

W E L S H
S T A T U T O R Y I N S T R U M E N T S

2007 No. 3231(W. 283)

HOUSING, WALES

**The Houses in Multiple Occupation
(Certain Blocks of Flats)
(Modifications to the Housing Act
2004 and Transitional Provisions
for section 257 HMOs) (Wales)
Regulations 2007**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify Part 2 (licensing of houses in multiple occupation) and Part 4 (additional control provisions in relation to residential accommodation) of the Housing Act 2004 (“the Act”) and section 263 of the Act in its operation for the purposes of those Parts, in relation to a house in multiple occupation (HMO) to which section 257 of the Act applies (a “section 257 HMO”).

Section 257 of the Act applies to a building or a part of a building which has been converted into, and consists of, self-contained flats if the building work undertaken in connection with the conversion did not comply with appropriate building standards and still does not comply with them, and less than two-thirds of the self-contained flats are owner-occupied. A flat is owner-occupied if it is occupied by a person who has a lease granted for a term of more than 21 years or by a person who has the freehold estate in the converted block of flats, or by a member of the household of a person within either of those two descriptions.

The Regulations modify, for the purposes of Part 2 of the Act, in respect of a section 257 HMO—

the definition of “person having control” (regulations 3 and 9);

the matters about which a local housing authority must satisfy itself when deciding whether or not to grant a licence (regulations 4 and 5);

the licence conditions (regulations 6 and 11);

the person in respect of whom a rent repayment order may be made (regulation 7); and

the circumstances when a notice under section 21 of the Housing Act 1988 may be served (regulation 8).

These Regulations also modify section 139 of the Act in respect of the service of overcrowding notices in respect of section 257 HMOs (regulation 11).

The Regulations also make transitional provisions in respect of section 257 HMOs which were previously registered in a registration scheme under Part 11 of the Housing Act 1985 (regulation 13). Part 11 of the Act was repealed by the Housing Act 2004 (Commencement No. 3 and Transitional Provisions and Savings) (Wales) Order 2006 (S.I. 2006/1535) (W. 152) on 16 June 2006 in respect of all HMOs other than section 257 HMOs. That Order provided that the repeal of Part 11 of the Housing Act 1985 would take effect in respect of a building or a part of a building which is both a section 257 HMO and a house in multiple occupation for the purpose of Part 11 of the Housing Act 1985 on the date on which regulations made under section 61(5) come into force.

Nothing in these Regulations affects a local authority's licensing functions under Part 2 of the Act in relation to a flat that is situated within a section 257 HMO.

A full regulatory impact assessment of the statutory instruments to supplement the provisions of the Act in relation to the licensing of HMOs and the selective licensing of other private rented accommodation and management orders (Parts 2, 3 and Chapter 1 of Part 4 of the Act) was produced in February 2006 and is available from the Private Sector Unit, Housing Directorate, Welsh Assembly Government, Merthyr Tydfil Office, Rhydycar, Merthyr Tydfil, CF48 1UZ, telephone 01685 729193, or email huw.mclean@wales.gsi.gov.uk.

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Made *12 November 2007*

Laid before the National Assembly for Wales
13 November 2007

Coming into force *5 December 2007*

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by sections 61(5), 146(3)(a) and 250(2) of the Housing Act 2004(1) and now vested(2) in the Welsh Ministers, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Houses in Multiple Occupation (Certain Blocks of Flats) (Modifications to the Housing Act 2004 and Transitional Provisions for section 257 HMOs) (Wales) Regulations 2007 and they come into force on 5 December 2007.

(2) These Regulations apply to section 257 HMOs(3) in Wales.

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- (1) 2004 c.34. The powers conferred by sections 61(5), 146(3) and 250(2) of the Act are exercisable, as respects Wales, by the National Assembly for Wales. *See* the definition of the “appropriate national authority” in section 261(1) of the 2004 Act.
- (2) By virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32) the functions formerly exercisable by the National Assembly for Wales are now exercisable by the Welsh Ministers.
- (3) For the meaning of “section 257 HMO” *see* sections 61(5) and 146(4) of the Act. For the meaning of “HMO” *see* sections 254 to 259 of the Act.

Modifications to Part 2 of the Housing Act 2004 (licensing of houses in multiple occupation)

2. The provisions of Part 2 (licensing of houses in multiple occupation) of the Housing Act 2004 (“the Act”) have effect in relation to a section 257 HMO, subject to the modifications specified in regulations 3 to 10.

3. In section 61 (requirement for HMOs to be licensed) after subsection (6) add—

“(7) In this Part the “person having control” in respect of a section 257 HMO is—

- (a) in relation to an HMO in respect of which no person has been granted a long lease of a flat within the HMO, the person who receives the rack rent for the HMO, whether on his own account or as an agent or trustee of another person;
- (b) in relation to an HMO in respect of which a person has been granted a long lease of a flat within the HMO, the person who falls within the first paragraph of subsection (8) to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.

