

**EXPLANATORY MEMORANDUM TO THE  
RESIDENTIAL PROPERTY TRIBUNAL (RIGHT TO BUY  
DETERMINATIONS) PROCEDURE (ENGLAND) REGULATIONS 2005**

**2005 No. 1509**

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments

2. **Description**

These Regulations set out the procedure to be followed by residential property tribunals (RPTs) in determining applications by tenants who wish to exercise the right to buy, and who wish to question a decision of their landlords that their properties are excluded from the right to buy because they are particularly suitable for occupation by the elderly.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

The following matters may be of particular interest:

- this is the first time the power in Schedule 13 (“Schedule 13”), to the Housing Act 2004 (“the 2004 Act”) to make procedure regulations for RPTs is being exercised (the provisions by which the 2004 Act also confers jurisdiction on RPTs to deal with appeals under Parts 1 to 4 of the 2004 Act having not yet been brought into force);
- although a power to prescribe fees is included in Schedule 13, these Regulations do not impose a fee for application to a tribunal;
- Schedule 13 gives power to award costs in exceptional circumstances up to a maximum of £500, but the Regulations stipulate that before such an order is made the paying party must be given the opportunity to make representations to the tribunal;
- The Housing Act 2004 (Commencement No.4 and Transitional Provisions)(England) Order 2005 brings into force the related sections of the 2004 Act (sections 181, 223, 230 and 231; and section 229 and Schedule 13 insofar as they are not already in force) on the same date as these Regulations.

4. **Legislative Background**

4.1 Part 5 of the Housing Act 1985 (“the 1985 Act”) gives secure tenants of local authorities and certain other public sector landlords the right to buy their homes subject to conditions and exceptions. Exceptions from the right to buy are set out in Schedule 5 to the 1985 Act. Paragraph 11 of Schedule 5 (as substituted by section 106 of the Leasehold Reform, Housing and Urban Development Act 1993) provides that the right to buy a property does not arise if -

- it is particularly suitable, having regard to its location, size, design, heating system, and other features, for occupation by elderly persons;
- it was let for occupation by a person of 60 or over, whether or not that person was the tenant; and
- the property was first let before 1st January 1990.

4.2 Section 181 of the 1985 Act provides that, in general, questions arising in relation to the right to buy are to be determined by the county court. However, paragraph 11(4) of Schedule 5 to that Act (as originally enacted and as substituted by the 1993 Act) made specific provision by which a tenant claiming to exercise the right to buy could question a decision by his landlord to deny the right to buy on the ground that the property was one to which paragraph 11 of Schedule 5 (“paragraph 11”) applied. The tenant could apply to the Secretary of State to determine the question. The application must be made within 56 days of service of the landlord’s notice under section 124 of the 1985 Act denying the tenant’s right to buy.

4.3 Section 181 of the 2004 Act amends paragraph 11 to provide that applications under paragraph 11(4) are to be determined by “the appropriate tribunal or authority”. By virtue of a new paragraph 11(5A), inserted by section 181, “the appropriate tribunal or authority” means, in relation to England, an RPT and, in relation to Wales, the Secretary of State.

4.4 Provision in respect of RPTs is made in sections 229 to 231 of the 2004 Act. Section 229 provides that any jurisdiction conferred on an RPT is exercisable by a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977, and that when exercising such jurisdiction the committee is to be known as a residential property tribunal. This is similar to the way in which any jurisdiction of a leasehold valuation tribunal is conferred on a rent assessment committee by section 173 of the Commonhold and Leasehold Reform Act 2002.

4.5 Section 230 of the 2004 Act confers a general procedural power on RPTs and introduces Schedule 13 which confers power on the Secretary of State to make regulations about the procedure of RPTs. This instrument is made under the powers in Schedule 13.

4.6 Section 231 of the 2004 Act deals with appeals from decisions of RPTs. In most cases, a party to proceedings before a RPT may appeal to the Lands Tribunal. This is not the case for applications under paragraph 11. Appeals in

these cases are excluded by paragraph 11(5B) of Schedule 5, inserted by section 181(3) of the 2004 Act. However, a right of appeal to the High Court remains, under section 11 of the Tribunals and Inquiries Act 1992.

