

C/M/S/ Cameron McKenna

Real Estate issues

2007

Service charge code

The revised code has been given a lead in period so that it will come into effect for service charges commencing on or after 1 April 2007. It has been specifically designed for larger properties and if it is to be used for smaller properties this will require managers and occupiers to apply common sense as to the scale and applicability of the code. It is important that the notes have been given the status of a guidance note. This means that the code is intended to embody "best practice".

The code will be used in 3 different situations.

- 1 Negotiating new leases.
- 2 Lease renewals.
- 3 Existing service charge clauses.

Specific requirements of the code include:

- A right for each occupier to challenge the propriety of expenditure where reasonable
- The owner will inform occupiers of the plans for the property in so far as they have an implication on the service charge
- Regular meetings will be held with occupiers and a clear communication structure will be maintained
- When substantial works are planned, summary details of the results of tenders and the process gone through will be communicated to the occupier
- The manager will issue budgets to occupiers with an explanatory commentary at least one month prior to the start of the service charge year and reconciliations following the year end to all users within 4 months of year end
- Service charge costs will not include such costs which are matters between the owner and an individual occupier, for example enforcement of covenants for collection of rent and any costs arising out of the failure/negligence of the manager or owner

- The fee for the management services is the reasonable price for the total cost of managing the provision of the services at the location. This total price will not be linked to a percentage of expenditure. The total price will be a fixed fee for a reasonable period of time for example 3 years
- Apportionment of costs to each occupier will be fair and reasonable and applied consistently throughout the property having regard to the physical size, nature of use and benefits to and use by the occupiers
- Occupiers will not be charged through the service charge towards the costs attributable to unlet premises
- Where services are provided for the benefit of specific occupiers only, these costs will be allocated only to the specific occupiers that benefit from them.

For further information please contact
louise.mead@cms-cmck.com

How the telecoms code can affect you

If you occupy a building, either as an owner or as a tenant, you may be tempted to allow a mobile phone company to place a mast or rooftop installation on your property for a handsome licence fee. You may take an assignment of a lease that is subject to a telecoms lease. Be warned.

Even though some leases will be excluded from the protection of the Landlord and Tenant Act 1954 meaning that there is no automatic right for renewal of the lease when it comes to an end, this does not mean that this is the end of the arrangement.

The Telecommunications Act 1984 and the Telecommunications Code give certain telecom operators power to remain in occupation despite the expiry of the lease. This will apply even if the landlord wants the premises back or if the original rights were granted by licence. If you have plans to alter the premises and the presence of telecoms equipment would be a problem think carefully before agreeing a lease to a telecoms operator.

For further information please contact
danielle.drummond-brassington@cms-cmck.com

New lease code

A new lease code will be published on 28 March. Drawn up by members of the RICS, the Law Society and representatives of landlords, tenants and the government. The code is shorter and written in more obligatory terms than its predecessor that contained 23 mere recommendations.

The new code is streamlined, providing 10 key points that will effectively become the kitemark for good practice according to the British Property Federation. Significant features of the new code are:

- A tenant's right to break the lease must not be subject to pre-conditions other than those requiring vacant possession and no arrears
- Repairing obligations are to be appropriate to the length of the term and the condition of the property
- Authorised guarantee agreements that effectively extend a tenant's liability to his landlord will be required in limited circumstances only
- Any insurance commission received by the landlord is to be disclosed to the tenant.

Although use of the code will not be obligatory, there will be pressure on the larger landlords to adhere to its terms.

For further information please contact mark.heighton@cms-cmck.com

Forfeiture

The Law Commission recently published the draft Landlord and Tenant (Termination of Tenancies) Bill proposing a new statutory scheme for the termination of tenancies by landlords following a breach of covenant by the tenant and the abolition of forfeiture

Forfeiture is the way a landlord can bring a tenancy to an end following default by the tenant.

The bill's key features are:

- Tenant default - A breach by the tenant of a covenant in the tenancy entitling the landlord to take "termination action". The tenancy will not need to include a right of re-entry and it will no longer be possible for a landlord to waive a breach.
- Tenant default notice - A landlord will need to warn the tenant of his intention to take "termination action" by giving written notice with details of the breach, the remedial action required and the date by which the remedial action should be completed.
- The termination claim – if there's no resolution, the landlord will need to make a "termination claim". The court must then consider factors including the conduct of the parties, the action the tenant could have taken to remedy the default, and the action actually taken by the tenant in order to make:
- "A termination order" to end the tenancy, or
- "A remedial order" setting out steps the tenant must take by a given date, or
- "An order for sale", or
- A "transfer order" transferring the tenancy to the applicant or a third party, or a "new tenancy order" granting the applicant a new tenancy. The Bill, which will undoubtedly be amended as it progresses through Parliament, also introduces a Summary termination procedure for cases where a court would have no option but to grant a termination order, or where the premises have been abandoned.

For more information please contact ross.berridge@cms-cmck.com

Rights of light

Rights to Light are an increasingly important issue for anyone with an interest in property whether you are an owner, an occupier or developer of property. In urban areas where space is at a premium, if rights of light exist, they are not to be ignored.

For a property owner or occupier they can bring large cash rewards and potential control over a neighbouring development. For a developer they can mean delays, a redesign of a scheme and large financial penalties.

Tips for Property Owners/Occupiers

- Light Obstruction Notices - Do not ignore them. A failure to take these seriously could result in the loss of any rights to light.
- Identify rights of light - As soon as an owner/occupier becomes aware of a potential infringement to its light it should act immediately and assess whether it does have a right.
- Assess the impact of any infringement - A right of light consultant should be appointed to assess any infringement by the proposed development and any damage that could be suffered as a result. This should be both in terms of the property value and loss of amenity.
- Plan a strategy - At the outset it is important to identify what the strategy is; is it to prevent the development or obtain financial compensation?

Tips for Developers

- Be aware and factor in costs - A developer should be aware of its neighbours' rights from the outset and obtain specialist rights of light advice (both legal and surveyor) early in a project to avoid being placed in a ransom position.
- Strategise - It is important to consider a strategy early on for eliminating or minimising the risk of any claim. A different strategy may be required for residential as opposed to commercial occupiers.
- Consider the risk of an injunction - If rights of light cannot be dealt with by negotiation, the risk of an injunction remains.
- Light Obstruction Notices - At the outset of any development project it may be worth registering a light obstruction notice against neighbouring properties. This acts as a notional obstruction that is deemed to block the access of light to properties.

For more information please contact caroline.delaney@cms-cmck.com

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CMS Cameron McKenna LLP
Mitre House
160 Aldersgate Street
London EC1A 4DD

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

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