

Explanatory Memorandum to Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016

This Explanatory Memorandum has been prepared by Housing Policy Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with:

Standing Order 27.1

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016.

Carl Sargeant

Cabinet Secretary for Communities and Children

12 October 2016

1. Description

These Draft Regulations will make provision in light of sections 30 to 34 of the Housing (Wales) Act 2014 ('the 2014 Act') with regards to applications in respect of rent stopping orders and rent repayment orders. The Draft Regulations will also provide a power for the Residential Property Tribunal ('the RPT') to close inactive applications.

For ease of use and clarity of law these Draft Regulations will also revoke and consolidate the previous statutory instruments that amended the Residential Property Tribunal Fees and Procedures (Wales) Regulations 2012 (S.I. 2012/531) which set out the procedures and fees for hearings undertaken by the RPT.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

These Draft Regulations are to be made under section 250(2)(a) and (b) of, and Schedule 13 to the Housing Act 2004 ('the 2004 Act').

Paragraph 1 of Schedule 13 to the 2004 Act gives the "appropriate national authority" powers to make Regulations in relation to the procedures of the RPT and these powers were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30(2)(c) of Schedule 11 to the Government of Wales Act 2006.

These Regulations follow the affirmative resolution procedure.

4. Purpose & intended effect of the legislation

As part of the enforcement provisions, sections 30 to 34 of the 2014 Act provide for applications to a residential property tribunal for Rent Stopping Orders and Rent Repayment Orders where licensing offences have been committed.

In order to enable the RPT to undertake these new functions when the new provisions contained within the 2014 Act are commenced, amendments were required to the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 (S.I. 2012/531) ('the 2012 Regulations').

Since they were made, the 2012 Regulations have been amended by a number of subsequent amending regulations and orders. Accordingly, these Regulations revoke and consolidate the provisions of the 2012 Regulations (S.I. 2012/531), the Residential Property Tribunal Procedures and Fees (Wales) (Amendment) Regulations 2014 (S.I. 2014/286), the Residential Property Tribunal Procedures and Fees (Wales) (Amendment No. 2) Regulations 2014 (S.I. 2014/2553) and the Residential Property Tribunal Procedures and Fees (Wales) (Amendment) Regulations 2015 (S.I. 2015/1821).

In addition, these Draft Regulations will also revoke article 5(1),(2) and (6)(c)(i) of the Mobile Homes Act 1983 (Amendments of Schedule 1 and Consequential Amendments)(Wales) Order 2013 (S.I. 2013/1723), together with paragraph 9 of Schedule 2 to the Marriage (Same Sex Couples) Act 2013 (Consequential Provisions) Order 2014 (S.I. 2014/107) and paragraph 98 of the Schedule to the Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013 (S.I. 2013/2042). This consolidation and revocation, as a result of these Regulations, will provide for clarity of law and ease of use for the reader.

These Draft Regulations will make provision in light of sections 30 to 34 of the 2014 Act with regards to applications made under the 2014 Act in respect of rent stopping order and rent repayment orders. The Draft Regulations will also provide a power for the RPT to close inactive applications. As such, in circumstances where it appears to the RPT that an applicant has failed to comply with a direction issued by the RPT, the Draft Regulations will provide that the RPT may dismiss an application. Prior to doing so, the RPT is required to first give the applicant opportunity to make representations in relation to the proposed dismissal.

This will enable the RPT to deal with applications which remain open even though no further activity has taken place which in turn creates an unnecessary administrative burden and distorts accurate information regarding the workload of the RPT. The First Tier Tribunal in England which hears equivalent cases has already been given a similar power.

5. Consultation

When the 2012 Regulations were made, the Administrative Justice and Tribunal Council ('the AJTC') were consulted in writing on the proposed Regulations. However, the AJTC was formally abolished by the UK Government in August 2013 and the requirement to consult under the Tribunals, Courts and Enforcement Act 2007 was repealed. The Lord Chief Justice for England and Wales and the RPT were formally written to and invited to comment on the proposed Draft Regulations. No issues were raised regarding the proposed Draft Regulations.

The Draft Regulations have not been subject to wider public consultation as:

- They are primarily a consolidation of existing Regulations and Orders and are technical in nature.
- They bring into force provisions which already formed part of the wider consultations surrounding the Housing (Wales) Act 2014.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers Code of Practice on carrying out a RIA was considered in relation to these Draft Regulations however no separate RIA has been prepared as the Impact Assessment prepared for the 2014 Act is relevant. A copy may be obtained from the Housing Policy Division, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF41 1UZ.