

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

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7

Section 229: Residential property tribunals

550. **Section 229** provides that the jurisdiction under this Act or any other enactment given to a RPT is to be exercised by a Rent Assessment Committee constituted under the Rent Act 1977 and when exercising that jurisdiction a committee is a RPT. The section also provides that the appropriate national authority can, by order approved by both Houses of Parliament, confer additional jurisdiction on the RPT and modify the Act or any other enactment accordingly.

Section 230: Powers and procedure of residential property tribunals

551. **Section 230** confers powers on the RPT to give directions in order to dispose of appeals and applications effectively so as to avoid the necessity for repeated appeals or applications in relation to the same matter. The section also gives effect to Schedule 13, which provides for regulations to govern tribunal procedures.

Section 231: Appeals from residential property tribunals

552. **Section 231** provides that an appeal against a decision of the RPT is to the Lands Tribunal. An Appeal can only be made with the permission of the RPT or the Lands Tribunal and only within the time specified in the Lands Tribunal rules.

Section 232: Register of licences and management orders

553. **Section 232** requires LHAs to keep an up to date register of all Part 2 or 3 licences, exemption notices, and management orders made under Chapters 1 or 2 of Part 4. The register must be available for public inspection and persons may take copies thereof (on payment of a fee).

Section 233: Approval of codes of practice with regard to the management of HMOs etc

554. **Section 233** allows the appropriate national authority to approve, or approve a modification to, codes of practice in relation to the management of HMOs or properties described in the Schedule 14 (buildings which are not HMOs other than for the purpose of Part 1). Non-compliance with a code is not in itself an offence. However, failure to comply with an approved code may be used in evidence in any proceedings before a court or a tribunal.

Section 234: Management regulations in respect of HMOs

555. **Section 234** provides that the appropriate national authority may make regulations with the aim of securing satisfactory standards of management in

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HMOs of the description set out in the regulation. In particular the regulations may impose duties on the managers to repair and maintain the fabric of the building and facilities and equipment within it and upon the occupiers not to frustrate the manager in exercising his duties under the regulations. Failure to comply with the regulations is a criminal offence, subject to a level 5 (maximum £5,000) fine.

Section 235: Power to require documents to be produced

Section 236: Enforcement of powers to obtain information

556. **Section 235** allows an LHA to require the production of documentation that the authority might need to carry out its functions under Parts 1 to 4 of the Act and to investigate whether an offence committed under those Parts in relation to any premises. A notice requiring the production of documentation must specify or describe the documents, or class of documents, which must be produced and must specify a time and place at which they must be produced. The notice must explain the consequences of not complying with the notice. Once a document has been produced it may be copied by the person who receives it. Under subsection (6) document is defined as including information which is not in legible form, this might include for example documents held on computer in a zipped file. Only a "relevant person" can be required to produce documentation under this section and subsection (7) defines "relevant person" for the purpose of this section.
557. **Section 236** provides enforcement powers relating to section 235. Anyone failing to comply with a notice to produce a document commits an offence and is liable to a fine not exceeding level 5 on the statutory scale (currently £5,000). Anyone deliberately altering or destroying a requested document can be subject to an unlimited fine if tried in the Crown Court. Subsection (2) provides a defence of reasonable excuse for failing to comply with the notice.

Section 237: Use of information obtained for certain other statutory purposes

558. **Section 237** allows an LHA to use information that it has obtained for housing benefit or council tax purposes in order to carry out its functions under Parts 1 to 4 of this Act. So, for example, if several claims for housing benefit are made from the same address, the LHA will be able to use information obtained for the purposes of administering the claims to investigate whether the property in question ought to have a licence under Part 2 of the Act. This information may also help the LHA to decide the actual number of occupants of a dwelling, in relation to hazards under Part 1, particularly those which could be exacerbated by over-occupation, such as hazards from fire.

