Draft Order laid before Parliament under section 250(6) of the Housing Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

MOBILE HOMES, ENGLAND

The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011

Made - - - -	*2011*
Coming into force - -	*30th April 2011*

The Secretary of State, in exercise of the powers conferred by sections 229(3) and (4) and 250(2) of the Housing Act 2004(**1**), makes the following Order.

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament in accordance with section 250(6) of the Housing Act 2004.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011 and comes into force on 30th April 2011.

(2) In this Order—

"the 1983 Act" means the Mobile Homes Act 1983(**2**); and

"the commencement date" means the day on which this Order comes into force.

Jurisdiction of residential property tribunals in relation to mobile homes

2. A residential property tribunal has conferred on it such jurisdiction under the 1983 Act as is specified by virtue of the amendments made to that Act and to the Housing Act 2004 by this Order.

(**1**) 2004 c.34. The powers conferred by section 229(3) and (4) of the Act are exercisable, as respects England, by the Secretary of State. See the definition of the appropriate national authority in section 261(1).

(**2**) 1983 c.34. The 1983 Act extends to England and Wales and Scotland. It has been substantially amended, in relation to England and Wales, by sections 206 to 208 of the Housing Act 2004 and section 318 of the Housing and Regeneration Act 2008, in relation to England by S.I. 2006/1755. By the time this Order comes into force, the 1983 Act will also have been amended in relation to certain agreements for England by the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011 and the Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) Order 2011.

Amendments to the 1983 Act

3.—(1) The 1983 Act is amended in accordance with the following paragraphs.

(2) In section 1(5) and (6) (particulars of agreements) for "court" substitute "appropriate judicial body".

(3) In section 2 (terms of agreements) in subsections (2), (3) and (4) for "court", wherever it appears, substitute "appropriate judicial body".

(4) In section 2A (power to amend implied terms) in subsection (3)(a) after "the court", in both places, insert "or a tribunal".

(5) For section 4 (jurisdiction of court) substitute—

"**Jurisdiction of a tribunal or the court: England and Wales**

4.—(1) In relation to a protected site in England, a tribunal has jurisdiction—

(a) to determine any question arising under this Act or any agreement to which it applies; and

(b) to entertain any proceedings brought under this Act or any such agreement,

subject to subsections (2) to (6).

(2) Subsection (1) applies in relation to a question irrespective of anything contained in an arbitration agreement which has been entered into before that question arose.

(3) In relation to a protected site in England, the court has jurisdiction—

(a) to determine any question arising by virtue of paragraph 4, 5 or 5A(2)(b) of Chapter 2, or paragraph 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1 (termination by owner) under this Act or any agreement to which it applies; and

(b) to entertain any proceedings so arising brought under this Act or any such agreement,

subject to subsections (4) to (6).

(4) Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question.

(5) A tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the court.

(6) Subsection (5) applies irrespective of anything contained in the arbitration agreement mentioned in subsection (4).

(7) In relation to a protected site in Wales, the court has jurisdiction—

(a) to determine any question arising under this Act or any agreement to which it applies; and

(b) to entertain any proceedings brought under this Act or any such agreement."

(6) In subsection (1) of section 5 (interpretation)—

(a) before the definition of "the appropriate national authority" insert—

""the appropriate judicial body" means whichever of the court or a tribunal has jurisdiction under section 4;",

(b) after the definition of "the appropriate national authority" insert—

""arbitration agreement" means an agreement in writing to submit to arbitration any question arising under this Act or any agreement to which it applies;",

(c) in the definition of "the court" in paragraph (a) for the words from "agreed" to "arbitration" substitute "entered into an arbitration agreement that applies to the question to be determined", and

(d) after the definition of "protected site" insert—

""a tribunal" means a residential property tribunal(**3**) or, where the parties have entered into an arbitration agreement that applies to the question to be determined and that question arose before the agreement was made, the arbitrator."

(7) In Chapter 2 of Part 1 of Schedule 1 (agreements relating to pitches in England and Wales except pitches in England on local authority gypsy and traveller sites and county council gypsy and traveller sites)—

(a) in paragraph 4 (termination by owner) for "court" substitute "appropriate judicial body",

(b) in paragraph 5 (termination by owner) for "court" substitute "appropriate judicial body",

(c) after paragraph 5 (termination by owner) insert—

"**5A.**—(1) This paragraph applies in relation to a protected site in England.

