

2004 No. 3098

LANDLORD AND TENANT, ENGLAND

**The Leasehold Valuation Tribunals (Procedure) (Amendment)
(England) Regulations 2004**

Made - - - - - *22nd November 2004*
Laid before Parliament *30th November 2004*
Coming into force - - - *28th February 2005*

The First Secretary of State, in exercise of the powers conferred by section 35(5) of the Landlord and Tenant Act 1987(a) and Schedule 12 to the Commonhold and Leasehold Reform Act 2002(b), and after consultation with the Council on Tribunals, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004 and shall come into force on 28th February 2005.

(2) These Regulations apply in relation to applications made, or proceedings transferred from a court to, a leasehold valuation tribunal, on or after 28th February 2005, in respect of premises in England.

Amendment of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

2. The Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003(c) shall be amended in accordance with regulations 3 to 8.

Application of Regulations

3. In regulation 1 (citation, commencement and application), in paragraph (3), for sub-paragraph (a), substitute—

“(a) in the case of an application—

(i) of the description specified in paragraph 2(a) of Schedule 1, 31st October 2003;

(ii) of the description specified in paragraph 8 of that Schedule, 28th February 2005; and”.

(a) 1987 c.31. Section 35(5) is amended by section 163(2) of the Commonhold and Leasehold Reform Act 2002 (c.15) (“the 2002 Act”). The functions of the Secretary of State under section 35(5) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Under section 177 of the 2002 Act, references to the 1987 Act in S.I. 1999/672 are to be treated as references to that Act as amended by Part 2 of the 2002 Act.

(b) 2002 c.15. See section 179(1) for the definition of “the appropriate national authority” as respects England.

(c) S.I. 2003/2099.

Particulars of applications

4. In regulation 3—
- (a) in paragraph (3), for “paragraph 2”, where it first occurs, substitute “any of sub-paragraphs (b) to (f) of paragraph 2”; and
 - (b) after paragraph (7), insert the following paragraph—

“(7A) Where an application is of the description specified in paragraph 8 of Schedule 1 (determination as to breach of covenant or condition) the particulars and documents listed in paragraph 7 of Schedule 2 shall be included with the application.”.

Determination without a hearing

5. In regulation 13(1), for sub-paragraphs (a) to (c), substitute the following sub-paragraphs—
- “(a) it has given to both the applicant and the respondent not less than 28 days’ notice in writing of its intention to proceed without an oral hearing; and
 - (b) neither the applicant nor the respondent has made a request to the tribunal to be heard,
- but this paragraph is without prejudice to paragraph (3).”.

Inspections

6. In regulation 17, for paragraphs (4) to (7), substitute the following paragraphs—
- “(4) Where an inspection is to be made, the tribunal shall give notice to the parties.
 - (5) A notice under paragraph (4) shall—
 - (a) state the date, time and place of the inspection; and
 - (b) be given not less than 14 days before that date.”.

Descriptions of applications

7. In Schedule 1, after paragraph 7, insert the following paragraph—

“Determination as to breach of covenant or condition

8. Applications under section 168(4) of the 2002 Act.”.

Particulars of applications

8. In Schedule 2—
- (a) in paragraph 1 (enfranchisement and extended leases), after sub-paragraph (5), insert the following sub-paragraph—

“(6) Except where an application is made under section 24, 25 or 27 of the 1993 Act, a copy of the lease.”;

(b) in paragraph 6 (variation of leases), after sub-paragraph (2), add the following sub-paragraph—

“(3) A copy of the lease.”; and

(c) after paragraph 6, add the following paragraph—

“Determination of breach of covenant or condition

7.—(1) A statement giving particulars of the alleged breach of covenant or condition.

(2) A copy of the lease concerned.”.

Signed by authority of the Secretary of State

22nd November 2004

Keith Hill
Minister of State,
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (“the Procedure Regulations”).

The amendments made by regulations 3, 4(b), 7 and 8(c) are consequential on the commencement of section 168 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).

Section 168 of the 2002 Act prevents a landlord from serving a notice to forfeit a lease for breach by a tenant of a covenant or condition in the lease, unless the tenant admits the breach or it has been finally determined that the breach has occurred. Under subsection (4) of that section, a landlord may apply to a leasehold valuation tribunal for a determination that a breach of covenant or condition has occurred.

The effect of the amendments made by regulations 3, 4(b), 7 and 8 is to add applications under section 168(4) of the 2002 Act to the applications to which the Procedure Regulations apply, and to require the applicant to include with his application a statement giving particulars of the alleged breach of covenant or condition, and a copy of the lease concerned.

The amendment made by regulation 4(a) has effect as regards applications to a leasehold valuation tribunal under section 20ZA(1) of the Landlord and Tenant 1985 Act to dispense with all or any of the consultation requirements relating to works and agreements for which contributions may be recovered by way of service charges. The effect of the amendment is to remove the requirement (imposed by regulation 3(3) of, and paragraph 2(3) of Schedule 2 to, the Procedure Regulations) to provide a copy of the lease when making an application under section 20ZA(1).

The amendment made by regulation 5 enables a leasehold valuation tribunal to determine an application without an oral hearing where it has given at least 28 days’ notice to the applicant and the respondent and neither of them has asked for an oral hearing. (Regulation 13(3), which enables the tribunal to decide at any time before an application has been determined that it should be the subject of an oral hearing, and allows either of the parties to request an oral hearing at any time before the application has been determined, is unaffected by this amendment.)

The amendment made by regulation 6 removes from regulation 17 of the Procedure Regulations the requirement to give notice at the hearing where an inspection is to be made during or after the close of the hearing. The requirement to give at least 14 days’ notice to the parties of the date, time and place of the inspection remains unchanged, but the opportunity has been taken to make minor drafting changes.

The amendments made by regulation 8(a) and (b) require the production of a copy of the lease with certain applications relating to enfranchisement or lease extension, and with applications under Part 4 of the 1987 Act for the variation of a lease.

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