

2018 No. 1043

LANDLORD AND TENANT, ENGLAND

**The Tenants' Associations (Provisions Relating to Recognition
and Provision of Information) (England) Regulations 2018**

<i>Made</i>	- - - -	<i>3rd October 2018</i>
<i>Laid before Parliament</i>		<i>5th October 2018</i>
<i>Coming into force</i>	- -	<i>1st November 2018</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 29(5)(b) to (d) and (6) and 29A of the Landlord and Tenant Act 1985(a).

PART 1

Introductory

Citation, commencement and application

1.—(1) These Regulations may be cited as the Tenants' Associations (Provisions Relating to Recognition and Provision of Information) (England) Regulations 2018 and come into force on 1st November 2018.

(2) These Regulations apply in relation to dwellings in England only.

PART 2

Recognised tenants' associations

Interpretation of Part 2

2. In this Part—

“certificate” means a certificate given by the First-tier Tribunal under section 29(1)(b)(i) of the Landlord and Tenant Act 1985 (certificate recognising a tenants' association);

“related premises” means more than one premises which have a common landlord.

Matters to which regard must be had by the First-tier Tribunal in giving a certificate

3. The First-tier Tribunal must, in particular, have regard to the following matters in giving a certificate—

(a) 1985 c. 70. Section 29 was amended by paragraph 10 of Schedule 2 to the Landlord and Tenant Act 1987 (c. 31) and S.I. 2013/1036. Section 29A was added by section 130 of the Housing and Planning Act 2016 (c. 22).

- (a) the composition of the membership of the tenants' association;
- (b) the tenants' association's rules regarding membership, including whether tenants who are not qualifying tenants are entitled to become members;
- (c) the tenants' association's rules regarding decision making;
- (d) the tenants' association's rules regarding voting;
- (e) the extent to which any fees or charges payable in connection with membership of the tenants' association apply equally to all members;
- (f) the extent to which the constitution of the tenants' association takes account of the interests of all members;
- (g) the extent to which the tenants' association is independent of the landlord of the dwellings to which the association relates;
- (h) whether the tenants' association has a chairperson, secretary and treasurer;
- (i) whether the constitution of the tenants' association may be amended by resolution of the members and the rules regarding amendment;
- (j) whether the tenants' association's constitution, accounts and list of members are—
 - (i) kept up to date; and
 - (ii) available for public inspection;
- (k) the extent to which the association operates in an open and transparent way.

Circumstances in which a certificate is not to be given

4.—(1) The First-tier Tribunal must not give a certificate to a tenants' association in relation to a premises where the tenants' association represents fewer than 50% of the qualifying tenants of dwellings situated in the premises.

(2) But where—

- (a) the tenants' association represents qualifying tenants in dwellings situated in related premises; and
- (b) those qualifying tenants contribute to the same costs by the payment of a service charge,

the First-tier Tribunal must not give a certificate to the tenants' association in relation to the related premises if the tenants' association represents an aggregate of fewer than 50% of the qualifying tenants of dwellings situated in the related premises.

(3) The First-tier Tribunal must not give a certificate to a tenants' association in relation to any premises if a certificate has previously been given to a tenants' association in relation to the premises and the certificate is in force.

(4) The First-tier Tribunal must not give a certificate to a tenants' association if the First-tier Tribunal is not satisfied that the constitution and rules of the tenants' association are fair and democratic.

(5) Paragraphs (1) and (3) do not apply where—

- (a) the landlord has failed to comply with an order made by the First-tier tribunal in relation to the tenants' association under regulation 11 (an order requiring the landlord to comply with regulation 8, 9 or 10); and
- (b) the tenants association represents a substantial number of qualifying tenants of dwellings in the premises or, as the case may be, the related premises.

(6) This regulation is without prejudice to any powers the First-tier Tribunal has, including its powers to not give a certificate.

Matters to which regard must be had by the First-tier Tribunal in cancelling a certificate

5. The First-tier Tribunal must, in particular, have regard to the following matters in cancelling a certificate—

- (a) whether the certificate was obtained by deception or fraud;
- (b) whether the tenants' association to which the certificate relates represents fewer than 50% of the qualifying tenants of dwellings situated in the premises to which the association relates;
- (c) where the tenants' association relates to related premises and the qualifying tenants in dwellings situated in the related premises contribute to the same costs by the payment of a service charge, the tenants' association to which the certificate relates represents an aggregate of fewer than 50% of the qualifying tenants of dwellings situated in the related premises;
- (d) whether the office of chairperson, treasurer or secretary of the tenants' association are vacant and, if so, the length of time for which the position has remained vacant;
- (e) whether any provision of the constitution of the tenants' association has been breached and, if so, the extent and nature of the breach;
- (f) whether an amendment to the constitution, as passed by a resolution of its members, has not been implemented and, if so, the nature of the amendment and the length of time for which it has not been implemented;
- (g) any irregularities in the tenants' association's—
 - (i) voting process;
 - (ii) decision making;
 - (iii) implementing of decisions; or
 - (iv) recording of decisions, and
 the nature of the irregularities and their effect.

