

These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004

HOUSING ACT 2004

EXPLANATORY NOTES

OVERVIEW

Expressions and abbreviations used throughout these notes

9. *Local housing authority* is defined in section 261. Throughout these notes local housing authority has been abbreviated to LHA.
10. *Home condition reports* are defined in section 164 as documents which are prescribed by regulations under section 163 and dealing with the physical condition and energy efficiency of a residential property.
11. *Home information packs* are described in Part 5 of the Act. In section 148 they are given a general description as a collection of documents relating to the property being sold, or the terms on which it is being offered for sale. The actual content of a home information pack for a particular property will be prescribed in regulations made under section 163 and for most purposes, the Act defines the pack as something that fulfils the requirements of these regulations, or purports to.
12. *Home inspector* is not a term which is used in the Act, but it is used in these notes to describe a member of an approved certification scheme who may make home condition reports by virtue of section 164.
13. *House in Multiple Occupation* is defined in sections 254 to 260. Throughout these notes House in Multiple Occupation has been abbreviated to HMO.
14. *Interim Management Order* and *Final Management Order* are covered by Chapter 1 of Part 4 of the Act. For the purposes of these notes, they are referred to as IMOs and FMOs. Interim empty dwelling management orders and final empty dwelling management orders are covered by Chapter 2 of Part 4 of the Act. For the purposes of these notes, they are referred to as interim EDMOs and final EDMOs. Throughout the notes the expression management orders refers to all the above orders made under Part 4.
15. *Tenancy deposit schemes* are covered in Chapter 4 of Part 6 of the Act. Throughout these notes, tenancy deposit schemes has been abbreviated to TDS.
16. *Residential property tribunal* is defined in section 229 of the Act. Throughout these notes residential property tribunal has been abbreviated to RPT.
17. The Act confers powers to make secondary legislation and give approvals on *the appropriate national authority*. This is defined in section 261 to mean the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales.
18. Where these notes refer to "he" or "him", this can also be read as "she" or "her" unless stated otherwise.
19. References to the singular also include the plural unless stated otherwise.

Part 1: Housing conditions

20. **Part 1** of the Act replaces the existing housing fitness standard contained in the Housing Act 1985 with the Housing Health and Safety Rating System. It also adapts and extends the powers of enforcement currently available to LHAs to tackle poor housing conditions.
21. These changes are intended to help LHAs to prioritise their intervention based on the severity of the health and safety hazards in the home.
22. The new framework is largely through free-standing provisions, although some of the provisions of the 1985 Act will remain in that Act with appropriate amendments.

Part 2: Licensing of houses in multiple occupation (HMOs)

23. **Part 2** of the Act introduces a mandatory scheme to licence HMOs of a description contained in regulations. It is intended initially to apply this only to the larger higher risk HMOs of 3 or more storeys occupied by 5 or more people. LHAs are given power to extend licensing in their districts to other categories of HMO, subject to carrying out consultation and with the approval of the appropriate national authority.
24. The term HMO applies to a wide range of housing types, mainly in the private rented sector, that young lower-income single people, including some particularly vulnerable and disadvantaged groups, typically occupy. Physical and management standards in HMOs are often low. Current statutory controls on HMOs are confusing and have grown up over several decades.

Part 3: Selective licensing of other residential accommodation

25. **Part 3** of the Act introduces a power for LHAs to introduce selective licensing to deal with particular problems in an area. Selective licensing will be primarily focused on:
 - areas of low housing demand, or that are likely to fall into that category; and
 - other areas suffering from anti-social behaviour
26. Low house prices in areas of low demand have resulted in an influx of unprofessional landlords purchasing properties to rent. These people frequently show no interest in managing their properties properly, often letting to anti-social tenants who cause a range of problems. This, in turn, can create misery for the local community and cause further destabilisation of these areas.
27. Although these problems tend to be concentrated in areas of low housing demand, other districts also suffer from the activities of poor landlords and anti-social tenants. Accordingly this power will be available to LHAs to tackle problems of anti-social behaviour in areas that do not experience low housing demand.
28. The Act provides a discretionary power, subject to carrying out consultation and to the approval of the appropriate national authority, for LHAs to license all private landlords in a designated area with the intention of ensuring that a minimum standard of management is met. In order for a scheme to be approved, such a selective licensing scheme must be shown to be co-ordinated with an authority's wider strategies to deal with anti-social behaviour and regeneration.
29. The Act also provides the appropriate national authority with powers to prescribe by regulation other circumstances in which discretionary schemes may be made.