Section 238: False or misleading information

559. **Section 238** makes it an offence to knowingly or recklessly supply false or misleading information under Parts 1 to 4 or Part 7 of the Act, or to another person who will then use that information under Parts 1 to 4 or Part 7 of the Act. The maximum penalty on summary conviction is a fine not exceeding level 5 on the statutory scale (currently £5,000).

Section 239: Powers of entry

560. **Section 239** gives an LHA powers of access to properties in pursuance of its duties under Parts 1 to 4 and Part 7 of the Act. The power of entry is exercisable where an inspection is to take place under section 4, the premises to be inspected are the subject of an improvement notice or prohibition order or a management order under Part 4 of the Act is in force. The person exercising the power of entry must be authorised in writing and this authorisation should set out the purpose for which the entry is authorised. Before exercising the power of entry the person authorised to enter must give at least 24 hours notice to the owner or occupier of the premises that they intend to enter, however

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the power of entry may be exercised at any reasonable time, without giving prior notice if entry is required to ascertain whether an offence has been committed under sections 72, 95 or 233(3) of the Act. Permission under this section does not include a power to use force to obtain entry. This power of entry includes entry for the purpose of taking samples.

561. Examples of when this power could be used are: to gain access to a property to ensure that a house in multiple occupation (HMO) is suitable for multiple occupation and reaches the prescribed standards set out in Part 2 of the Act; or when the LHA wished to establish whether the provisions of an improvement notice or prohibition order have been properly complied with.
562. See section 243 for provisions as to which officers within a LHA are empowered to give authorisations under this section.

Section 240: Warrant to authorise entry

563. **Section 240** enables a Justice of the Peace to issue a warrant authorising entry to premises for the purposes of an inspection under section 4, an inspection to determine whether any functions under Parts 1 to 4 of Part 7 of the Act should be exercised, surveying or examining premises which are the subject of an improvement notice, a prohibition order or a management order under Part 4. A warrant should specify the purposes for which the entry is allowed. A warrant to authorise entry may only be granted when either entry under section 239 has been refused, or the property is empty and immediate access is necessary, or prior warning of entry is likely to negate the purpose of access. A power of entry under a warrant may include the power to enter by force if necessary.

Section 241: Penalty for obstruction

564. **Section 241** makes it a criminal offence to obstruct a representative of an LHA in carrying out the LHA's functions under Parts 1 to 4 and sections 239 and 240. The maximum penalty on summary conviction (conviction in the Magistrates' Court) is a fine not exceeding level 4 on the statutory scale (currently £2,500). Subsection (2) provides a defence of reasonable excuse for obstructing the representative.

Section 242: Additional notice requirements for protection of owners

565. **Section 242** allows the owner of a property to require notice from the LHA of any relevant action taken under Parts 1 to 4 of this Act relating to their property. This provision is intended to ensure that any owner who is not actually managing or controlling his property is kept informed.

Section 243: Authorisations for enforcement purposes etc

566. **Section 243** requires that a person exercising the powers set out in subsection (1), including the power to require the production of documents under section 235 and the power of entry under section 239, must be authorised by the appropriate officer of the local housing authority. Subsection (3) defines the appropriate officer as a person who is a deputy chief officer within the meaning of section 2 of the Local Government and Housing Act 1989 and whose duties consist of or include duties relating to the exercise of the relevant functions, or is an officer to whom such a person reports or is accountable.

Section 244: Power to prescribe forms

567. **Section 244** allows the appropriate national authority to prescribe the form of any notice, statement or document required under the Act.

Section 245: Power to dispense with notices

568. **Section 245** provides that the appropriate national authority may allow an LHA to dispense with the service of a notice if it is reasonable to do so. Before giving a dispensation, the appropriate national authority must have regard to the need to ensure as far as possible that the interests of any person are not prejudiced by the dispensation.

Sections 246 - 248: Service of documents and things done electronically

569. **Sections 246 - 248** make provision for the service of documents, including the service of documents in electronic form.

