

Social Justice and Regeneration Committee

SJR(2)-11-06 Paper 5 Annex 2

HOUSING ACT 2004 - Secondary Legislation

Royal Assent: 18th November 2004. New provisions in the Housing Act 2004 refer to SIs being made by the ‘Appropriate National Authority’ (‘ANA’ is defined under s261(1) as the National Assembly for Wales in relation to Wales). Where provisions amend/ insert or substitute sections or paragraphs into earlier Housing Acts there is reference to ‘Relevant Authority’ and ‘Secretary of State’. Please note section 267 states that in Schedule 1 to the NAW TFO 1999 (S.I. 1999/672), references to the 1985, 1988 and 1996 Housing Acts are treated as amended by the Housing Act 2004.

Part 1 – Housing Conditions	Power	Exercisable	Timescales
Section 2 new system for assessing housing conditions	<p>Subsection (1) provides a definition of ‘hazard’ for the purposes of the Housing Health and Safety Rating System. It also provides for the prescription by regulations of two categories of hazard – Category 1 and Category 2 – according to their seriousness as calculated under the method prescribed in regulations. It is intended that the regulations will describe 29 different types of hazard which can be assessed by LHAs.</p> <p>Under subsections (2) and (3) a method for calculating the seriousness of each hazard which exists on residential premises may be prescribed by secondary legislation. The calculation will be based on the risk to the most vulnerable potential occupant of that dwelling, whether or not anyone, or a most vulnerable occupant is resident at the time of the inspection and the calculation will result in the hazard being given a score. That score will determine the band into which the hazard will fall. The</p>	By regulations	<p>RA</p> <p>Summer 2006</p>

	<p>regulations will prescribe that hazards falling within bands A to C are Category 1 hazards while those within bands D to J are category 2 hazards. The system relates poor housing conditions to the kinds of harm attributable to such conditions. Under Section 5 LHAs will have a general duty to take action to deal with Category 1 hazards and under Section 7 they will have discretionary powers to take action to deal with Category 2 hazards.</p>		
<p>Section 4 inspections by LHAs to see whether category 1 or 2 hazards exist</p>	<p>Power to specify how authorities should make inspections to detect category 1 and 2 hazards.</p>	<p>By regulations</p>	<p>NAW CO</p> <p>Coming into force Summer 2006</p>
<p>Section 9 Guidance about inspections and enforcement action</p>	<p>Issue of statutory guidance to LHAs on a number of matters eg the inspection of premises and assessment of hazards on those premises (technical guidance) and on the use of the enforcement functions (enforcement guidance).</p>	<p>Guidance</p>	<p>RA</p> <p>Summer 2006</p>
<p>Section 46 demolition orders</p>	<p>New 265 substituted into the Housing Act 1985. Power to specify or describe the circumstances that must be satisfied for a demolition order in respect of a dwelling/HMO which is not a flat and in respect of any building containing one or more flats.</p>	<p>By Order</p>	<p>Commences Summer 2006</p>
<p>Section 47 Clearance areas</p>	<p>Section 47 amends section 289 of the Housing Act 1985 (declaration of clearance area) in order to align it with the hazard assessment and enforcement provisions in part 1 of the Act. The effect of this realignment is to retain the link between poor housing conditions and enforcement action. New subsection (2) provides that if a Category 1 hazard exists in each of the residential buildings in an area and if the other buildings in the area are dangerous or harmful to the health and safety of the inhabitants of the</p>	<p>By Order</p>	<p>Commences Summer 2006</p>

