

**HOUSING ACT 2004**  
**EXPLANATORY NOTES**

*These notes refer to the Housing Act 2004 (c34) which received Royal Assent on Thursday 18 November 2004*

**INTRODUCTION**

1. These explanatory notes relate to the Housing Act 2004 which received Royal Assent on 18th November 2004. They have been prepared by the Office of the Deputy Prime Minister in order to assist the reader in the understanding of it. They do not form part of the Act and have not been endorsed by Parliament.
2. The explanatory notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

**SUMMARY**

3. This Act replaces the existing housing fitness standard with the Housing Health and Safety Rating System. It introduces two new licensing regimes for private rented properties. There is a new requirement for sellers or estate agents to produce a home information pack before marketing any residential property for sale along with provision for an ombudsman scheme for estate agents. The Act makes other provision about housing, including changing the right to buy scheme, strengthening the rights of park home owners, extending the power of the Housing Corporation to give social housing grant to non-registered social landlords and enabling local authorities to secure occupation of long-term empty private sector homes. It also establishes tenancy deposit schemes to safeguard deposits paid in connection with assured shorthold tenancies. Finally, it requires local housing authorities to assess the accommodation needs of Gypsies and travellers in their area, and produce a strategy on how these needs can be met.

**BACKGROUND**

4. Details of the legislative framework for each Part of the Act is contained in the overview.
5. The Act takes forward provisions contained in the Housing Green Paper (2000) and subsequent policy statement, and responses to these documents.
6. The main provisions of the Act have been subject to public consultation and pre-legislative scrutiny following the publication of the draft Housing Bill in March 2003 (command paper 5793 available from Her Majesty's Stationery Office).
7. In relation to Part 5 of the Act, the contents of home information packs were the subject of the consultation paper, "Reforming the home buying and selling process in England and Wales; contents of the home information pack", published in March 2003 and available from the Office of the Deputy Prime Minister. Similar provisions to those in Part 5 were contained in Part 1 of the Homes Bill 2000 which fell when Parliament was dissolved for the general election in 2001.

## OVERVIEW

8. These notes are divided into seven main parts, reflecting the main parts of the Act.

Part 1 - Housing conditions  
Part 2 - Licensing of houses in multiple occupation  
Part 3 - Selective licensing of other residential accommodation  
Part 4 - Additional control provisions in relation to residential accommodation  
Part 5 - Home information packs  
Part 6 - Other provisions about housing  
Part 7 - Supplementary and final provisions

### Expressions and abbreviations used throughout these notes

9. *Local housing authority* is defined in section 261. Throughout these notes local housing authority has been abbreviated to LHA.
10. *Home condition reports* are defined in section 164 as documents which are prescribed by regulations under section 163 and dealing with the physical condition and energy efficiency of a residential property.
11. *Home information packs* are described in Part 5 of the Act. In section 148 they are given a general description as a collection of documents relating to the property being sold, or the terms on which it is being offered for sale. The actual content of a home information pack for a particular property will be prescribed in regulations made under section 163 and for most purposes, the Act defines the pack as something that fulfils The requirements of these regulations, or purports to.
12. *Home inspector* is not a term which is used in the Act, but it is used in these notes to describe a member of an approved certification scheme who may make home condition reports by virtue of section 164.
13. *House in Multiple Occupation* is defined in sections 254 to 260. Throughout these notes House in Multiple Occupation has been abbreviated to HMO.
14. *Interim Management Order* and *Final Management Order* are covered by Chapter 1 of Part 4 of the Act. For the purposes of these notes, they are referred to as IMOs and FMOs. Interim empty dwelling management orders and final empty dwelling management orders are covered by Chapter 2 of Part 4 of the Act. For the purposes of these notes, they are referred to as interim EDMOs and final EDMOs. Throughout the notes the expression management orders refers to all the above orders made under Part 4.
15. *Tenancy deposit schemes* are covered in Chapter 4 of Part 6 of the Act. Throughout these notes, tenancy deposit schemes has been abbreviated to TDS.
16. *Residential property tribunal* is defined in section 229 of the Act. Throughout these notes residential property tribunal has been abbreviated to RPT.
17. The Act confers powers to make secondary legislation and give approvals on *the appropriate national authority*. This is defined in section 261 to mean the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales.
18. Where these notes refer to "he" or "him", this can also be read as "she" or "her" unless stated otherwise.