4.7 The amendments made by section 181 of the 2004 Act and the provisions of sections 229 to 231 of that Act come into force in relation to England on the same date as this instrument comes into force.

4.8 By virtue of section 250(4) of the 2004 Act, this instrument is subject to the negative resolution procedure. The instrument does not include regulations under paragraphs 11(3)(b) and 12(3)(b) of Schedule 13 to the 2004 Act, which by virtue of section 250(6)(g) are subject to the draft affirmative resolution procedure.

4.9 The Council on Tribunals operates under the Tribunals and Inquiries Act 1992, to keep under review the constitution and working of the tribunals specified in Schedule 1 of that Act. Rent assessment committees are so specified - and thus also RPTs which are rent assessment committees under a different name. Under section 8 of the Tribunals and Inquiries Act 1992 the Council must be consulted before procedural rules are made for the tribunals which it supervises. Details of consultation with the Council on Tribunals are given in section 7 of this memorandum (Policy Background).

4.10 The instrument will come into force on the same date that jurisdiction to determine applications under paragraph 11 is transferred to RPTs. Transitional provision is made in section 181(4) to (6) of the 2004 Act to deal with cases where applications have been made to the Secretary of State before the date of transfer of jurisdiction to RPTs but have not been determined by him. If an application has been made more than 28 days before that date, the Secretary of State must continue to determine the application. Otherwise, applications are to be determined by an RPT and the Secretary of State must make such arrangements as he considers necessary to enable RPTs to make determinations.

4.11 Section 270(9) of the 2004 Act enables the Secretary of State to make such provision as he considers necessary or expedient for transitional purposes in connection with the coming into force of any provisions of that Act. Transitional provision has been made in the commencement order bringing Schedule 13 of the 2004 Act (together with the related sections of that Act) into force. The transitional provision is that for a period of 56 days after the Regulations come into force, an application sent to the Secretary of State will be deemed to have been sent to an RPT.

## **5. Extent**

This instrument applies to England only.

## **6. European Convention on Human Rights**

No statement is required.

## **7. Policy background**

7.1 Local housing authorities have an important role in providing support to vulnerable people, including those who are elderly. To ensure that authorities can retain a stock of housing which is suitable for elderly people, successive governments have excluded such dwellings from the right to buy scheme. The statutory basis for such exclusion is now contained in paragraph 11, which also gives tenants denied the right to buy on this ground a right of appeal against the landlord's decision.

7.2 Section 181 of the 2004 Act provides that an RPT shall determine such appeals instead of the Secretary of State. This will be the case only in England. The National Assembly for Wales has decided to retain responsibility for determining appeals in Wales, and the position with regard to secure tenants in Wales has therefore not changed.

7.3 The Residential Property Tribunal Service provides administrative support for Rent Assessment Panels, Rent Assessment Committees, Leasehold Valuation Tribunals, and Rent Tribunals, and will also provide administrative support for RPTs. It is an independent Government-sponsored body which was established in June 2002, following the coming into force of the Commonhold and Leasehold Reform Act 2002. It was created to reflect the new responsibilities brought about by changes in legislation, and to provide a fair, accessible and relatively informal tribunal service to help landlords, tenants and leaseholders settle disputes about rents and leasehold property.

7.4 The transfer of jurisdiction in respect of appeals under paragraph 11 from the Secretary of State to RPTs is part of a wider exercise designed to bring together matters of similar kinds under a single jurisdiction. It will ensure that policy-making on the exclusion from the right to buy of dwellings suitable for occupation by elderly persons is kept separate from the quasi-judicial function of determining appeals against denial of the right to buy on these grounds.