Section 249: Proof of designations

570. **Section 249** makes provision regarding proof of designations made by an LHA under Part 2 or 3 stating that a certified copy of the scheme is prima facie evidence that the scheme has been made.

Section 250: Orders and regulations

571. **Section 250** makes provision in relation to orders and regulations made under the Act. Any power of the Secretary of State or the National Assembly for Wales to make orders or regulations under the Act is exercisable by statutory instrument. Under subsection (3), the Secretary of State must consult the National Assembly for Wales before making any regulations under Part 5 which relate to residential properties in Wales.
572. The section provides for different procedures to apply in different cases. Commencement powers, as is usual, have no form of Parliamentary procedure. Detailed and technical orders and regulations will be subject to the negative resolution procedure. Orders and regulations listed in subsection (5) are subject to the affirmative resolution procedure.

Section 251: Offences by bodies corporate

573. **Section 251** makes provision in respect of offences by a body corporate, for example, a limited company. It provides that a representative of an organisation, that is a director, manager, secretary or other similar officer of the body corporate, is capable of being liable as well as the organisation itself.

Section 252: Power to up-rate level of fines for certain offences

574. **Section 252** allows the Secretary of State to change the fines for certain offences in line with inflation.

Section 253: Local inquiries

575. **Section 253** allows the appropriate national authority to require a local inquiry to be held in connection with the carrying out of its functions under the Act, if it considers that it is appropriate to do so.

Section 254: Meaning of "house in multiple occupation"

576. **Section 254** provides a definition of a "house in multiple occupation". To fall within that definition a privately rented building must be
- a block of flats within the meaning of section 257; or
 - be subject to an HMO declaration; or
 - meet one of the three tests set out in the section.

577. The standard test in subsection (2) requires that unrelated occupiers of the building share basic amenities in living accommodation that is not a self contained flat or flats, or that the living accommodation lacks one or more of those amenities. Subsection (3) provides that a self contained flat can be an HMO if unrelated occupiers share basic amenities, or the flat lacks one or more of those amenities.
578. Subsection (4) applies to private rented converted buildings which meet the shared or lack of facilities tests in (2) and also buildings that include flats where the basic amenities for the exclusive use of the occupant are located outside of the main living accommodation.
579. [Section 254](#) also contains definitions of “self-contained flat”, “converted building” and “basic amenities”. In addition it exempts those buildings in Schedule 14 from the definition and provides regulation making powers for the appropriate national authority to amend this section and related provisions as they relate to the definition of HMO.

Section 255: HMO declarations

580. [Section 255](#) provides that where an LHA is satisfied that although not exclusively occupied by people as their main or only home, a building is occupied to a significant degree by such persons (and otherwise the occupation and building satisfies the HMO tests) it may issue a declaration that the building is an HMO. This could be used, for example, where it is not entirely clear that a building was being predominantly used as a hotel catering for short term guests or as a hostel accommodating permanent residents. An HMO declaration puts beyond doubt that such a building is to be regarded as an HMO. It must serve the declaration on the relevant persons as defined in the section and they have a right of appeal against the making of a declaration. The declaration does not come into force until the appeal process is finished, if on appeal the decision to make it is confirmed.

Section 256: Revocation of HMO declarations

581. [Section 256](#) provides that when an HMO declaration is in force and the LHA is satisfied that the test for making an HMO declaration is no longer satisfied, it can revoke the declaration and the building will cease to be an HMO. An LHA can revoke the declaration on its own volition or upon an application from a relevant person. If it decides not to revoke the declaration where it has been asked to do so, it must tell the applicant the reason for its decision. If the applicant is not satisfied with that decision there is a right to appeal. On appeal the tribunal may confirm the LHAs decision not to revoke the declaration or may reverse that decision and revoke it.

Section 257: HMOs: certain converted blocks of flats

582. [Section 257](#) defines the “converted blocks of flats” that are classified as HMOs. These are blocks that have been converted into self-contained flats that did not comply with the 1991 Building Regulations when they were converted and where less than two-thirds of the flats are owner-occupied.