19. References to the singular also include the plural unless stated otherwise.

**Part 1: Housing conditions**

20. Part 1 of the Act replaces the existing housing fitness standard contained in the Housing Act 1985 with the Housing Health and Safety Rating System. It also adapts and extends the powers of enforcement currently available to LHAs to tackle poor Housing conditions.
21. These changes are intended to help LHAs to prioritise their intervention based on the severity of the health and safety hazards in the home.
22. The new framework is largely through free-standing provisions, although some of the provisions of the 1985 Act will remain in that Act with appropriate amendments.

**Part 2: Licensing of houses in multiple occupation (HMOs)**

23. Part 2 of the Act introduces a mandatory scheme to licence HMOs of a description contained in regulations. It is intended initially to apply this only to the larger higher risk HMOs of 3 or more storeys occupied by 5 or more people. LHAs are given power to extend licensing in their districts to other categories of HMO, subject to carrying out consultation and with the approval of the appropriate national authority.
24. The term HMO applies to a wide range of housing types, mainly in the private rented sector, that young lower-income single people, including some particularly vulnerable and disadvantaged groups, typically occupy. Physical and management standards in HMOs are often low. Current statutory controls on HMOs are confusing and have grown up over several decades.

**Part 3: Selective licensing of other residential accommodation**

25. Part 3 of the Act introduces a power for LHAs to introduce selective licensing to deal with particular problems in an area. Selective licensing will be primarily focused on:
- areas of low housing demand, or that are likely to fall into that category; and
  - other areas suffering from anti-social behaviour
26. Low house prices in areas of low demand have resulted in an influx of unprofessional landlords purchasing properties to rent. These people frequently show no interest in managing their properties properly, often letting to anti-social tenants who cause a range of problems. This, in turn, can create misery for the local community and cause further destabilisation of these areas.
27. Although these problems tend to be concentrated in areas of low housing demand, other districts also suffer from the activities of poor landlords and anti-social tenants. Accordingly this power will be available to LHAs to tackle problems of anti-social behaviour in areas that do not experience low housing demand.
28. The Act provides a discretionary power, subject to carrying out consultation and to the approval of the appropriate national authority, for LHAs to license all private landlords in a designated area with the intention of ensuring that a minimum standard of management is met. In order for a scheme to be approved, such a selective licensing scheme must be shown to be co-ordinated with an authority's wider strategies to deal with anti-social behaviour and regeneration.
29. The Act also provides the appropriate national authority with powers to prescribe by regulation other circumstances in which discretionary schemes may be made.

#### **Part 4: Additional control provisions in relation to residential accommodation**

30. Chapter 1 of Part 4 contains provisions for enforcement action in respect of properties licensable under Parts 2 and 3 and for individual properties where a residential property tribunal is satisfied that a property, which is not required to be licensed, requires the intervention of the LHA. Chapter 2 enables LHAs to take over the management of long-term empty properties and to bring them back into occupation. Chapter 3 contains provisions on overcrowding in non-licensable HMOs.

#### **Part 5 - Home information packs**

31. Part 5 of the Act imposes new legal duties on people marketing residential properties in England and Wales. Before marketing a property, the seller or, more usually, their estate agent must have a home information pack of standard documents available for prospective buyers.
32. In England and Wales, an offer to buy a property and acceptance of that offer are usually made "subject to contract". Normally, the acceptance of an offer does not constitute a legally binding agreement, until an exchange of written contracts proves that an agreement has been reached. Between agreeing terms and exchanging contracts, both the buyer and seller commonly do a number of things. For the seller, this could include:
- obtaining the title deeds to the property;
  - establishing title and producing Land Registry office copy entries where the property is registered;
  - replying to pre-contract enquiries;
  - preparing a draft contract.
33. The buyer will usually carry out local searches and make other enquiries of the local authority and other organisations. The buyer may also arrange a survey.
34. Therefore these documents and information are, under current practices, normally available only after terms have been negotiated and agreed "subject to contract".
35. Part 5 of the Act aims to bring forward the availability of some of this information to the start of the process. It requires the person responsible for marketing a residential property to have a home information pack before marketing begins. The pack is expected to contain documents and information similar to those mentioned above, including a report on the condition of the property.

#### **Part 6: Other provisions about housing**

36. The Act gives LHAs further tools to tackle anti-social behaviour in social housing. These measures complement those introduced by the Anti-social Behaviour Act 2003.
37. Part 6 introduces changes to the Right to Buy (RTB) scheme. This is a statutory scheme enabling secure tenants to buy the homes that they live in, at a discount, from their landlord. Landlords are most often LHAs, but registered social landlords (and certain other social landlords) may also have tenants who have the RTB, or preserved RTB, both for historical reasons and as a result of large-scale voluntary transfers of properties from LHA ownership. Provisions in the Act will amend the RTB scheme with a view to tackling exploitation of the rules by property developers and tenants.