PART 3

Relevant tenants' associations: duty on landlords to provide information

Interpretation of Part 3

6. In this Part—

“information form” has the meaning given in regulation 9(2) (landlord's method of contacting relevant qualifying tenants(a));

“known information” has the meaning in regulation 7(6) (request by relevant tenants' association for known information);

“request notice” has the meaning given in regulation 7.

Request by relevant tenants' association for known information

7.—(1) The secretary of a relevant tenants' association(b) may serve a notice (a “request notice”) on the landlord of a dwelling to which the association relates which contains a request for the landlord to provide known information about relevant qualifying tenants who are not members of the association.

(2) A request notice must—

(a) include—

- (i) a schedule listing the relevant qualifying tenants who are members of the relevant tenants' association;
- (ii) the postal address of the relevant tenants' association; and

(a) For the definition of “relevant qualifying tenant”, see section 29A(8) of the Landlord and Tenant Act 1985.

(b) For the definition of “relevant tenants' association”, see section 29A(8) of the Landlord and Tenant Act 1985.

- (iii) an email address for the relevant tenants' association, if it has one; and
 - (b) be signed and dated by the secretary of the relevant tenants' association.
- (3) Where the secretary of a relevant tenants' association gives more than one request notice in respect of the same relevant qualifying tenant, the later notice supersedes all earlier notices.
- (4) The request notice must be accompanied by a statement that—
- (a) the known information being requested will be used only to ask the relevant qualifying tenants concerned if they wish to become members of the relevant tenants' association; and
 - (b) is signed and dated by the secretary of the relevant tenants' association.
- (5) A request notice is duly served on a landlord under this regulation if it is served on the landlord's managing agent.
- (6) In this regulation—
- “known information”, in relation to a relevant qualifying tenant (“T”), means any of the following information that is in the possession of the landlord or the landlord's managing agent—
- (a) T's name;
 - (b) the address of the dwelling for which T pays a service charge;
 - (c) any address to which service charge demands for T are sent;
 - (d) T's email address;
- “managing agent” means an agent appointed by the landlord to discharge any of the landlord's obligations to the tenants represented by the relevant tenants' association which relate to the management by the landlord of the tenants' dwellings.

Landlords' duty: acknowledgement of request notice

- 8.**—(1) A landlord who has been served with a request notice must, within 7 days beginning with the date on which the request notice was received—
- (a) acknowledge receipt of the request notice in writing; and
 - (b) inform the secretary of the relevant tenants' association that the landlord will provide a substantive response to the notice.
- (2) Where the landlord does not consider the notice received to be a valid request notice, the landlord must, within 7 days beginning with the date on which the notice was received—
- (a) inform the secretary of the relevant tenant's association in writing that the landlord will not provide a substantive response to the notice because the landlord does not consider the notice received to be a valid request notice; and
 - (b) give reasons as to why the landlord does not consider the notice received to be a valid request notice.
- (3) “Substantive response” has the meaning given in regulation 10(2).

Landlords' duty: contacting relevant qualifying tenants

- 9.**—(1) A landlord who has been served with a request notice must, as soon as practicable after the request notice was received, give an information form to each relevant qualifying tenant (“T”) in relation to whom known information has been requested.
- (2) An “information form” is a written document which—
- (a) informs T that a relevant tenants' association has requested that the landlord provide known information relating to T;
 - (b) sets out what known information has been requested in relation to T;
 - (c) identifies the relevant tenants' association that has made the request;

- (d) includes—
 - (i) the postal address of the relevant tenants’ association; and
 - (ii) an email address for the relevant tenants’ association, if it has one;
- (e) asks T for written consent to disclose the known information to the relevant tenants’ association;
- (f) informs T that the known information will not be disclosed without that consent;
- (g) informs T that the relevant tenant’s association has stated in its request that the known information will be used only to ask T if T wishes to become a member of the relevant tenants’ association;
- (h) informs T that any queries relating to the relevant tenants’ association should be directed to the relevant tenants’ association;
- (i) asks T to reply within 28 days beginning with the date of receipt of the information form—
 - (i) confirming that T consents to all of the known information being disclosed to the relevant tenants’ association;
 - (ii) confirming that T consents to some of the known information being disclosed to the relevant tenants’ association, and stating the known information that may be disclosed; or
 - (iii) confirming that T does not consent to any of the known information being disclosed to the relevant tenants’ association;
- (j) gives a postal address and, if the landlord has one, an email address, which can be used to reply to the landlord; and
- (k) is signed and dated by the landlord.

