



# Leasehold Reform, Housing and Urban Development Act 1993

## 1993 CHAPTER 28

### PART I

#### LANDLORD AND TENANT

#### CHAPTER V

##### TENANTS' RIGHT TO MANAGEMENT AUDIT

#### **76 Right to audit management by landlord**

- (1) This Chapter has effect to confer on two or more qualifying tenants of dwellings held on leases from the same landlord the right, exercisable subject to and in accordance with this Chapter, to have an audit carried out on their behalf which relates to the management of the relevant premises and any appurtenant property by or on behalf of the landlord.
- (2) That right shall be exercisable—
  - (a) where the relevant premises consist of or include two dwellings let to qualifying tenants of the same landlord, by either or both of those tenants; and
  - (b) where the relevant premises consist of or include three or more dwellings let to qualifying tenants of the same landlord, by not less than two-thirds of those tenants;and in this Chapter the dwellings let to those qualifying tenants are referred to as “the constituent dwellings”.
- (3) In relation to an audit on behalf of two or more qualifying tenants—
  - (a) “the relevant premises” means so much of—
    - (i) the building or buildings containing the dwellings let to those tenants,
    - and

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- (ii) any other building or buildings,  
as constitutes premises in relation to which management functions are discharged in respect of the costs of which common service charge contributions are payable under the leases of those qualifying tenants; and
  - (b) “appurtenant property” means so much of any property not contained in the relevant premises as constitutes property in relation to which any such management functions are discharged.
- (4) This Chapter also has effect to confer on a single qualifying tenant of a dwelling the right, exercisable subject to and in accordance with this Chapter, to have an audit carried out on his behalf which relates to the management of the relevant premises and any appurtenant property by or on behalf of the landlord.
- (5) That right shall be exercisable by a single qualifying tenant of a dwelling where the relevant premises contain no other dwelling let to a qualifying tenant apart from that let to him.
- (6) In relation to an audit on behalf of a single qualifying tenant—
  - (a) “the relevant premises” means so much of—
    - (i) the building containing the dwelling let to him, and
    - (ii) any other building or buildings,  
as constitutes premises in relation to which management functions are discharged in respect of the costs of which a service charge is payable under his lease (whether as a common service charge contribution or otherwise); and
  - (b) “appurtenant property” means so much of any property not contained in the relevant premises as constitutes property in relation to which any such management functions are discharged.
- (7) The provisions of sections 78 to 83 shall, with any necessary modifications, have effect in relation to an audit on behalf of a single qualifying tenant as they have effect in relation to an audit on behalf of two or more qualifying tenants.
- (8) For the purposes of this section common service charge contributions are payable by two or more persons under their leases if they may be required under the terms of those leases to contribute to the same costs by the payment of service charges.

## 77 **Qualifying tenants**

- (1) Subject to the following provisions of this section, a tenant is a qualifying tenant of a dwelling for the purposes of this Chapter if—
  - (a) he is a tenant of the dwelling under a long lease other than a business lease; and
  - (b) any service charge is payable under the lease.
- (2) For the purposes of subsection (1) a lease is a long lease if—
  - (a) it is a lease falling within any of paragraphs (a) to (c) of subsection (1) of section 7; or
  - (b) it is a shared ownership lease (within the meaning of that section), whether granted in pursuance of Part V of the Housing Act 1985 or otherwise and whatever the share of the tenant under it.
- (3) No dwelling shall have more than one qualifying tenant at any one time.
- (4) Accordingly—

- (a) where a dwelling is for the time being let under two or more leases falling within subsection (1), any tenant under any of those leases which is superior to that held by any other such tenant shall not be a qualifying tenant of the dwelling for the purposes of this Chapter; and
  - (b) where a dwelling is for the time being let to joint tenants under a lease falling within subsection (1), the joint tenants shall (subject to paragraph (a)) be regarded for the purposes of this Chapter as jointly constituting the qualifying tenant of the dwelling.
- (5) A person can, however, be (or be among those constituting) the qualifying tenant of each of two or more dwellings at the same time, whether he is tenant of those dwellings under one lease or under two or more separate leases.
- (6) Where two or more persons constitute the qualifying tenant of a dwelling in accordance with subsection (4)(b), any one or more of those persons may sign a notice under section 80 on behalf of both or all of them.