38. Part 6 also contains provisions to better protect park home owners. These changes will help deter unscrupulous site owners from exploiting and harassing occupiers, and give a power to the Secretary of State to make further changes to the implied terms of occupation agreements.
39. Changes have been made to bring the treatment of local authority owned gypsy and traveller sites into line with that for privately owned caravan sites with regard to protection from unlawful eviction and harassment.
40. The powers of the Housing Corporation and the National Assembly for Wales under the Housing Act 1996 are extended to allow them to give grants to persons other than registered social landlords for specified purposes.
41. Part 6 extends eligibility for disabled facilities grant to include all those occupying caravans as their only or main residence.
42. A duty has been introduced upon LHAs to carry out assessments of the accommodation needs of Gypsies and Travellers residing in or resorting to their district, when they undertake a review of housing needs in the district.
43. Part 6 sets up the office of Social Housing Ombudsman for Wales to investigate complaints against social landlords in Wales.
44. Part 6 also establishes tenancy deposit schemes. These will protect tenants' deposits in the private rented sector and help to ensure that such deposits are not misappropriated by landlords or their agents.

#### **Part 7: Supplementary and final provisions**

45. Part 7 requires LHAs to keep registers of licences and management orders. It also provides for the approval of statutory codes of management practice, and for the making of management regulations, relating to HMOs.
46. For the purposes of Parts 1 to 4 of the Act it provides for documents and other information to be produced. It provides powers of entry to property and powers to prescribe the form of any notice, statement or other document required or authorised under the Act.
47. Other supplementary provisions provide for the way in which orders and regulations are to be made.
48. Provisions in Part 7, in conjunction with Schedule 14, provide a definition of HMO.

#### **TERRITORIAL APPLICATION**

49. All provisions of the Act apply to England and Wales with two exceptions, section 228 and Schedule 12, which make amendments to the Housing Act 1996 so as to provide for a Social Housing Ombudsman for Wales. These amended provisions will only apply in relation to Wales.
50. Under Part 5 of the Act, the power to make orders and regulations for both England and Wales is conferred upon the Secretary of State. However, the National Assembly for Wales must be consulted before making any regulations which relate to residential properties in Wales (section 250(3)).

## **COMMENTARY ON SECTIONS**

### **PART 1 - HOUSING CONDITIONS**

#### **Chapter 1 - Enforcement of Housing Standards: General**

##### **Section 1: New system for assessing housing conditions and enforcing housing standards**

51. Section 1 introduces a new system for assessing housing conditions that is to be used in the enforcement of housing standards. It replaces the existing system which is based on a test of fitness for human habitation under section 604 of the Housing Act 1985 (the 1985 Act).
52. Subsection (2) provides for the new system to operate by reference to the existence of category 1 or category 2 hazards (defined in section 2) in residential premises.
53. Subsection (3) sets out the enforcement options which will be available to LHAs under the Act. These options are dealt with in more detail in Chapters 2 and 3 of Part 1, and in provisions of the 1985 Act which are substituted by Chapter 4 of Part 1.
54. Subsections (4) to (8) define some of the terms used in Part 1.
55. The purpose of the Housing Health and Safety Rating System (HHSRS) introduced by section 1 is to apply objective information to the taking of enforcement decisions by LHAs.

##### **Section 2: Meaning of "category 1 hazard" and "category 2 hazard"**

56. Subsection (1) provides a definition of "hazard" for the purposes of Part 1. It also provides for the prescription by regulations of two categories of hazard - category 1 and category 2 - according to their seriousness as calculated under the method prescribed in regulations under subsections (2) and (3). It is intended that regulations under subsection (1) will describe 29 different types of hazards which can be assessed by LHAs.
57. Under subsections (2) and (3) a method for calculating the seriousness of each hazard which exists on residential premises may be prescribed by secondary legislation. The calculation will be based on the risk to the most vulnerable potential occupant of that dwelling, whether or not anyone, or a most vulnerable occupant, is resident in the premises at the time of the inspection, and the calculation will result in the hazard being given a score. That score will determine the band into which the hazard will fall. The regulations will prescribe that hazards falling within bands A to C are category 1 hazards, while those within bands D to J are category 2 hazards. Banding is intended to avoid the impression of spurious accuracy. The system relates poor housing conditions to the kinds of harm attributable to such conditions - it does not try to assess a specific health outcome in relation to the current occupant.
58. Under section 5, LHAs will have a general duty to take action to deal with category 1 hazards, and under section 7 they will have discretionary powers to take action to deal with category 2 hazards.
59. The enforcement action an LHA takes under the provisions of Part 1 will be based on (a) the band into which the hazard falls as a result of the HHSRS calculation; (b) whether the LHA has a duty or a power to act; and (c) the LHA's judgement as to the best means of dealing with that hazard.