(2) The owner is entitled to terminate the agreement forthwith if—

(a) on the application of the owner, a tribunal has determined that, having regard to its condition, the mobile home is having a detrimental effect on the amenity of the site; and

(b) then, on the application of the owner, the appropriate judicial body, having regard to the tribunal's determination and to any other circumstances, considers it reasonable for the agreement to be terminated.

(3) Sub-paragraphs (4) and (5) apply if, on an application to the tribunal under sub-paragraph (2)(a)—

(a) the tribunal considers that, having regard to the present condition of the mobile home, it is having a detrimental effect on the amenity of the site, but

(b) it also considers that it would be reasonably practicable for particular repairs to be carried out on the mobile home that would result in the mobile home not having that detrimental effect, and

(c) the occupier indicates to the tribunal that the occupier intends to carry out those repairs.

(4) In such a case, the tribunal may make an interim order—

(a) specifying the repairs that must be carried out and the time within which they must be carried out; and

(b) adjourning the proceedings on the application for such period specified in the interim order as the tribunal considers reasonable to enable the repairs to be carried out.

(5) If the tribunal makes an interim order under sub-paragraph (4), it must not make a determination under sub-paragraph (2)(a) unless it is satisfied that the specified period has expired without the repairs having been carried out.",

(d) in paragraph 6 (termination by owner) before sub-paragraph (1) insert—

"(A1) This paragraph applies in relation to a protected site in Wales.",

(e) in paragraph 8 (sale of mobile home to a person approved by the owner)—

(**3**) By section 229 of the Housing Act 2004 (c.34) any jurisdiction of a residential property tribunal by or under any enactment may be exercised by a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977 (c. 42).

(i) in sub-paragraph (1E), for "court, wherever it appears, substitute "appropriate judicial body", and

(ii) after sub-paragraph (1G), insert—

"(1H) Subject to sub-paragraph (1I), an application to a tribunal under sub-paragraph (1E) by an occupier must be made—

(a) within the period of three months beginning with the day after the date on which the occupier receives notice of the owner's decision under sub-paragraph (1B); or

(b) where the occupier receives no notice from the owner as required by sub-paragraph (1B), within the period of three months beginning with the date which is 29 days after the date upon which the occupier served the request under sub-paragraph (1A).

(1I) A tribunal may permit an application under sub-paragraph (1E) to be made to the tribunal after the applicable period specified in sub-paragraph (1H) if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply before the end of that period and for any delay since then in applying for permission to make the application out of time.",

(f) in paragraph 9 (gift of mobile home), in sub-paragraph (2) for "(1G)" substitute "(1I)",

(g) in paragraph 10 (re-siting of mobile home), in sub-paragraphs (1)(a) and (2), for "court" substitute "appropriate judicial body",

(h) in paragraph 16 (the pitch fee), in paragraph (b), for "court" substitute "appropriate judicial body",

(i) in paragraph 17 (pitch fee review)—

(i) for "court", wherever it appears, substitute "appropriate judicial body",

(ii) in sub-paragraph (5) after "review date" insert "but, in the case of an application in relation to a protected site in England, no later than three months after the review date",

(iii) in sub-paragraph (9) after "sub-paragraph (6)(b)" insert "but, in the case of an application in relation to a protected site in England, no later than four months after the date on which the owner serves that notice", and

(iv) after sub-paragraph (9) insert—

"(9A) A tribunal may permit an application under sub-paragraph (4)(a) or (8)(a) in relation to a protected site in England to be made to it outside the time limit specified in sub-paragraph (5) (in the case of an application under sub-paragraph (4)(a)) or in sub-paragraph (9) (in the case of an application under sub-paragraph (8)(a)) if it is satisfied that, in all the circumstances, there are good reasons for the failure to apply within the applicable time limit and for any delay since then in applying for permission to make the application out of time.",

(j) in paragraph 18 (pitch fee determination), in sub-paragraph (1)(a)(iii), for "court" substitute "appropriate judicial body",

(k) in paragraph 19 (pitch fee determination)—

(i) the existing provision becomes sub-paragraph (1),

(ii) after sub-paragraph (1) insert—

"(2) In the case of a protected site in England, when determining the amount of the new pitch fee, no regard may be had to any costs incurred by the owner in relation to the conduct of proceedings under this Act or the agreement.", and