Section 258: HMOs: persons not forming a single household

583. [Section 258](#) provides that persons do not form a single household for the purpose of section 254 unless they are members of the same family or they form a prescribed relationship under regulations made by the appropriate national authority. The section defines “family” for these purposes.

Section 259: HMOs: persons treated as occupying premises as only or main residence

584. [Section 259](#) sets out that in certain circumstances persons are to be treated as occupying accommodation as their only or main residence (notwithstanding they may have a home

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elsewhere) for the purpose of section 254. These are students and those in refuges fleeing domestic violence. The appropriate national authority may by regulations prescribe other descriptions of circumstances for the purpose of this section.

Section 260: Presumption that sole use condition or significant use condition is met

585. Section 260 provides that in any legal proceedings it is presumed in respect of a building that the sole use condition or the significant use condition is met, unless there is evidence to the contrary.

Section 261: Meaning of "appropriate national authority", "local housing authority" etc.

586. Section 261 gives the meaning of appropriate national authority. In relation to England, the expression means the Secretary of State. In relation to Wales it means the National Assembly for Wales. The section also defines the expression local housing authority.

Section 262: Meaning of "lease", "tenancy", "occupier" and "owner" etc.

587. Section 262 gives the meaning, for the purpose of the Act, of "lease", "tenancy", "occupier" and "owner", and derivations of those terms. In particular subsection (4) provides that the definition of "lessee" includes a statutory tenant. The expressions include lettings granted by the LHA, but the definition of "occupier" does not apply where any different definition is provided elsewhere in the Act for specific purposes.

Section 263: Meaning of "person having control" and "person managing" etc

588. Section 263 defines for the purpose of the Act that "person having control" is the person who receives (directly or as an agency or trustee) the market rents from the tenants for a given premises or is otherwise entitled to receive the rents if the premises were let (i.e. an owner) "Person Managing" is someone who receives the rents directly from the occupier (but "rent" includes ground rent), so such a person could be a managing agent.

Section 264: Calculations of numbers of persons

589. Section 264 provides that that the appropriate national authority can prescribe rules with respect to the calculation of numbers of persons for the purposes of any provision of the Act, any provision made under the Act or any order or licence made or granted under the Act.

Section 265: Minor and consequential amendments

590. Section 265 gives effect to Schedule 15 to the Act which contains minor and consequential amendments. Subsection (2) enables the Secretary of State to make supplementary, incidental and consequential provisions by order for the purposes of the Act. Subsection (3) allows such an order to modify any Act or subordinate legislation for those purposes. Any order made under subsection (3) is subject to the affirmative resolution procedure. The power in subsection (2) is also exercisable by the National Assembly for Wales in relation to provisions dealing with matters with respect to which the functions are exercisable by the Assembly.

Section 266: Repeals

591. Section 266 gives effect to Schedule 16 to the Act which contains repeals.

Section 267: Devolution: Wales

592. Functions of the Secretary of State under the Housing Acts of 1985, 1988 and 1996 are exercisable, as respects Wales, by the National Assembly for Wales, pursuant to the National Assembly for Wales (Transfer of Functions) Order 1999. This section provides

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that the reference in that Order to those acts is to be treated as a reference to those acts as amended by the Act.

Section 268: The Isles of Scilly

593. The Act applies to the Isles of Scilly, but section 268 allows the Secretary of State to make modifications as to how the Act applies, by order.

Section 270: Short title, commencement and extent

594. [Section 270](#) provides that in general the Act extends to England and Wales and makes provision for commencement. Details of commencement of each of the provisions of this Act are set out in a separate section at the end of these notes.
595. Subsection (9) enables the Secretary of State, by order, to make transitional provisions in connection with the coming into force of any provision of this Act and subsection (10) enables the National Assembly for Wales to make such provision for matters with respect to which functions are exercisable by the Assembly.