

REGULATORY APPRAISAL

HOUSING, WALES

THE RESIDENTIAL PROPERTY TRIBUNAL PROCEDURE (WALES) REGULATIONS 2006

Background

1. Residential property tribunals (RPTs) are created by the Housing Act 2004 to determine applications and appeals under Parts 1, 2, 3 and 4 of the Housing Act 2004 and certain applications and appeals under Part 9 of the Housing Act 1985.
2. The new jurisdiction given under the Act to RPTs is a logical extension to current jurisdictions. RPTs will normally consist of three members: a professionally qualified chair who is usually legally qualified, an expert who is usually a building surveyor or a management consultant and a lay member with relevant practical experience.
3. The Housing Act 2004 requires or empowers the State (in the form of Local Housing Authorities) to interfere with an individual's property. It is, therefore, necessary, in order to comply with the Human Rights Act 1988, to provide a system, which allows for appeals against decisions to be made to an independent tribunal.
4. These Regulations have been drafted to enable a speedy and informal approach to determining appeals and applications. In addition, unlike in the county courts system, RPT members will be able to take into account their own expert knowledge to help reach decisions, and it is expected that the tribunal will usually inspect the appeal property (if the appeal relates to its physical or management condition).
5. However, full provision has also been made for disclosure of documents and information to the tribunal and between parties, and for reliance on expert advice where this is considered necessary. Within the rules set out by the procedure regulations, the tribunal may decide on the best procedure in relation to a given application or appeal.
6. The tribunal will normally only hold a hearing if either party request one, otherwise the appeal will be dealt with using the written representations the RPT receives.
7. These Regulations require cases before the RPT to be heard in public, subject to some exceptions at the discretion of the tribunal. Decisions on any exceptions will be based on the circumstances of individual cases.

Purpose and intended effect of the measure

8. These Regulations will implement the procedure to be followed for applications and appeals made to a residential property tribunal under the Housing Act 2004 or Part 9 of the Housing Act 1985. The Act transfers

jurisdiction from the County Court to RPTs where proceedings are brought in relation to demolition orders under sections 269, 272 and 317 of the 1985 Act and under section 318 of that Act, where a person applies for authorisation to enter land, which is harmful to health and safety to carry out works. These applications concern, or relate to provisions in connection with housing conditions and enforcement of housing standards, including emergency remedial action, demolition orders and slum clearance, regulation of houses in multiple occupation, management of dwellings and empty dwellings and overcrowding.

9. Applications and appeals to which these Regulations apply are as follows:
- decisions made by Local Housing Authorities concerning the housing health and safety rating system (HHSRS);
 - mandatory licensing of houses in multiple occupation (HMOs);
 - selective licensing of other residential accommodation;
 - management orders applying to HMOs and other residential accommodation;
 - empty dwelling management orders (EDMOs); and
 - demolition orders and applications regarding unfit housing under Part 9 of the 1985 Act.

Risk Assessment

10. The overriding objective of these Regulations is to ensure that when a tribunal exercises any power under these Regulations or interprets any Regulation, it must seek to deal fairly and justly with applications, which it is to determine. The risk of not making these Regulations is that there will be no provision for appeals to be made, the public would not have recourse to challenge local authority decisions and local authorities would be unable to apply for Empty Homes Management Orders.

Options

Option 1: Do Nothing

11. If these Regulations are not made, there will be no provision for appeals to be made, the public would not have recourse to challenge local authority decisions and local authorities would be unable to apply for Empty Homes Management Orders.

Option 2: Make the Legislation

12. Will allow for appeals under the Housing Act 2004 to be heard by newly created Residential Property Tribunals. The RPT as a specialist tribunal will be better placed to deal with proceedings especially with regards to HHSRS and licensing appeal decisions, which involve factual matters in

relation to which tribunal panel members could be expected to have appropriate experience.

Benefits

13. The Regulations will ensure that when a tribunal exercises any power under these Regulations or interprets any Regulation it must seek to deal fairly and justly with applications which it is to determine. The public and local authorities will both benefit from the introduction of these Regulations, because they will have access to the right of appeal and to make applications, which otherwise would not be available to them.