## 78 Management audits

- (1) The audit referred to in section 76(1) is an audit carried out for the purpose of ascertaining—
- (a) the extent to which the obligations of the landlord which—
    - (i) are owed to the qualifying tenants of the constituent dwellings, and
    - (ii) involve the discharge of management functions in relation to the relevant premises or any appurtenant property,are being discharged in an efficient and effective manner; and
  - (b) the extent to which sums payable by those tenants by way of service charges are being applied in an efficient and effective manner;
- and in this Chapter any such audit is referred to as a “management audit”.
- (2) In determining whether any such obligations as are mentioned in subsection (1)(a) are being discharged in an efficient and effective manner, regard shall be had to any applicable provisions of any code of practice for the time being approved by the Secretary of State under section 87.
- (3) A management audit shall be carried out by a person who—
- (a) is qualified for appointment by virtue of subsection (4); and
  - (b) is appointed—
    - (i) in the circumstances mentioned in section 76(2)(a), by either or both of the qualifying tenants of the constituent dwellings, or
    - (ii) in the circumstances mentioned in section 76(2)(b), by not less than two-thirds of the qualifying tenants of the constituent dwellings;
- and in this Chapter any such person is referred to as “the auditor”.
- (4) A person is qualified for appointment for the purposes of subsection (3) above if—
- (a) he has the necessary qualification (within the meaning of subsection (1) of section 28 of the 1985 Act (meaning of “qualified accountant”)) or is a qualified surveyor;
  - (b) he is not disqualified from acting (within the meaning of that subsection); and
  - (c) he is not a tenant of any premises contained in the relevant premises.

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- (5) For the purposes of subsection (4)(a) above a person is a qualified surveyor if he is a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers or satisfies such other requirement or requirements as may be prescribed by regulations made by the Secretary of State.
- (6) The auditor may appoint such persons to assist him in carrying out the audit as he thinks fit.

## **79 Rights exercisable in connection with management audits**

- (1) Where the qualifying tenants of any dwellings exercise under section 80 their right to have a management audit carried out on their behalf, the rights conferred on the auditor by subsection (2) below shall be exercisable by him in connection with the audit.
- (2) The rights conferred on the auditor by this subsection are—
- (a) a right to require the landlord—
    - (i) to supply him with such a summary as is referred to in section 21(1) of the 1985 Act (request for summary of relevant costs) in connection with any service charges payable by the qualifying tenants of the constituent dwellings, and
    - (ii) to afford him reasonable facilities for inspecting, or taking copies of or extracts from, the accounts, receipts and other documents supporting any such summary;
  - (b) a right to require the landlord or any relevant person to afford him reasonable facilities for inspecting any other documents sight of which is reasonably required by him for the purpose of carrying out the audit; and
  - (c) a right to require the landlord or any relevant person to afford him reasonable facilities for taking copies of or extracts from any documents falling within paragraph (b).
- (3) The rights conferred on the auditor by subsection (2) shall be exercisable by him—
- (a) in relation to the landlord, by means of a notice under section 80; and
  - (b) in relation to any relevant person, by means of a notice given to that person at (so far as is reasonably practicable) the same time as a notice under section 80 is given to the landlord;
- and, where a notice is given to any relevant person in accordance with paragraph (b) above, a copy of that notice shall be given to the landlord by the auditor.
- (4) The auditor shall also be entitled, on giving notice in accordance with section 80, to carry out an inspection of any common parts comprised in the relevant premises or any appurtenant property.
- (5) The landlord or (as the case may be) any relevant person shall—
- (a) where facilities for the inspection of any documents are required under subsection (2)(a)(ii) or (b), make those facilities available free of charge;
  - (b) where any documents are required to be supplied under subsection (2)(a)(i) or facilities for the taking of copies or extracts are required under subsection (2)(a)(ii) or (c), be entitled to supply those documents or (as the case may be) make those facilities available on payment of such reasonable charge as he may determine.