**Section 3: Local housing authorities to review housing conditions in their districts**

60. Subsection (1) requires LHAs to keep under review the housing conditions in their district with a view to identifying what, if any, course of action should be taken by the LHA. This provision replaces, with modifications, section 605 of the 1985 Act.
61. Subsection (2) sets out the courses of action the LHA could take. These include the use of the enforcement powers under Part 1, the licensing of property and provision of management orders provided for under Parts 2 to 4, and the use of the powers enabling LHAs to declare a renewal area and provide financial assistance towards the cost of improvement and repair of residential property.

**Section 4: Inspections by local housing authorities to see whether category 1 or 2 hazards exist**

62. This provision replaces, with modifications, section 606 of the 1985 Act. Under subsection (1) if the LHA considers that it would be appropriate to inspect residential premises to establish whether or not there is a category 1 or category 2 hazard, the authority must arrange for an inspection to be carried out.
63. Subsection (2) retains the complaint procedure in section 606 of the 1985 Act so that where an official complaint is made to a proper officer, that a category 1 or 2 hazard may exist on residential premises, or that an area should be dealt with as a clearance area, the proper officer must inspect the premises or area. An official complaint is a complaint made in writing by a local JP or a parish or community council.
64. Inspections of premises under section 4 must be carried out in accordance with regulations made under sub-section (4). Where an inspection is made following an official complaint and the proper officer concludes that a category 1 or category 2 hazard exists, or that an area should be declared a clearance area, he is required to make a report in writing to the LHA. The LHA must consider any such report as soon as possible.

**Section 5: Category 1 hazards: general duty to take enforcement action**

65. Section 5 imposes a general duty on LHAs to take appropriate enforcement action where there is a category 1 hazard. Subsection (1) sets out the courses of action that may be available to the local housing authority:
  - to serve an improvement notice under section 11;
  - to make a prohibition order under section 20;
  - to serve a hazard awareness notice under section 28;
  - to take emergency remedial action under section 40;
  - to make an emergency prohibition order under section 43;
  - to make a demolition order under section 265(1) or (2) of the 1985 Act;
  - to declare a clearance area under section 289 (2) of the 1985 Act.
66. Under subsections (3) and (4), the LHA is under a duty to take the best course of action available to it in relation to the hazard. LHAs cannot simultaneously take more than one of the actions set out in subsection (2), for example make a prohibition order and serve an improvement notice dealing with the same hazard. This is to ensure that LHAs have properly considered the appropriate action and owners are not asked to comply unnecessarily with more than one requirement.

67. Subsection (5) enables an LHA to take the same course or a different course of action if the action already taken has not proved satisfactory. It also provides that, where an LHA has given notice, under section 289 of the 1985 Act, that it intends to declare a clearance area containing a property to which the duty in section 5 applies, but has decided to exclude that property from the area, it remains under a duty to take one of the remaining courses of action in section 5 in relation to the hazard.

**Section 6: Category 1 hazards: how duty under section 5 operates in certain cases**

68. Section 6 enables an LHA, instead of making a prohibition order or a demolition order under section 5(2) in respect of a property, to make a determination under section 300(1) or (2) of the 1985 Act, enabling it to purchase the property if the LHA considers the property is capable of providing adequate accommodation for temporary housing use.
69. Subsections (3) and (4) have the effect of enabling LHAs to take emergency remedial action and another course of action as a single step rather than wait until the emergency action has proved effective. This is because the LHA will be aware that certain emergency remedial action will not have the effect of removing the category 1 hazard entirely.
70. Sub-section (5) provides that the option of declaring a clearance area under section 5(2) is not available to an LHA in respect of a property if that property has already been proposed for inclusion within a clearance area but excluded from it.

**Section 7: Category 2 hazards: power to take enforcement action**

71. Section 7 lists the enforcement powers available to LHAs where a category 2 hazard exists on residential premises. Subsection (2) sets out the courses of action that available to the LHA:
- to serve an improvement notice under section 12;
  - to make a prohibition order under section 21;
  - to serve a hazard awareness notice under section 29;
  - to make a demolition order under s265 (3) or (4) of the 1985 Act, but only in circumstances prescribed by the Secretary of State or, in relation to Wales, by the National Assembly for Wales;
  - to include the premises in the declaration of a clearance area under s289 (2ZB) of the 1985 Act, but only in circumstances so prescribed.
72. Subsection (3) makes clear that an LHA can take the same course or a different course of action if the action already taken has not proved satisfactory.

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