
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

2008 No. 254 (W.30)

HOUSING, WALES

**The Rent Repayment Orders
(Supplementary Provisions) (Wales)
Regulations 2008**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales, supplement the provisions of sections 73, 74, 96 and 97 of the Housing Act 2004 (“the Act”). Those sections deal with the consequences of operating unlicensed houses in multiple occupation (“HMOs”) or certain other unlicensed houses. In particular, they deal with the making of rent repayment orders (“RROs”) by a residential property tribunal on the application of a local housing authority.

RROs cannot be made unless the tribunal is satisfied as to a number of matters. The matter that is relevant for the purposes of these Regulations is that housing benefit has been paid by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO (section 73(6)(b) of the Act) or the whole or any part or parts of the house (section 96(6)(b) of the Act), during a period during which it appears to the tribunal that an offence under section 72(1) of the Act (for HMOs) or section 95(1) of the Act (for other houses) was being committed.

Where the tribunal is satisfied that a person has been convicted of an offence under section 72(1) or 95(1) of the Act and that housing benefit was paid as mentioned in the previous paragraph, section 74(2) of the Act (for HMOs) and section 97(2) of the Act (for other houses) requires the tribunal to make a RRO. The order must require the person who, at the time that the housing benefit was paid, was entitled to receive the periodical payments in respect of which the housing benefit was paid (“the appropriate person”) to pay to the local

housing authority an amount equal to the total amount of housing benefit paid during the period during which it appears to the tribunal that an offence under section 72(1) of the Act (for HMOs) or section 95(1) of the Act (for other houses) was being committed. This is subject to some exceptions, set out in the Act.

In all other cases, the tribunal has a discretion to make a RRO for such an amount as is reasonable in the circumstances.

Regulation 2 of these Regulations permits a local housing authority that has made an application for a RRO to seek leave from the tribunal to amend its application where it believes that there has been an overpayment of housing benefit so that the application is in respect of the amount of housing benefit that the local housing authority believes is properly payable under the Housing Benefit Regulations 2006 or the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006. Paragraph (3) of regulation 2 defines “properly payable”.

Regulation 3 specifies the purposes for which monies received by a local housing authority under a RRO may be applied. There is an exception relating to costs and expenses recovered by other means, for example, court orders or under section 129 of the Act (relating to recovery of costs of management orders).

Regulation 4 requires a local housing authority to pay into the Welsh Consolidated Fund amounts received under a RRO that are not applied for a purpose specified in regulation 3.

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Made 6 February 2008

Laid before the National Assembly for Wales

7 February 2008

Coming into force 4 March 2008

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by sections 74(15) and 97(15) of the Housing Act 2004⁽¹⁾ and now vested⁽²⁾ in the Welsh Ministers, make the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is The Rent Repayment Orders (Supplementary Provisions) (Wales) Regulations 2008 and they come into force on 4 March 2008.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations, “the Act” (“*y Ddeddf*”) means the Housing Act 2004.

Amendment of a rent repayment order application to remove Housing benefit not properly payable

2.—(1) Paragraph (2) applies if, in the course of proceedings on an application under subsection (5) of

(1) 2004 c.34. The powers conferred by sections 74(15) and 97(15) of the Act are exercisable, as respects Wales by the National Assembly for Wales and, as respects England, by the Secretary of State. See the definition of the “appropriate national authority” in section 261(1).

(2) The powers of the National Assembly for Wales under sections 74(15) and 97(15) were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

section 73 of the Act (other consequences of operating unlicensed HMOs⁽¹⁾: rent repayment orders) or subsection (5) of section 96 of the Act (other consequences of operating unlicensed houses⁽²⁾: rent repayment orders), it comes to the notice of the local housing authority that in respect of periodical payments payable in connection with occupation of the part or parts of the HMO or of the whole or part of the house to which the application applies there may have been a payment of housing benefit⁽³⁾ that was not properly payable.

(2) A local housing authority may apply to the residential property tribunal for leave to amend the authority's application by substituting for the total amount of housing benefit paid, such part of that amount as the authority believes is properly payable.

(3) For the purposes of paragraphs (1) and (2) an amount of housing benefit is properly payable if the person to whom, or in respect of whom, it is paid is entitled to it under the Housing Benefit Regulations 2006⁽⁴⁾ or the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽⁵⁾ (whether on the initial decision or as subsequently revised or superseded, or further revised or superseded).

Application of amounts recovered under a rent repayment order

3.—(1) Subject to paragraph (3), a local housing authority may apply an amount recovered under a rent repayment order for any of the purposes mentioned in paragraph (2).

(2) The purposes are the reimbursement of the authority's costs and expenses (whether administrative or legal) incurred in, or associated with—

- (a) the making of the application under section 73(5) of the Act or, as the case may be, section 96(5) of the Act;
- (b) the registration and enforcement of any legal charge under section 74(9)(b) or 97(9)(b) of the Act on the relevant property;
- (c) dealing with any application for the grant of a licence in respect of the relevant property under Part 2 of the Act (licensing of HMOs) or, as the case may be, Part 3 of the Act (selective licensing of other residential accommodation);

(1) As to the meaning of "HMO", *see* sections 55(2) and 77 of the Act.

(2) As to the meaning of "house", *see* section 99 of the Act

(3) As to "housing benefit", and "periodical payments", *see* section 96(10) of the Act.

(4) S.I. 2006/213.

(5) S.I. 2006/214.

- (d) the prosecution of the appropriate person for an offence under section 72(1) of the Act or, as the case may be, section 95(1) of the Act, in relation to the relevant property (whether proceedings are instituted before or after the making of the order);
- (e) the making of an interim or final management order under Chapter 1 of Part 4 of the Act (interim and final management orders) in respect of the relevant property (whether the management order is made before or after the making of the rent repayment order);
- (f) the management of the relevant property while an interim or final management order is in force;
- (g) the execution of works undertaken in relation to the relevant property while an interim management order is in force; and
- (h) the preparation of, or execution of works under, a management scheme under section 119 of the Act (management schemes and accounts) while a final management order is in force.

(3) Nothing in paragraph (1) authorises the application of an amount by way of reimbursement of an authority's costs or expenses where those costs or expenses have already been paid by or on behalf of the appropriate person.

(4) In paragraph (2), "the relevant property" means the HMO or house to which the rent repayment order relates.

Treatment of surpluses

4. An amount recovered under a rent repayment order which is not applied for a purpose mentioned in regulation 3(2), must be paid into the Welsh Consolidated Fund.

Jocelyn Davies

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

6 February 2008