	<p>area declaring a clearance area is one of the courses of action available to a LHA in discharging its general duty to take the most appropriate enforcement action to deal with a Category 1 hazard.</p> <p>New subsection (2ZA) provides a discretionary power for an LHA to declare a clearance area if it is satisfied that the residential buildings in the area as a result of their narrowness or bad arrangement of the streets; and any other buildings are dangerous or harmful to the health or safety of the inhabitants of the area.</p> <p>New subsection (2ZB) provides that if a Category 2 hazard exists in each of the residential buildings in an area the LHA may only declare a clearance area if it conforms to an Order made by the NAW.</p>		
Section 50 recovery of charge relating to enforcement action	Power under section 50(13) to prescribe the form of, and particulars to be contained in, a demand for payment of any charge under section 49. Amount of charge may not exceed such amount as specified in an order under section 49.	By regulations By Order	Commences Summer 2006
Part 2	Licensing of houses in multiple occupation (HMO)		
Section 55 Licensing of HMOs under Part 2	Power to prescribe descriptions of HMOs that are to be licensed for the purposes of subsection (2)(a)&(b).	By Order	Summer 2006
Section 58 Designation needs confirming or general approval to be effective Sections 59-60 Notification requirements etc	<p>Power to confirm/refuse to confirm a designation. A general approval may be given in relation to a description of designations framed by reference to any matters or circumstances.</p> <p>Power to prescribe manner of notice and revocation notice.</p>	Confirmation of Designation/ general approval By regulations	Commences Summer 2006

Section 61 HMOs required to be licensed	Power to provide for any provision of Part 2 or section 263 to have effect in relation to a "section 257 HMO" (ie a HMO which is a converted block of flats to which section 257 applies).	By regulations	Commences Summer 2006
Section 63 applications for licences	Power to make provision about the making of applications for licences and in particular those matters listed under subsection (6) (a)-(e) ie form, content, fees.	By regulations	Commences Summer 2006
Section 65 tests as to suitability for multiple occupation	Section 65 sets out what needs to be considered for a house to be suitable for occupation by a particular maximum number of households or persons. Regulations may prescribe minimum standards such as to the number, type and quality of toilets, washing facilities and food preparation facilities and certain other standards of facilities or equipment to be provided. An LHA may require different but not lower standards than those prescribed in the regulations when determining whether the HMO is reasonably suitable for the number of occupants.	By regulations	Summer 2006
Section 70 Revocation of Licences	Power to prescribe additional circumstances in which a licence may be revoked.	By Regulations	Commences Summer 2006
Section 74 Further provisions about rent repayment orders	Section 74 provides that where a landlord is convicted of an offence under Section 72 (1) [ie where a person has control/ manages a HMO but does not have the required licence] the Residential Property Tribunal (formerly Rent Assessment Panel) is required to make a rent repayment order in respect of all Housing Benefit received by the landlord unless exceptional circumstances apply. In all other cases the RPT has discretion to make a rent repayment order for such an amount as is reasonable in the circumstances.	Regulations	Commences Summer 2006

Part 3	Selective licensing of other residential accommodation		
Section 79 licensing of houses to which Part 3 applies	Descriptions of tenancies and licences to be exempt from selective licensing.	By Order	Autumn 2006
Section 80 designation of selective licensing areas	<p>Power to amend subsection 4 (ie matters that LHA must take into account in deciding whether an area is, or is likely to become an area of low housing demand) to add new matters to be taken into account in defining low demand.</p> <p>Power under 80(7) to provide additional set of conditions for the purposes of subsection (2) (conditions in relation to an area that must be satisfied before an authority can designate an area as being subject to selective licensing).</p>	<p>By Order</p> <p>By Order</p>	Autumn 2006
Section 82 Designation needs confirmation or general approval to be effective	Power to confirm or refuse to confirm a designation of an area subject to selective licensing. A general approval may be given in relation to a description of designations framed by reference to any matters or circumstances.	Confirmation of designation/ general approval	Commences Summer 2006
Section 83-84 Notification requirements etc	Power to prescribe regulations in relation to notification requirements and in respect of duration/review and revocation of designations.	By regulations	
Section 87 applications for licences	Provision re licence applications (eg form, content, fees).	By regulations	Commences Summer 2006