Landlords’ duty: substantive response to request notice

10.—(1) A landlord who has been served with a request notice which does not fall within regulation 8(2) must provide a substantive response to the relevant tenant’s association which served the notice within 4 months beginning with the date on which the notice was received (“the 4 month period”).

- (2) A “substantive response” is a written document which—
 - (a) states—
 - (i) all known information requested in the request notice which the landlord has consent to disclose; or
 - (ii) that there is no such known information;
 - (b) states the number of relevant qualifying tenants to whom the landlord sent an information form in connection with the request notice;
 - (c) states the number of relevant qualifying tenants in relation to whom known information was requested who did not give written consent for known information to be disclosed by the landlord; and
 - (d) is signed and dated by the landlord.
- (3) The substantive response must be accompanied by a statement that—
 - (a) the information contained in the substantive response is true to the best of the landlord’s knowledge and belief; and
 - (b) is signed and dated by the landlord.

(4) Where the landlord receives consent from a relevant qualifying tenant to disclose known information after the 4 month period, the landlord must disclose the known information as soon as reasonably practicable after the consent is received (“further disclosure”).

- (5) Further disclosure under paragraph (4) must—

- (a) be in writing; and
- (b) be accompanied by a statement that—
 - (i) the information comprising the further disclosure is true to the best of the landlord’s knowledge and belief; and
 - (ii) is signed and dated by the landlord.

Power of First-tier Tribunal to remedy failure by a landlord to comply

11.—(1) The secretary of a relevant tenants’ association may apply to the First-tier tribunal for an order requiring the landlord to perform a duty under regulation 8, 9 or 10 of these Regulations.

(2) The First-tier Tribunal may make such an order where—

- (a) the landlord has failed to perform a duty under regulation 8, 9 or, as the case may be, 10; and
- (b) the landlord does not have a reasonable excuse for failing to perform the duty.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Rishi Sunak

Parliamentary Under Secretary of State

Ministry of Housing, Communities and Local Government

3rd October 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provisions in relation to recognised tenants’ associations and relevant tenants’ associations.

Part 2 makes provision in relation to certificates given by the First-tier Tribunal under section 29(1)(b)(i) of the Landlord and Tenant Act 1985 recognising a tenants’ association.

Regulation 3 specifies the matters which the First-tier Tribunal must have regard to in giving a certificate.

Regulation 4 specifies the circumstances in which a certificate is not to be given.

Regulation 5 specifies the matters to which the First-tier Tribunal must have regard in cancelling a certificate.

Part 3 makes provision in relation to relevant tenants’ associations and impose certain duties on landlords in relation to the provision of known information.

Regulation 7 makes provision for a relevant tenants’ association to serve a notice (a “request notice”) on a landlord requesting that the landlord provide certain, specified information.

Regulation 8 requires landlords who have been served with a request notice to acknowledge receipt within 7 days. Where the landlord does not believe the notice received to be a valid request notice, the landlord must reply within 7 days informing the tenants’ association of this and giving reasons why.

Regulation 9 requires landlords who have been served with a request notice to give an information form to each relevant qualifying tenant in relation to whom known information has been requested. The information form sets out, amongst other things, the information being requested, asks for the tenants’ consent to provide the known information and informs the tenants why the information has been requested.

Regulation 10 requires landlords who have been served with a request notice which does not fall within regulation 8(2) to provide a substantive response to the notice within 4 months. This response must, amongst other things, state the known information that was requested and that the

landlord has consent to disclose (or state that there is no such information) and be accompanied by a statement that the contents are true to the best of the landlord's knowledge and belief. Known information for which consent is received after 4 months has passed must also be provided to the relevant tenants' association.

Regulation 11 gives power to the First-tier Tribunal to make an order remedying a failure by a landlord to comply with regulation 8, 9 or 10 of these Regulations.

An impact assessment has not been prepared for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.

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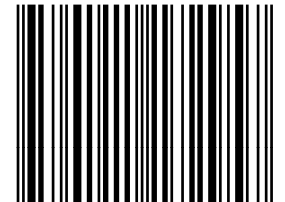
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