) notify the Secretary of State, the local housing authority, the tenant management organisation and the approved person of his determination, setting out those terms in his notification.

(8) Where an authority is notified of a determination under paragraph (7) it shall comply with paragraphs (a) and (b) of regulation 4(12) within two months of being so notified; and, for the purpose of such compliance, the reference in paragraph (a) of that regulation to the terms of the agreement as set out in the approved person's report and to that report shall be construed as a reference to the terms of the agreement as set out in the determination notified under paragraph (7) of this regulation and to that determination.

Withdrawal of proposal notice

6.—(1) A tenant management organisation may by notice in writing to the local housing authority withdraw a proposal notice served by it at any time.

(2) Where a proposal notice is withdrawn no further action shall be taken in relation to that notice under these Regulations.

Guidance by Secretary of State

7. Any person exercising functions under these regulations shall act in accordance with any guidance given by the Secretary of State.

Management agreements with tenant management organisations and other management agreements

8.—(1) A management agreement (other than an agreement with a tenant management organisation) entered into by a local housing authority after the entry into force of these Regulations shall contain a provision (a “break clause”) enabling the authority to determine it to the extent that it overlaps with any subsequent management agreement entered into with a tenant management organisation.

(2) A break clause contained in a management agreement in accordance with paragraph (1) shall provide that the authority may exercise the rights conferred by it at different times in relation to different overlapping provisions and that it shall determine the provisions in relation to which it is exercised within three months of it being exercised.

(3) This paragraph applies where a local housing authority enter into a management agreement with a tenant management organisation in pursuance of these Regulations and—

- (a) at the time of entering into that agreement a previous agreement is in operation; and
- (b) either—
 - (i) the two agreements overlap when the management agreement is entered into; or
 - (ii) the two agreements subsequently overlap on the variation of either; and
- (c) the previous agreement contains provisions which allow the authority to determine the overlapping provisions (whether by determining the whole of that agreement or otherwise).

(4) Subject to paragraph (5), where paragraph (3) applies the local housing authority shall determine the overlapping provisions in the previous agreement (whether by determining the whole of that agreement or otherwise) as soon as possible after the two agreements overlap.

(5) Where paragraph (3) applies, if the tenant management organisation agrees in writing, the local housing authority may postpone the determination of the overlapping provisions (or some of them, if the previous agreement allows the authority to determine the provisions at different times) until such time as may be agreed.

(6) Nothing in this regulation requires an agreement (or any part of an agreement) to be determined otherwise than in accordance with provisions contained in that agreement.

Local housing authority participation in tenant management organisations

9. A local housing authority may, if invited to do so by the organisation concerned, nominate one or more persons to be directors or other officers of any tenant management organisation with whom the authority have entered into, or propose to enter into, a management agreement.

Transitional provisions

10.—(1) Where any of the following paragraphs of this regulation apply the tenant management organisation shall be treated as having served on the day these Regulations come into force (“the commencement date”) a proposal notice on the local housing authority in relation to the houses to which the study, ballot or poll relates.

(2) Where a study has been carried out during the period of twelve months ending on the commencement date or is being carried out immediately before the commencement date, which, if it had been carried out or were being carried out by an approved person for the purpose of paragraph (2) of regulation 4, would comply (or substantially comply) with the requirement in that paragraph to carry out an initial feasibility study (“a pre-commencement initial feasibility study”) and none of the following paragraphs of this regulation applies, the study shall be treated, on and after the commencement date, as having been carried out or being carried out by an approved person for the purpose of complying with that requirement and—

- (a) if the study has been completed and a report of the study submitted to the Secretary of State, the authority and the tenant management organisation before that date, it shall be treated as having been submitted under regulation 4(2) on the commencement date;
- (b) if a report on the study has not been submitted to the Secretary of State, the authority and the tenant management organisation before that date, but is so submitted within nine months of that date, it shall be treated as having been submitted under regulation 4(2).

(3) Where a ballot or poll has been carried out during the period of twelve months ending on the commencement date or is being carried out immediately before the commencement date following a pre-commencement initial feasibility study which, if it had been carried out or were being carried out by an authority for the purpose of paragraph (4) of regulation 4, would comply (or substantially comply) with the requirement in that paragraph to carry out a ballot or poll, and none of the following paragraphs of this regulation apply—

- (a) if the ballot or poll has been completed before that date, it shall be treated as having been completed on that date for the purpose of regulation 4(4);
- (b) if the ballot or poll has not been completed before that date but is completed within one month of that date, it shall be treated as having been carried out for the purpose of regulation 4(4).

(4) Where a study has been carried out during the period of twelve months ending on the commencement date or is being carried out immediately before the commencement date, which, if it had been carried out or were being carried out by an approved person for the purpose of paragraph (9) of regulation 4, would comply (or substantially comply) with the requirement in that paragraph to carry out a full feasibility study (a “pre-commencement full feasibility study”), and paragraph (5) of this regulation does not apply, the study shall be treated, on and after that date, as having been carried out or being carried out by an approved person for the purpose of complying with that requirement and—

- (a) if the study has been completed and a report on the study submitted to the Secretary of State, the authority and the tenant management organisation before that date, it shall be treated as having been submitted under regulation 4(9) on the commencement date;
- (b) if a report on the study has not been submitted to the Secretary of State, the authority and the tenant management organisation before that date, but is so submitted within two years of that date, it shall be treated as having been submitted under regulation 4(9).

(5) Where a ballot has been carried out during the period of twelve months ending on the commencement date or is being carried out immediately before the commencement date following a pre-commencement full feasibility study, which, if it had been carried out or were being carried out for the purpose of paragraph (12) of regulation 4 by an authority, would comply (or substantially comply) with the requirement in that paragraph to carry out a ballot—

- (a) if the ballot has been completed before that date, it shall be treated as having been completed on that date for the purpose of regulation 4(12);
- (b) if the ballot has not been completed before that date, but is completed within one month of that date, it shall be treated as having been carried out for the purpose of regulation 4(12).

Agreements entered into voluntarily

11. A local housing authority may enter into a management agreement with a tenant management organisation otherwise than in pursuance of the foregoing regulations where that agreement is in such form as is approved by the Secretary of State for the purposes of these Regulations and the requirements of sections 27 and 27A of the Housing Act 1985 are satisfied.

Signed by authority of the Secretary of State

Department of the Environment
2th March 1994

G. S. K Young
Minister of State,

7th March 1994

John Redwood
Secretary of State for Wales

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under section 27AB of the Housing Act 1985, set out the procedure to be followed where a tenant management organisation proposes to enter into a management agreement with a local housing authority under section 27 of that Act, impose an obligation on the authority in specified circumstances to enter into an agreement, and contain related provisions.

The Regulations provide for—

- (a) service of a proposal notice by a tenant management organisation (regulation 2);
- (b) the local authority to support the tenant management organisation (regulation 3);
- (c) feasibility studies and ballots or polls of tenants (regulation 4);
- (d) arbitration in cases of dispute (regulation 5);
- (e) withdrawal of proposal notices (regulation 6);
- (f) guidance given by the Secretary of State (regulation 7);
- (g) the relationship with other management agreements (regulation 8);
- (h) participation by authorities in tenant management organisations (regulation 9);
 - (i) transitional provisions (regulation 10);
- (j) management agreements entered into voluntarily with tenant management organisations (regulation 11).