- (6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.
- (7) In this Chapter “relevant person” means a person (other than the landlord) who—
- (a) is charged with responsibility—
    - (i) for the discharge of any such obligations as are mentioned in section 78(1)(a), or
    - (ii) for the application of any such service charges as are mentioned in section 78(1)(b); or
  - (b) has a right to enforce payment of any such service charges.
- (8) In this Chapter references to the auditor in the context of—
- (a) being afforded any such facilities as are mentioned in subsection (2), or
  - (b) the carrying out of any inspection under subsection (4),
- shall be read as including a person appointed by the auditor under section 78(6).

## **80 Exercise of right to have a management audit**

- (1) The right of any qualifying tenants to have a management audit carried out on their behalf shall be exercisable by the giving of a notice under this section.
- (2) A notice given under this section—
- (a) must be given to the landlord by the auditor, and
  - (b) must be signed by each of the tenants on whose behalf it is given.
- (3) Any such notice must—
- (a) state the full name of each of those tenants and the address of the dwelling of which he is a qualifying tenant;
  - (b) state the name and address of the auditor;
  - (c) specify any documents or description of documents—
    - (i) which the landlord is required to supply to the auditor under section 79(2)(a)(i), or
    - (ii) in respect of which he is required to afford the auditor facilities for inspection or for taking copies or extracts under any other provision of section 79(2); and
  - (d) if the auditor proposes to carry out an inspection under section 79(4), state the date on which he proposes to carry out the inspection.
- (4) The date specified under subsection (3)(d) must be a date falling not less than one month nor more than two months after the date of the giving of the notice.
- (5) A notice is duly given under this section to the landlord of any qualifying tenants if it is given to a person who receives on behalf of the landlord the rent payable by any such tenants; and a person to whom such a notice is so given shall forward it as soon as may be to the landlord.

**81 Procedure following giving of notice under section 80**

- (1) Where the landlord is given a notice under section 80, then within the period of one month beginning with the date of the giving of the notice, he shall—
  - (a) supply the auditor with any document specified under subsection (3)(c)(i) of that section, and afford him, in respect of any document falling within section 79(2)(a)(ii), any facilities specified in relation to it under subsection (3)(c)(ii) of section 80;
  - (b) in the case of every other document or description of documents specified in the notice under subsection (3)(c)(ii) of that section, either—
    - (i) afford the auditor facilities for inspection or (as the case may be) taking copies or extracts in respect of that document or those documents, or
    - (ii) give the auditor a notice stating that he objects to doing so for such reasons as are specified in the notice; and
  - (c) if a date is specified in the notice under subsection (3)(d) of that section, either approve the date or propose another date for the carrying out of an inspection under section 79(4).
- (2) Any date proposed by the landlord under subsection (1)(c) must be a date falling not later than the end of the period of two months beginning with the date of the giving of the notice under section 80.
- (3) Where a relevant person is given a notice under section 79 requiring him to afford the auditor facilities for inspection or taking copies or extracts in respect of any documents or description of documents specified in the notice, then within the period of one month beginning with the date of the giving of the notice, he shall, in the case of every such document or description of documents, either—
  - (a) afford the auditor the facilities required by him; or
  - (b) give the auditor a notice stating that he objects to doing so for such reasons as are specified in the notice.
- (4) If by the end of the period of two months beginning with—
  - (a) the date of the giving of the notice under section 80, or
  - (b) the date of the giving of such a notice under section 79 as is mentioned in subsection (3) above,the landlord or (as the case may be) a relevant person has failed to comply with any requirement of the notice, the court may, on the application of the auditor, make an order requiring the landlord or (as the case may be) the relevant person to comply with that requirement within such period as is specified in the order.
- (5) The court shall not make an order under subsection (4) in respect of any document or documents unless it is satisfied that the document or documents falls or fall within paragraph (a) or (b) of section 79(2).
- (6) If by the end of the period of two months specified in subsection (2) no inspection under section 79(4) has been carried out by the auditor, the court may, on the application of the auditor, make an order providing for such an inspection to be carried out on such date as is specified in the order.
- (7) Any application for an order under subsection (4) or (6) must be made before the end of the period of four months beginning with—

- (a) in the case of an application made in connection with a notice given under section 80, the date of the giving of that notice; or
- (b) in the case of an application made in connection with such a notice under section 79 as is mentioned in subsection (3) above, the date of the giving of that notice.