7.5 Drafting of the procedures set out in these Regulations was informed by consultation between the Office of the Deputy Prime Minister, the Residential Property Tribunal Service, and the Council on Tribunals. The Senior President of the Residential Property Tribunal Service, who is also President of the London Rent Assessment Panel, has been involved throughout in commenting on successive drafts and suggesting amendments, many of which have been incorporated. The Council on Tribunals has published guidance entitled 'Guide to Drafting Tribunal Rules' (November 2003) which contains model procedural rules. Regard has been had to the model rules as well as to the precedent of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 (S.I.2003/2099) in drafting these Regulations. Consultation with the Council on Tribunals on the regulations was initiated on 17<sup>th</sup> January 2005. The Council replied on 16<sup>th</sup> February 2005 giving general approval to the draft Regulations, welcoming the use made of its Guide, and making a number of drafting suggestions which have been taken into account in subsequent amendments to the Regulations since that date.

7.6 The main aims in drafting the procedure regulations have been to ensure that RPTs are able to deal with cases fairly and justly, and that the transfer of jurisdiction from the Secretary of State to RPTs will have minimal impact for tenants and landlords. As far as possible the new administrative process for dealing with appeals mirrors the procedures used by the Secretary of State in determining appeals. To achieve these objectives, the Regulations -

- do not charge a fee for an application to a tribunal;
- request a minimum of information with the initial application (reflecting the Tribunal Service’s practice of sending applicants questionnaires to elicit any further information it considers necessary);
- provide that the tribunal will deal with ensuring that the parties have all necessary documents and information;
- provide that a single legally qualified member of a tribunal panel (“a single member”) may determine an appeal without an oral hearing unless one of the parties requests a hearing;
- provide that a single member may deal with most interim decisions (see paragraph 7.7);
- provide for inspection of the property and its neighbourhood;
- require provision of free translation and interpretation where required by any participant in the proceedings.

7.7 The approach taken in the Regulations to specifying powers of a single member has been to ensure that a single member may exercise those preliminary and incidental powers which are necessary to prepare a case for determination, whether the final determination is to be by a single member without a hearing or by a tribunal panel at an oral hearing. In addition, where a single member is to determine an application without an oral hearing he or she may -

- impose a penalty under regulation 11 for failure to comply with an order to supply information and documents;
- inspect the property and neighbourhood;
- make an order awarding costs, in the exceptional circumstances where such an order is permitted; and
- correct clerical mistakes or accidental errors in the printed record of the decision on determination of the application.

7.8 Two transitional provisions apply to applications under paragraph 11. The first of these transitional provisions is described in paragraph 4.10 of this

memorandum. This transitional provision leaves open the possibility that applications made to the Secretary of State during the 28 days before jurisdiction is transferred may be determined by him before the date of transfer. However, as most applications take longer than 28 days to consider and determine, it is likely that the majority of applications received within 28 days of the date of transfer will in fact be sent on for determination by RPTs. There is therefore the potential for a short period of delay in respect of applications received by the Secretary of State during this 28 day period but not determined during that period and instead passed to RPTs. It is not considered that this will be significant in relation to the time it generally takes to contact and elicit information from the landlord and to progress the matter to the point where it is ready for determination.

7.9 The second transitional provision relates to the time limit for making an application. Although the Regulations enable a tribunal to extend time limits, this power only applies to time limits contained in the Regulations themselves. It does not apply to the time limit for making an application to appeal the landlord's decision (56 days from service of the landlord's notice) which is specified in the 1985 Act. In order to ensure that tenants' unawareness of the change of jurisdiction does not lead to applications being out of time, the transitional provision in the commencement order provides that for a period of 56 days after the Regulations come into force, an application sent to the Secretary of State will be deemed to have been sent to an RPT.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There will be little impact on the public sector. Secure tenants and landlords will deal with RPTs as they do now with the Secretary of State. The provisions in this instrument in respect of (for example) notification and acknowledgement of applications and the distribution of documents mirror those operated by the Office of the Deputy Prime Minister and its predecessors in respect of these applications. Similarly, the provisions in respect of inspections of the property and the neighbourhood mirror options that have always been available to the Secretary of State. As noted in paragraph 7.6, although tribunals are able to hold hearings if they consider this necessary in the circumstances, and must do so if a party requests an oral hearing by a tribunal panel, it is envisaged that applications to an RPT will normally be determined by a single member without a hearing.

## **9. Contact**

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