Costs

14. All work arising from these Regulations will be accommodated within existing and planned, Assembly administration costs budgets. Consequently, if the Regulations are agreed, any additional financial implications will be met by the Assembly.
15. The workload administered by the RPT has been steadily diminishing since 2000, reflected mainly in the decline of fair rent appeals. Appeals under the new jurisdictions are expected to be off-set by this decline. The number of appeals that will be made to the RPT cannot be estimated until the new arrangements have been in place and have been running for some time.
16. The RPT is (subject to the limited exceptions specified in the Act) a no cost jurisdiction and, therefore, will not normally award the other sides' costs against a losing party. The Regulations provide that in the rare cases where the tribunal contemplates making a costs order, in accordance with the provisions in the Act, the paying party will be given the opportunity to make representations before the order is made.

Consultation

With Stakeholders

17. Consultation on these Regulations with the Council on Tribunals was required by statute, and there was also close consultation with the Tribunal Service in the drafting of the Regulations. The Department for Constitutional Affairs was also consulted regarding the parallel amendments to the Lands Tribunal Rules to accommodate appeals from the RPT to the Lands Tribunal.
18. Views were sought on whether licensing appeals should continue to be determined by the county court, or by a dedicated tribunal, during the consultation on the Licensing of Houses of Multiple Occupation in April 1999. Formal consultation on the Implementation of Licensing Houses in Multiple Occupation (Wales) Regulations 2006 took place from 13 January 2005 to 28 February 2005 following the introduction of the Housing Act 2004 in November 2004 and a list of consultees is attached at Annex A. 27 responses were received to this consultation, the vast majority of which welcomed the licensing proposals as an effective way of

regulating the sector. Consequently, formal consultation on the Regulations themselves is not appropriate in this case.

19. In 2003 a consultation was carried out on the draft Housing Bill where views were sought on whether appeals should be heard in the county court or by a dedicated tribunal. 54% of responses found in favour of the tribunal.

With Subject Committee

20. These Regulations were notified to the Social Justice and Regeneration Committee via the list of forthcoming legislation on 12 January 2006 (SJR(2)01-06 (Paper 4, Annex 1))(pg.5) and have remained ever since. The Regulations were not identified for detailed scrutiny. The Committee was also updated on the proposed timetable for making these Regulations at its meeting on 3 May 2006 (SJR(2)-07-06(P.4)).

Review

21. The Welsh Assembly Government will monitor the new system via its sponsorship role of the Residential Property Tribunal.

Summary

22. These Regulations set out the procedures to be followed by residential property tribunals (RPTs) in determining applications and appeals in Wales and will benefit the public, who will have the right of appeal; and local authorities, who will have the right to make applications to the RPTs.

Annex A

Licensing in the Private Rented Sector – Consultation on the Implementation of HMO Licensing.

List of Consultees

All Local Authorities in Wales
All Police & Fire Authorities in Wales
All Wales Chief Housing Officers Group
Association of Chief Police Officers
Association of Letting Management Agents
Association of Residential Letting Agents
Caer Las
Cardiff Bond Board
Cardiff Law Centre
Care and Repair Cymru
Chartered Institute of Housing Cymru
Chief & Assistant Chief Fire Officers Association
Commission for Local Administration in Wales
Council of Mortgage Lenders
Federation of Small Business
Fire Brigades Union
Fire Officers Association
Further Education Funding Council in Wales
Health & Safety Executive in Wales
Higher Education Funding Council for Wales
National Association of Estate Agents
National Federation of Builders (Wales Area)
National Landlords Association
National Union of Students Wales
Pembrokeshire Action for Single Homeless
Royal College of Nursing Wales
Royal Institution of Chartered Surveyors
Royal Society for Prevention of Accidents
Salvation Army

Shelter Cymru
Society of Architects in Wales
Society of Directors of Public Protection in Wales
Trades Union Congress Wales
Wales Council for Voluntary Action
Wales Tourist Board
Welsh Federation of Housing Associations
Welsh Local Government Association
Welsh Tenants' Federation Ltd