WELSH STATUTORY INSTRUMENTS

2005 No. 1816 (W.145)

HOUSING, WALES

The Social Housing Ombudsman (Wales) Regulations 2005

Made - - - -	*5 July 2005*
Coming into force - -	*15 July 2005*

The National Assembly for Wales, in exercise of the powers conferred on it by section 51B of the Housing Act 1996(**1**), hereby makes the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Social Housing Ombudsman (Wales) Regulations 2005, and come into force on 15 July 2005.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations —

"action" ("*camau*") includes a failure to act (and related expressions must be construed accordingly);

"complainant" ("*achwynydd*") means a person who claims to have sustained injustice or hardship as a result of a matter which SHOW is entitled to investigate under these Regulations other than a social landlord acting in its capacity as such;

"SHOW" ("*OTCC*") means the Social Housing Ombudsman for Wales(**2**);

"relevant action" ("*camau perthnasol*") means action taken by the social landlord in its capacity as social landlord;

"relevant service" ("*gwasanaeth perthnasol*") means any service which it is the social landlord's function to provide in its capacity as social landlord; and

"social landlord" ("*landlord cymdeithasol*") has the same meaning as "Social landlord in Wales" as defined by section 51C(1) of the Housing Act 1996(**3**).

(**1**) 1996 c. 52. Section 51B is inserted by section 228 of the Housing Act 2004 (c. 34). By S.I.2005/1814 (W.144) (C.75) section 228 of the Housing Act 2004 comes into force on 14 July 2005.

(**2**) *See* section 51A (Social Housing Ombudsman for Wales) of the Housing Act 1996 (c. 52) — the person who is the Local Commissioner for Wales will also be the Social Housing Ombudsman for Wales.

(**3**) 1996 c. 52. *See* section 51C(1)

Matters about which complaints may be made

3. The following are matters about which complaints may be made to SHOW in accordance with these Regulations:

(a) alleged maladministration by a social landlord in connection with relevant action;

(b) an alleged failure by a social landlord to provide a relevant service; and

(c) an alleged failure in a relevant service provided by a social landlord.

Grounds on which a matter is excluded from investigation

4.—(1) SHOW may not investigate:

(a) matters arising in connection with the discharge by a social landlord of any of its functions otherwise than in relation to Wales;

(b) action taken by the social landlord when that social landlord was not registered;

(c) matters in respect of a contract of employment between the social landlord and any other person, (but not procedures for recruitment and appointment);

(d) matters in relation to the determination of the amount of rent; and

(e) a matter which is the subject of a complaint made against a social landlord to the National Assembly for Wales before these Regulations come into force unless the National Assembly for Wales agree that SHOW may investigate the matter.

(2) SHOW may not investigate a matter where a complainant has or had a remedy by way of proceedings in a court of law, unless SHOW is satisfied that, in the particular circumstances, it is not reasonable to expect the complainant to resort, or to have resorted, to seeking the remedy via a court.

(3) (a) subject to sub-paragraph (b) SHOW may not investigate a matter unless SHOW is satisfied that:

(i) the matter has been brought to the attention of the social landlord to which it relates by or on behalf of the complainant; and

(ii) the social landlord has been given a reasonable opportunity to investigate and respond to the complaint in accordance with the social landlord's complaints procedure.

(b) sub-paragraph (a) does not apply if SHOW is satisfied that it is nevertheless reasonable to investigate the matter in the particular circumstances.

(4) Paragraphs (1) to (3) do not prevent SHOW from investigating action of a social landlord in operating a procedure established to examine complaints or review decisions.

Description of individuals who may make a complaint

5.—(1) The persons who may make a complaint are:

(a) a complainant;

(b) a person authorised by the complainant to act on behalf of the complainant; and

(c) if the complainant is not capable of authorising a person to act on their behalf, a person who appears to SHOW to be appropriate to represent a complainant.

(2) It is for SHOW to determine any question of whether a person is entitled under this regulation to make a complaint.

Power of SHOW to investigate a complaint made

6.—(1) Subject to regulation 5 SHOW may investigate a complaint where a complaint is made by or on behalf of a complainant in accordance with these Regulations.

(2) Subject to paragraph (3) a complaint must be made in writing, specifying the matters about which the complaint is made.

(3) A complaint need not be made in writing if SHOW is satisfied that there are special circumstances which make it appropriate for it to be made orally.

(4) A complaint to SHOW must be made before the end of the period of one year starting on the day on which the complainant first has notice of the matters alleged in the complaint, but SHOW may waive this requirement if SHOW considers it is reasonable to do so.

(5) Subject to paragraph (6) SHOW may:

(a) decide whether to begin, continue or discontinue an investigation; and

(b) begin or continue an investigation into a complaint even if the complaint has been withdrawn.

(6) Where in accordance with paragraph (5) SHOW decides not to investigate a complaint or decides to discontinue an investigation, SHOW must prepare a written statement of the reasons for the decision.

(7) SHOW must send a copy of the statement to:

(a) the complainant;

(b) the social landlord; and

(c) any other person SHOW considers appropriate.

(8) If a written statement of reasons prepared under paragraph (6) –

(a) mentions the name of any person other than the social landlord in respect of which the complaint was made, or

(b) includes any particulars which, in the opinion of SHOW, are likely to identify any such person and which, in SHOW's opinion, can be omitted without impairing the effectiveness of the statement of reasons,

that information must not be included in a version of the statement of reasons sent to a person under paragraph (7), subject to paragraph (9).

(9) Paragraph (8) does not apply in relation to a version of the statement of reasons if, after taking account of the interests of the complainant and any other persons SHOW thinks appropriate, SHOW considers it to be in the public interest to include that information in that version of the statement of reasons.

Procedure to be followed in conduct of investigations

7.—(1) If SHOW decides to investigate a complaint, SHOW must:

(a) give the social landlord an opportunity to comment on any allegations contained in the complaint; and

(b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on any allegations relating to that person.

(2) An investigation in accordance with these Regulations must be conducted in private.

(3) The procedure for conducting an investigation is to be that which SHOW considers appropriate in the circumstances of the case.

(4) For the purposes of an investigation SHOW may request the social landlord and any person considered able to supply information or produce a document relevant to the investigation to do so.

(5) For the purposes of an investigation SHOW may request:

(a) the attendance and examination of witnesses; and