(8) A person falls within this subsection if the person—

- (a) has acquired the right to manage the HMO under Part 2 of the Commonhold and Leasehold Reform Act 2002⁽¹⁾;
- (b) has been appointed by the Leasehold Valuation Tribunal under section 24 of the Landlord and Tenant Act 1987⁽²⁾;
- (c) is the person who is the lessee of the whole of the HMO under a lease between him and a head lessor or the freeholder, or is the freeholder of the HMO; or
- (d) has been appointed to manage the HMO by the freeholder, by a head lessor of the whole of the HMO, or by a person who has acquired the right to manage the HMO under Part 2 of the Commonhold and Leasehold Reform Act 2002.

(9) In this section “long lease” means a lease that—

- (a) is granted for a term certain exceeding 21 years, whether or not it is (or may

⁽¹⁾ 2002 c.15.

⁽²⁾ 1987 c. 31. Section 24 has been amended by the Housing Act 1996 (c. 31) and the Commonhold and Leasehold Reform Act 2002.

become terminable) before the end of that term; or

- (b) is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease,

and neither the lease nor any superior lease contains a provision enabling the lessor or superior lessor to terminate the tenancy, other than by forfeiture, before the end of that term.”.

4. In section 64 (grant or refusal of a licence) omit subsection (3)(a) and for subsection (4) substitute—

“(4) When deciding whether the proposed licence holder is a fit and proper person to be the licence holder the local housing authority must take into consideration whether that person has control of the HMO and the extent to which he has control over it.”

5. In section 65 (tests as to suitability for multiple occupation)—

- (a) for subsection (1) substitute—

“(1) The local housing authority cannot be satisfied that the house is reasonably suitable for occupation as a section 257 HMO if they consider that—

- (a) the common parts of the HMO; or
- (b) any flat within the HMO other than a flat let on a long lease,

fail to meet prescribed standards.”(1);

- (b) after subsection (1) add—

“(1A) Where a house becomes a section 257 HMO as a result of conversion works carried out on the house after 5 December 2007, any flat within the HMO in respect of which a long lease is granted after that date shall be treated for the purpose of subsection (1) as though no such lease has been granted unless—

- (a) the local housing authority are satisfied that the appropriate building standards have been met in relation to that flat; or
- (b) the local housing authority are satisfied that the lease has been granted by a person other than the freeholder or head lessor of the whole of the HMO.”;
- (c) omit subsection (2);
- (d) in paragraph (a) of subsection (4) omit “number,”; and

(1) See Schedule 3 to S.I. 2006/1715 (W.177) which prescribes standards under section 65(4).

(e) after subsection (4) add—

“(5) In this section “long lease” has the same meaning as in section 61(9).”.

6. In section 67 (licence conditions) after subsection (1) insert—

“(1A) For the purposes of section 67(1) a licence may not include a condition that regulates the use, occupation or contents of any part of an HMO unless the condition relates to a matter over which it would be reasonable to expect the licence holder, in all the circumstances, to exercise control.”.

7. In section 73 (other consequences of operating unlicensed HMOs: rent repayment orders) in subsection (10)—

(a) for the definition of “the appropriate person” substitute—

““the appropriate person”, in relation to any payment of housing benefit or periodical payments payable in connection with occupation of a part of a section 257 HMO means the person who at the time when such benefit or payments were made was the person—

(a) having control of the HMO; and

(b) entitled to receive on his own account periodical payments in connection with such occupation of the part of the HMO in respect of which the payment or housing benefit relates.”; and

(b) after the definition of “periodical payments” insert—

““rent” does not include ground rent, service charges or insurance charges paid under the terms of a lease in respect of a flat within a section 257 HMO.”.

8. In section 75 (other consequences of operating unlicensed HMOs: restrictions on terminating tenancies)—

(a) for subsection (1) substitute—

“(1) No section 21 notice may be given in relation to a shorthold tenancy of a flat in an unlicensed section 257 HMO by the person having control of the HMO so long as it remains such an HMO.”; and

(b) after subsection (2) insert—

“(3) Subsection (1) does not affect the right of any person (other than the person having control of a section 257 HMO) to serve a section 21 notice in respect of a shorthold tenancy of a flat in such an HMO.”.

9. In section 78 (index of defined expressions: Part 2) in the entry relating to a person having control for the reference to section 263(1) and (2) substitute a reference to section 61(7).

10. In Schedule 4—

- (a) in paragraph (1) after “conditions” insert “but in the case of a licence under Part 2, this is subject to sub-paragraph (6)”;
- (b) after sub-paragraph (5) insert—

“(6) The conditions contained in sub-paragraphs (2) to (5) apply only in relation to any part of a section 257 HMO over which the licence holder exercises control, or over which it would be reasonable to expect that he would exercise control.”.

Modification to Part 4 of the Act (additional control provisions in relation to residential accommodation)

11. Section 139 of the Act (service of overcrowding notices) has effect in relation to a section 257 HMO as if at the end of paragraph 1(b) there were inserted—

“(1A) This Chapter also applies, in the case of a section 257 HMO which is required to be licensed under Part 2, to any flat within that HMO in respect of which a long lease has been granted and over which the licence holder cannot reasonably be expected to exercise control.

