

EXPLANATORY MEMORANDUM TO THE RENT REPAYMENT ORDERS (SUPPLEMENTARY PROVISIONS) (WALES) REGULATIONS

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

1. These Regulations supplement the provisions in Parts 2 and 3 of the Housing Act 2004 (“the Act”) which give power to local housing authorities to apply to a residential property tribunal for a rent repayment order (“RRO”) to be made in respect of a house in multiple occupation (“HMO”) required to be licensed under Part 2 of the Act, or a house that is required to be licensed under Part 2 of the Act, but which is not so licensed.

Matters of special interest to the Subordinate Legislation Committee

2. None.

Legislative Background

3. Under section 74(15) of the Housing Act 2004 the “appropriate national authority” may make regulations which it considers appropriate for supplementing the provisions in sections 73 and 74 of the Act. Under section 97(15) the appropriate national authority may make regulations which it considers appropriate for supplementing the provisions in sections 96 and 97 of the Act. In respect of both sections 74(15) and 97(15) the regulations may in particular make provision for securing that persons are not unfairly prejudiced by RROs, and for requiring or authorising amounts received by local housing authorities by virtue of such orders to be dealt with in such manner as is specified in the regulations.

4. In Wales, the “appropriate national authority” was defined by the Housing Act 2004 to be the National Assembly for Wales. Its functions were transferred to the Welsh Ministers by paragraph 30 of schedule 11 of the Government of Wales Act 2006, and they are thus empowered to make such regulations in relation to Wales. This is the first time the powers in section 74(15) or 97(15) have been exercised in relation to Wales, and the Regulations are made under the negative resolution procedure.

Purpose and intended effect of the legislation

5. The Regulations specify the purposes for which monies received by a local housing authority under an RRO may be applied and require a local housing authority to pay into the Welsh Consolidated Fund any amounts received under an RRO that are not applied for a purpose specified the Regulations These Regulations also make provisions to enable a local housing authority to amend its application for an RRO where it comes to the notice of the local housing authority that there may have been an overpayment made of housing benefit in respect of the part or parts of the HMO, or the whole or part of the house to which its application relates. In that case, the local housing authority may seek leave to amend its application by substituting for the total amount of the housing benefit paid, such part of that amount as they believe is properly payable.

6. RROs were introduced by the Act both as an enforcement tool and as a means of compensating a local housing authority or tenant when a landlord fails to comply with the licensing requirements. The making of RROs will also prevent exploitation of public resources, through the retention of housing benefit receipts, by landlords who have acted illegally.

7. Where a local housing authority is satisfied that a landlord operates a licensable property under Parts 2 (Houses in Multiple Occupation) or 3 (Selective Licensing) of the Act, without a licence, it can apply to a residential property tribunal for an RRO, to recover housing benefit payments made in respect of a person's occupation of the property. The RRO may not require the payment of any amount which is in respect of any time falling outside the period of twelve months before the authority serve the notice of intended proceedings to seek an RRO.

8. An occupier (or former occupier) may also apply to a tribunal for an RRO in respect of rent paid for a period of up to twelve months, less any amount paid by housing benefit that was paid during that period, but only if the landlord has been convicted of the offence of operating the property without a licence, or if the local housing authority has previously obtained an RRO in respect of the property. These Regulations only make provision for cases where the Authority applies and do not affect application by occupiers or former occupiers.

9. The Act does not specify how monies a local housing authority recovers under an RRO are to be applied. These Regulations permit a local housing authority to apply the monies only in relation to the exercise of its functions connected with the licensing of the property to which the order relates, or, in the event that the property cannot be licensed, for the making of a management order in connection with the property. Any excess revenues must be placed in the Welsh Consolidated Fund. Both these provisions are intended to ensure that RRO monies received by a local housing authority are not applied for more general purposes. It is hoped that the power for a local housing authority to make an order will be a deterrent against landlords failing in their duty to licence their property, rather than as a device by which local housing authorities can increase their revenues.

10. These Regulations also permit a local housing authority (with the permission of a tribunal) to amend its application for an RRO so that it excludes any amount of overpayment of housing benefit which it believes may have been included in the amount for which it originally applied. Housing benefit legislation contains detailed provisions enabling overpaid housing benefit to be recovered, and so the intention is that the RRO legislation should not be used for the recovery of such overpayments. Since monies recovered under an RRO are no longer be treated as housing benefit, even if they were originally paid to the landlord in the form of housing benefit, they cannot be recovered as housing benefit. Consequently it is important for an authority to ensure that the right recovery mechanism is used, and to be able to adjust its RRO application should an overpayment come to light.

Implementation

11. It is intended that this instrument should come into force on 4 March 2008. Similar legislation was introduced in England on 6 April 2007. Implementation in Wales is later than England due to pressures on legislative timetabling and Assembly elections.

Consultation

12. The introduction of these Regulations was covered by the comprehensive consultation exercise that was undertaken in conjunction with the introduction of the Housing Act 2004.

Regulatory impact Assessment

13. A Regulatory Impact Assessment has not been prepared for this instrument as it does not impact on business, charities or voluntary bodies.