## **82 Requirement relating to information etc. held by superior landlord**

(1) Where the landlord is required by a notice under section 80 to supply any summary falling within section 79(2)(a), and any information necessary for complying with the notice so far as relating to any such summary is in the possession of a superior landlord—

- (a) the landlord shall make a written request for the relevant information to the person who is his landlord (and so on, if that person is himself not the superior landlord);
- (b) the superior landlord shall comply with that request within the period of one month beginning with the date of the making of the request; and
- (c) the landlord who received the notice shall then comply with it so far as relating to any such summary within the time allowed by section 81(1) or such further time, if any, as is reasonable.

(2) Where—

- (a) the landlord is required by a notice under section 80 to afford the auditor facilities for inspection or taking copies or extracts in respect of any documents or description of documents specified in the notice, and
- (b) any of the documents in question is in the custody or under the control of a superior landlord,

the landlord shall on receiving the notice inform the auditor as soon as may be of that fact and of the name and address of the superior landlord, and the auditor may then give the superior landlord a notice requiring him to afford the facilities in question in respect of the document.

(3) Subsections (3) to (5) and (7) of section 81 shall, with any necessary modifications, have effect in relation to a notice given to a superior landlord under subsection (2) above as they have effect in relation to any such notice given to a relevant person as is mentioned in subsection (3) of that section.

## **83 Supplementary provisions**

(1) Where—

- (a) a notice has been given to a landlord under section 80, and
- (b) at a time when any obligations arising out of the notice remain to be discharged by him—
  - (i) he disposes of the whole or part of his interest as landlord of the qualifying tenants of the constituent dwellings, and
  - (ii) the person acquiring any such interest of the landlord is in a position to discharge any of those obligations to any extent,

that person shall be responsible for discharging those obligations to that extent, as if he had been given the notice under that section.

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- (2) If the landlord is, despite any such disposal, still in a position to discharge those obligations to the extent referred to in subsection (1), he shall remain responsible for so discharging them; but otherwise the person referred to in that subsection shall be responsible for so discharging them to the exclusion of the landlord.
- (3) Where a person is so responsible for discharging any such obligations (whether with the landlord or otherwise)—
- (a) references to the landlord in section 81 shall be read as including, or as, references to that person to such extent as is appropriate to reflect his responsibility for discharging those obligations; but
  - (b) in connection with the discharge of any such obligations by that person, that section shall apply as if any reference to the date of the giving of the notice under section 80 were a reference to the date of the disposal referred to in subsection (1).
- (4) Where—
- (a) a notice has been given to a relevant person under section 79, and
  - (b) at a time when any obligations arising out of the notice remain to be discharged by him, he ceases to be a relevant person, but
  - (c) he is, despite ceasing to be a relevant person, still in a position to discharge those obligations to any extent,
- he shall nevertheless remain responsible for discharging those obligations to that extent; and section 81 shall accordingly continue to apply to him as if he were still a relevant person.
- (5) Where—
- (a) a notice has been given to a landlord under section 80, or
  - (b) a notice has been given to a relevant person under section 79,
- then during the period of twelve months beginning with the date of that notice, no subsequent such notice may be given to the landlord or (as the case may be) that person on behalf of any persons who, in relation to the earlier notice, were qualifying tenants of the constituent dwellings.

## 84 Interpretation of Chapter V

In this Chapter—

“the 1985 Act” means the Landlord and Tenant Act 1985;

“appurtenant property” shall be construed in accordance with section 76(3) or (6);

“the auditor”, in relation to a management audit, means such a person as is mentioned in section 78(3);

“the constituent dwellings” means the dwellings referred to in section 76(2) (a) or (b) (as the case may be);

“landlord” means immediate landlord;

“management audit” means such an audit as is mentioned in section 78(1);

“management functions” includes functions with respect to the provision of services or the repair, maintenance or insurance of property;

“relevant person” has the meaning given by section 79(7);

“the relevant premises” shall be construed in accordance with section 76(3) or (6);



“service charge” has the meaning given by section 18(1) of the 1985 Act.