Part 4: Additional control provisions in relation to residential accommodation

30. **Chapter 1** of Part 4 contains provisions for enforcement action in respect of properties licensable under Parts 2 and 3 and for individual properties where a residential property tribunal is satisfied that a property, which is not required to be licensed, requires the

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intervention of the LHA. Chapter 2 enables LHAs to take over the management of long-term empty properties and to bring them back into occupation. Chapter 3 contains provisions on overcrowding in non-licensable HMOs.

Part 5 - Home information packs

31. **Part 5** of the Act imposes new legal duties on people marketing residential properties in England and Wales. Before marketing a property, the seller or, more usually, their estate agent must have a home information pack of standard documents available for prospective buyers.
32. In England and Wales, an offer to buy a property and acceptance of that offer are usually made "subject to contract". Normally, the acceptance of an offer does not constitute a legally binding agreement, until an exchange of written contracts proves that an agreement has been reached. Between agreeing terms and exchanging contracts, both the buyer and seller commonly do a number of things. For the seller, this could include:
 - obtaining the title deeds to the property;
 - establishing title and producing Land Registry office copy entries where the property is registered;
 - replying to pre-contract enquiries;
 - preparing a draft contract.
33. The buyer will usually carry out local searches and make other enquiries of the local authority and other organisations. The buyer may also arrange a survey.
34. Therefore these documents and information are, under current practices, normally available only after terms have been negotiated and agreed "subject to contract".
35. **Part 5** of the Act aims to bring forward the availability of some of this information to the start of the process. It requires the person responsible for marketing a residential property to have a home information pack before marketing begins. The pack is expected to contain documents and information similar to those mentioned above, including a report on the condition of the property.

Part 6: Other provisions about housing

36. The Act gives LHAs further tools to tackle anti-social behaviour in social housing. These measures complement those introduced by the Anti-social Behaviour Act 2003.
37. **Part 6** introduces changes to the Right to Buy (RTB) scheme. This is a statutory scheme enabling secure tenants to buy the homes that they live in, at a discount, from their landlord. Landlords are most often LHAs, but registered social landlords (and certain other social landlords) may also have tenants who have the RTB, or preserved RTB, both for historical reasons and as a result of large-scale voluntary transfers of properties from LHA ownership. Provisions in the Act will amend the RTB scheme with a view to tackling exploitation of the rules by property developers and tenants.
38. **Part 6** also contains provisions to better protect park home owners. These changes will help deter unscrupulous site owners from exploiting and harassing occupiers, and give a power to the Secretary of State to make further changes to the implied terms of occupation agreements.
39. Changes have been made to bring the treatment of local authority owned gypsy and traveller sites into line with that for privately owned caravan sites with regard to protection from unlawful eviction and harassment.

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40. The powers of the Housing Corporation and the National Assembly for Wales under the Housing Act 1996 are extended to allow them to give grants to persons other than registered social landlords for specified purposes.
41. [Part 6](#) extends eligibility for disabled facilities grant to include all those occupying caravans as their only or main residence.
42. A duty has been introduced upon LHAs to carry out assessments of the accommodation needs of Gypsies and Travellers residing in or resorting to their district, when they undertake a review of housing needs in the district.
43. [Part 6](#) sets up the office of Social Housing Ombudsman for Wales to investigate complaints against social landlords in Wales.
44. [Part 6](#) also establishes tenancy deposit schemes. These will protect tenants' deposits in the private rented sector and help to ensure that such deposits are not misappropriated by landlords or their agents.

Part 7: Supplementary and final provisions

45. [Part 7](#) requires LHAs to keep registers of licences and management orders. It also provides for the approval of statutory codes of management practice, and for the making of management regulations, relating to HMOs.
46. For the purposes of Parts 1 to 4 of the Act it provides for documents and other information to be produced. It provides powers of entry to property and powers to prescribe the form of any notice, statement or other document required or authorised under the Act.
47. Other supplementary provisions provide for the way in which orders and regulations are to be made.
48. Provisions in Part 7, in conjunction with Schedule 14, provide a definition of HMO.