(1B) In subsection (1A) “long lease” means a lease that—

- (a) is granted for a term certain exceeding 21 years, whether or not it is (or may become terminable) before the end of that term; or
- (b) is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal, other than a lease by sub-demise from one which is not a long lease,

and neither the lease nor any superior lease contains a provision enabling the lessor or superior lessor to terminate the tenancy, other than by forfeiture, before the end of that term.”.

Modification to section 263 of the Act

12.—(1) Section 263 of the Act (meaning of “person having control” and “person managing” etc) has effect as if, after subsection (1), there were inserted—

“(1A) Subsection (1) does not apply to any reference in Parts 2 or 4 to “person having

control” where the reference relates to a person having control of a section 257 HMO.

(1B) Any reference in Part 4 to a person having control in respect of a section 257 HMO has the same meaning as in section 61(7).”.

Repeal of Part 11 of the Housing Act 1985: transitional provisions

13.—(1) During the period beginning on 5 December 2007⁽¹⁾ and ending on 5 December 2008, the repeal of sections 346, 346A, 346B, 347, 348, 348A to 348G, 350, 351 and 395 to 397 of the Housing Act 1985⁽²⁾ (“the 1985 Act”) does not have effect in relation to any registration scheme which—

- (a) conforms to a model scheme prepared by the National Assembly for Wales under section 346B of the 1985 Act; or
- (b) was confirmed by the National Assembly for Wales before 30 June 2006,

in so far as such scheme applies to a relevant converted block of flats that is registered or required to be registered under such scheme.

(2) During the period beginning on 5 December 2007 and ending on 5 December 2008, the maximum permissible fee payable on registration, or re-registration, of a relevant converted block of flats will be calculated as one fifth of the fee that would normally be chargeable by the local housing authority operating the registration scheme.

(3) During the period beginning on 5 December 2007 and ending on 5 December 2008—

- (a) the repeal of sections 352, 352A and 353 of, and Schedule 10 to, the 1985 Act will not have effect in relation to any notice served before 5 December 2008 under section 352(1) of that Act in relation to a relevant converted block of flats; and
- (b) the repeal of sections 354, 355, 356, and 395 to 397 of the 1985 Act will not have effect in relation to the commission before 5 December

⁽¹⁾ Under paragraph 2(1) of Part 2 of the Schedule to the Housing Act 2004 (Commencement No. 3 and Transitional Provisions and Savings) (Wales) Order 2006 (S.I. 2006/1535 (W. 152)), during the period beginning on 16 June 2006 and ending on the date when regulations made by the National Assembly for Wales under section 61(5) of the Act come into force, the repeal of certain sections contained in Part 11 of the Housing Act effected by that Order did not have effect in relation to a “relevant converted block of flats”. “Relevant converted block of flats” is defined in that Order as a building or part of a building which is a converted block of flats to which section 257 of the Housing Act 2004 applies and a house in multiple occupation for the purposes of Part 11 of the Housing Act 1985. This regulation makes further transitional provision in relation to such relevant converted blocks of flats.

⁽²⁾ 1985 c. 68.

2008 of any offence concerning a relevant converted block of flats under—

(i) subsection (2) of section 355 of that Act;
or

(ii) subsection (2) of section 356 of that Act.

(4) In relation to an appeal brought under subsection (2) of section 357 of the 1985 Act before 5 December 2007, a decision of a court to vary, or not to revoke, a direction under section 354 of that Act will not have effect.

(5) During the period beginning on 5 December 2007 and ending on 5 December 2008—

(a) the repeal of sections 369 and 395 to 397 of the 1985 Act will not have effect in relation to the commission before 5 December 2007 of any offence under regulations made under section 369 of that Act concerning a relevant converted block of flats;

(b) the repeal of section 372 of the 1985 Act will not have effect in relation to any notice served under subsection (1) of that section concerning a relevant converted block of flats before that date; and

(c) the repeal of section 373 of the 1985 Act will not have effect in relation to an appeal made before 5 December 2007 under subsection (1) of that section concerning a relevant converted block of flats

(6) During the period beginning on 5 December 2007 and ending on 5 December 2009 the repeal of sections 375 to 377A and 378 of, and Schedule 10 to, the 1985 Act will not have effect in relation to any notice served before 5 December 2007 under section 352 or 372 of that Act concerning a relevant converted block of flats.

(7) In this regulation “relevant converted block of flats” (*“bloc fflatiau perthnasol a addaswyd”*) means a building or a part of a building which is—

(a) a converted block of flats to which section 257 of the 2004 Act applies; and

(b) a house in multiple occupation for the purposes of Part 11 of the 1985 Act.

Jocelyn Davies

Under authority of the Minister for the Environment,
Sustainability and Housing, one of the Welsh
Ministers

12 November 2007.