Section 90 licence conditions & Schedule 4 Licences under Parts 2 and 3: mandatory conditions	Power to prescribe licence conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards. Under Paragraph 3, power to amend Schedule 4 so as to alter (by the addition or removal of conditions) the conditions which must be included (a) in a licence under Part 2 or 3, or (b) only in a licence under one of those Parts.	By regulations By regulations	Commences Summer 2006
Section 93 revocation of licences	Power to prescribe circumstances in which a LHA may revoke a licence.	By regulations	Commences Summer 2006
Section 97 Further provisions about rent repayment orders	Rent repayment orders.	By regulations	Commences Summer 2006
Part 4	Additional control provisions in relation to residential accommodation		
Section 103 special interim management orders	Power to prescribe categories of circumstances for the purposes of subsection (3) (ie relating to the house fall, etc.), and provide for any of the provisions of the Act to apply in relation to houses to which this section applies, or interim or final management orders made in respect of them, with any modifications specified in the Order.	By Order	Summer 2006
Section 108 General effect of IMOs: leases & licences granted by authority	Provision in respect of leases and licences granted by authority.	By Order	Summer 2006

Section 134 authorisation to make interim EDMOs	Power to prescribe exceptions for purposes of subsection (1)(b), prescribe period of time for purposes of subsection 2(a), and prescribe requirements for the purposes of subsection (2)(e). Order may include exceptions in relation to those matters under subsection (6).	By Order	Autumn 2006
Section 145 Supplementary provisions	Power to supplement the provisions of Chapter 1 or 2.	By regulations	Commences Summer 2006
Section 146 Interpretation / modification of Part 4	Modify any provision of Part 4 in relation to section 257 HMOs.	By regulations	Commences Summer 2006
Part 5 Home Information Packs (HIPs)	Part 5 is not transferred to the Assembly under the Act. However, under section 250(3) the Secretary of State must consult with the Assembly before making any regulations, which relate to residential properties in Wales.	-	SoS
Part 6	Other Provisions About Housing		
Section 179 extension of introductory tenancies	Power under new 125B(3) to the Housing Act 1996 to make provision as to the procedure to be followed in connection with a Review of a landlord's decision to extend the trial period of an introductory tenancy.	By regulations	NAW CO Timetabled to come into force on 17 November 2006.
Section 182 Exceptions to the right to buy: houses due to be demolished	Inserts new paragraphs 13-16 into Schedule 5 of the Housing Act 1985. Paragraph 15 allows a direction to be issued extending the period during which a final demolition notice is in force in respect of a dwelling house. Under paragraphs 15(8)&(9) consent can be given subject to conditions.	Direction Consent	No timetable

Section 187 RTB: Deferred resale agreements	New 163A to the Housing Act 1985 gives power to provide for subsection (1) to apply to agreements of any description specified in an order in addition to those specified under subsection (3); and for subsection (1) not to apply to agreements of any description so specified.	By Order	No timetable
Section 188 RTB: Landlords right of first refusal	Power under new 156A(4) to the Housing Act 1985 to prescribe conditions in connection with the right of first refusal for landlord in connection with a disposal.	By regulations	Consideration being given for use of Executive procedure asap
Section 189 RTB: Information to help tenants decide whether to exercise the right to buy etc	Power under new 121A to the Housing Act 1985 to specify matters desirable for secure tenants to have information about when considering whether to exercise the right to buy or the right to acquire on rent to mortgage terms.	By Order	Consideration being given for use of Executive procedure asap
Section 192 RTB: Suspension of certain rights in connection with anti social behaviour (ASB)	Expand existing regulation making power under section 171C of the Housing Act 1985 (modifications of Part 5 in relation to preserved right to buy), and section 17 of the Housing Act 1996 (application of that Part in relation to right to acquire dwelling). These Regulations may make provision for continuing the effect of a suspension order where the secure tenancy in respect of which the order was made has been replaced by an assured tenancy.	Amendment to regulation-making power	Timetable not yet finalised. Timetabling is dependant upon receiving the English (DCLG) regulations
Section 194 disclosure of information as to orders in respect of ASB	Expand existing regulation making power under section 171C of the Housing Act 1985 or section 17 of the Housing Act 1996. Regulations may make provision corresponding to subsections (1)-(3) of this section so far as those subsections relate to section 138(2B) of Housing Act 1985.	Amendment to regulation-making power	Timetable not yet finalised. Timetabling is dependant upon receiving the English (DCLG) regulations.
Disposals by local authorities			

