WELSH STATUTORY INSTRUMENTS

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

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.

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—

(**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.

(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(**4**);

(b) has been appointed by the Leasehold Valuation Tribunal under section 24 of the Landlord and Tenant Act 1987(**5**);

(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 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."(**6**);

(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—

(**4**) 2002 c. 15.
(**5**) 1987 c. 31. Section 24 has been amended by the Housing Act 1996 (c. 31) and the Commonhold and Leasehold Reform Act 2002.
(**6**) *See* Schedule 3 to S.I. 2006/1715 (W.177) which prescribes standards under section 65(4).

(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

(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—