Section 197 local authority's right of first refusal	New section 36A to the Housing Act 1985 gives power to prescribe conditions for and in connection with conferring a right of first refusal on the former landlord or some other person.	By regulations	Consideration being given for use of Executive procedure asap
Section 198 deferred resale agreements	New section 39A inserted into the Housing Act 1985 in respect of deferred resale agreements. Power to provide description of agreement etc.	By Order	No timetable
Disposals by Registered Social Landlords (RSL)			
Section 200 RSL's right of first refusal	New section 12A inserted into the Housing Act 1996. Power to prescribe conditions for and in connection with conferring a right of first refusal on the former landlord or some other person.	By regulations	Consideration being given for use of Executive procedure asap
Section 201 deferred resale agreements	New section 15A of the Housing Act 1996 can provide for subsection (1) to apply to agreements of any description specified in the order in addition to those within subsection (3).	By order	No timetable
Disposals by Housing Action Trust (HAT)			
Section 204 right of first refusal	Under new 2A (inserted into Schedule 11 Housing Act 1988) power to prescribe conditions for and in connection with conferring a right of first refusal on former landlord.	By regulations	(No HATs in Wales)
Section 205 deferred resale agreements	Inserts new paragraph 8 into Schedule 11 to the Housing Act 1988. May provide for those matters under subsection (5)(a) &(b).	By Order	No timetable
Mobile Homes			

<p>Section 206 particulars of site agreements to be given in advance</p>	<p>Substitutes new s1 into the Mobile Homes Act 1983. Power to prescribe requirements in respect of site agreements.</p> <p>Draft Mobile Homes (Written statement) (Amendment) Regulations 2005</p>	<p>By Regulations</p>	<p>No timetable</p>
<p>Section 208 power to amend implied terms in site agreements</p>	<p>New section 2A inserted into the Mobile Homes Act 1983. Power to amend terms implied in site agreements. Power to amend Part 1 or 2 of Schedule 1 to the Act.</p> <p>Draft Mobile Homes (Amendment of Schedule 1 of the Mobile Homes Act 1983) Regulations 2005</p>	<p>By Order</p>	<p>No timetable</p>
<p>Section 212 tenancy deposit schemes (TDS) & Schedule 10</p>	<p>Power to confer/impose on scheme administrators powers/duties in connection with arrangements under subsection (1), ie for securing that one or more TDSs are available for the purpose of safeguarding tenancy deposits paid in connection with shorthold tenancies.</p> <p>Under Schedule 10, paragraph 3(5) the relevant arrangements under section 212 (1) may provide for any amount paid in accordance with paragraph 4 to be paid with interest at such rate as specified (see Paragraph 3(5)(a)&(b)).</p>	<p>By regulations</p> <p>By Order</p>	<p>April 2007</p>
<p>Section 213 requirements relating to tenancy deposits</p>	<p>Power to prescribe forms relating to tenancy deposits.</p>	<p>Regulations</p>	<p>April 2007</p>
<p>Section 216 Overcrowding</p>	<p>To make provision for amending the legislation that governs the control of overcrowding in housing accommodation.</p>	<p>By Order</p>	<p>To be determined - may be covered by Part 1 of the Act</p>

<p>Section 218</p> <p>Amendments relating to RSLs & Schedule 11 amendments relating to RSLs</p>	<p>Paragraph 16 of Schedule 11 inserts new Paragraph 15A into Schedule 1. May provide for any provisions of paragraph 15(2)-(6) to apply in relation to a RSL within paragraph (2) in such circumstances and with such modifications....</p>	<p>By regulations</p>	
<p>Section 220</p> <p>additional power to give grants for social housing</p>	<p>New section 27A to the Housing Act 1996. Power to make provision in connection with the making of grants under the section in particular those matters under sub-section 4(a)-(d).</p>		<p>NAW CO</p> <p>No plans to commence provisions in Wales</p>
<p>Sections 226</p> <p>Guidance in relation to section 225 (Accommodation needs of Gypsies and Travellers)</p>	<p>Power to issue guidance to LHAs in respect of carrying out assessments in respect of Gypsies and Travellers, and the preparation of any strategies that LHAs are required to prepare.</p>	<p>Guidance</p>	<p>No timetable</p>
<p>Section 228</p> <p>& Schedule 12</p> <p>Social Housing Ombudsman for Wales ("SHOW")</p>	<p>Inserts new section 51B into the Housing Act 1996 and gives the National Assembly for Wales power to make provision about the investigation by Social Housing Ombudsman for Wales of complaints against social landlords in Wales and in particular those matters under subsection (2).</p> <p>The new S51C(3) provides for the Assembly, by order to add to or amend</p>	<p>By Regulations</p>	<p>NAW CO</p> <p>Commencement Order to come into force on 14 July 2005</p> <p>Regulations to come into force on 15 July 2005</p> <p>Not planned</p>

	the descriptions of landlords who are to be treated as social landlords in Wales.	By Order	
Part 7	Supplementary and Final provisions		
Section 229 residential property tribunals (RPT) & Schedule 13 – procedure of RPTs	Power to specify provision for and in connection with conferring jurisdiction on RPTs.	By Order	Summer 2006
	Power under Paragraph 1 to make regulations about the procedure of RPTs.	By regulations	Summer 2006
Section 232 register of licences and management orders	Power to prescribe requirements for LHAs to keep register of licences and management orders.	By regulations	Summer 2006
Section 233 approval of codes of practice with regard to the management of HMOs	Power to (1) approve a code of practice laying down standards of conduct to be followed with regard to the management of HMOs; (2) approve a modification of such a code; (3) withdraw the authority's approval of such a code or modification.	By Order	Summer 2006
Section 234 management regulations in respect of HMOs	Power to make provision to ensure that HMOs have satisfactory management arrangements and that satisfactory standards of management are observed.	By regulations	Summer 2006
Section 244 power to prescribe forms	Prescribe form of any notice, statement or other document which is required or authorised to be used under, or for the purposes of, this Act.	By regulations	Commences Summer 2006
Section 245 Power to dispense with notices	Power to dispense with the service of a notice, required to be served by a LHA under this Act if satisfied it is reasonable to do so. Can be given subject to conditions. Before issuing dispensation, must have regard to the need to ensure, so far as possible, that the interests of any person are not prejudiced by the dispensation.	Dispensation	Commences Summer 2006

Section 250 Orders and Regulations	Power to make incidental, supplementary, consequential, transitory, transitional or saving provision as the Assembly considers appropriate.	By order/ regulations	
Section 253 Local Inquiries	Power for the purposes of execution of any of the authority's functions under this Act may cause such local inquiries to be held as the authority considers appropriate.	Local Inquiry	
Section 254 meaning of 'House in Multiple Occupation' Schedule 14 (building which are not HMOs)	Power to amend this section and sections 255 to 259 with a view to securing that any building/part of a building of a description specified is or is not to be a HMO for any specified purposes of this Act, provide for amendments to have effect and make consequential amendments.	By regulations	Commences Summer 2006
Section 257 HMOs Certain Blocks of Flats	Power for local authorities to apply additional HMO licensing to poorly converted blocks of flats that do not conform to building regulations.	By Regulations	Autumn 2006
Section 258 HMOs: persons not forming a single household	Power to specify a description of circumstances in which persons are to be regarded as not forming a single household.	By regulations	Summer 2006
Section 259 persons treated as occupying premises as only or main residence	Power to specify a description of circumstances in which persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.	By regulations	Summer 2006
Section 264 Calculation of numbers of persons	Prescribe rules with respect of the calculation of numbers of persons for the purposes of any provision made by/under this Act specified in the rules, or any order/licence made/granted under this Act of any description so specified. Rules may provide for those matters under subsection (2).	By order or regulations	Summer 2006