A BIRD'S EYE VIEW OF THE HOUSING ACT 2004

The latter days of November bring falling leaves, left-over fireworks and a flurry of new legislation. Along with Hunting with Hounds (or not) and the other new laws, this year's crop included the first Housing Act for some time. Was it worth waiting for? When will it come into operation? This short guide gives an overview of the new Act with indications of when its changes will start.

The Act received Royal Assent on 18 November 2004. It runs to more than 300 pages and is divided into 7 Parts comprising 270 sections, supplemented by 16 schedules. It has a companion volume of explanatory notes, which itself is 114 pages long. That is the physical manifestation of the beast, and below is a summary of what it will actually do.

PART 1 - Housing conditions

This Part of the Act introduces the Housing Health and Safety Rating System instead of the existing fitness standard set out in the Housing Act 1985. The idea is that local councils should be able to prioritise action on the worst homes.

In more detail

The existing fitness standards are replaced by a new system of Category 1 and Category 2 Hazards; local authorities have a duty to inspect and calculate the risk to the most vulnerable person who might potentially occupy the property, not just who is actually living there.

Local authorities have a **duty** to take enforcement action on a Category 1 Hazard and a **power** to do so on a Category 2. Enforcement action can include:

- Serving an improvement notice
- Making a prohibition order or an emergency prohibition order
- Serving a hazard awareness notice
- Taking emergency remedial action
- Making a demolition order
- Declaring a clearance area.

There is a right of appeal to a Residential Property Tribunal; appeals are dealt with in more detail in Schedules 1, 2 and 3.

Comes into force

Most of this Part will need a commencement order on a date still to be decided; this includes detailed regulations on how the Category 1 and Category 2 Hazards are to be calculated. Only the power to make the regulations came into force on Royal Assent.

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PART 2 - Licensing of houses in multiple occupation

This Part introduces a mandatory licence scheme for HMOs, although the intention to limit it initially to larger HMOs will disappoint campaigners. There is a power for local authorities to extend the licensing requirement to all HMOs in their area.

In more detail

Local authorities will have a **duty** to introduce licensing for HMOs of three or more storeys occupied by at least five people. This will enable them to refuse licences for the worst HMOs or impose conditions on the owner. These can include making improvements and reducing anti-social behaviour (ASB). A fine of up £20,000 can be imposed for breach of licence or operating an HMO without a licence. However, perhaps of more interest to landlords is the loss of the automatic right of possession on an assured shorthold tenancy for operating without a licence.

Authorities will have a **power** to extend this to all HMOs in all or part of their area, if this will help them to develop a co-ordinated approach to homelessness, empty property and ASB. The extension will need the approval of the appropriate national authority (the Secretary of State in England and the National Assembly for Wales in that country).

Comes into force

By commencement order on a date still to be decided.

PART 3 - Selective licensing of other residential accommodation

This Part enables local authorities to introduce selective licensing for other privately rented property.

In more detail

This provision is primarily aimed at areas of low demand where some private landlords fail to manage their properties. It can also be implemented in other areas where anti-social behaviour is a problem. A local authority may designate all or part of their area for licensing private landlords; as with the extension on HMOs, designation will need the approval of the appropriate national authority.

Comes into force

By commencement order on a date still to be decided.

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PART 4 - Additional controls in relation to residential accommodation

Here we find the long awaited provision to enable local authorities to take empty private homes into management, subject to strict limitations. There are also powers to serve overcrowding notices on HMOs not licensed under Part 2 of the Act.

In more detail

There are two circumstances where a local authority can step in and manage a private property. First, where a private landlord cannot be licensed or there is some other management problem and second, where the owner of the property has left it empty for at least six months. This action must be approved by a Residential Property Tribunal and does not apply to property owned by public bodies, including social landlords. Approval cannot be given where a property is the "principal home of an absent owner", a second or holiday home; being renovated; on the market for sale or letting; or owned by someone who has recently died.

An interesting thing about the overcrowding notices is that it enables the local authority to specify the number of people sleeping in a room or to say that a particular room is not to be occupied as sleeping accommodation. There is more on overcrowding generally in Part 6.

Comes into force

By commencement order on a date still to be decided.

PART 5 - Home information packs

The provision upon which the Act nearly fell, this Part introduces the much trailed Sellers' Packs for owner occupiers selling their property.

In more detail

The requirement to provide a Home Information Pack seems to fall on the seller (or their estate agent) when a property is put on the market (this should exclude RTB sales, as the property is not generally being marketed and the potential vendor is not the one instigating the sale – but lawyers may disagree). The contents of the Home Information Pack are to be detailed by regulations but are likely to include things like proof of title, terms of sale, condition of the property etc.

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Comes into force

Mostly by commencement order on a date still to be decided but generally thought to be well after the next general election. The powers to make regulations came into force on Royal Assent.

PART 6 - Other provisions about housing

Probably the Part of most interest to those working and living in social housing, it is – as its title suggests – a mix of measures ranging from changes to the RTB scheme to tenancy deposit schemes.

Right to buy

Changes which come into effect on **18 January 2005** include:

- Extending the qualifying period from two to five years for new secure tenants
- Removing RTB from properties due to be demolished
- Extending the period for the discount to be repayable from three to five years
- Seeks to end deferred resale agreements by making discount repayable from the date of the agreement to resell
- Gives the social landlord (or another social landlord if more appropriate) right of first refusal on resale within 10 years
- Extending the RTB changes to voluntary disposals by local authority landlords, housing associations and Housing Action Trusts.

Anti-social behaviour

Changes which require **a commencement order on a date still to be decided** include:

- Withholding consent to mutual exchange for someone who has an ASB injunction, an ASBO or possession order for ASB
- Provision for RTB to be suspended by court order on grounds of ASB
- Suspending a landlord's obligation to complete an RTB sale if someone's tenancy is demoted
- Extending introductory tenancies for a further six months
- Easing information exchange on ASB.

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Tenancy Deposit Scheme

This change means all landlords who require a deposit for an assured shorthold tenancy must put the money with a Tenancy Deposit Scheme which will be established. Failure to do so means the landlord will not be able to get the property back on the two-month notice provision. This change requires **a commencement order on a date still to be decided.**

Social Housing Grant

This change will enable SHG to be paid to bodies other than housing associations. This can include ALMOs, will include private developers and may well include unregistered arms of existing associations. The Housing Corporation will be issuing a consultation paper in advance of any **commencement order** to implement this provision. However, it seems likely that at least a pilot scheme will be under way in 2005/6.

Other main provisions

- Termination of Rent to Mortgage scheme – **from Royal Assent**, but with an eight month period of grace for existing eligible tenants
- Requirements on giving notice in advance of agreements or their termination on mobile home sites - coming into effect on **18 January 2005**
- Giving protection, including length of notice and protection from harassment and unlawful eviction to county council sites providing accommodation for gypsies - coming into effect on **18 January 2005**
- Extending protection from harassment and unlawful eviction to other mobile homes sites - coming into effect on **18 January 2005**
- Enabling the relevant national authority to make changes to the current definitions of overcrowding – **from Royal Assent**
- Requiring local authorities to take account of the needs of gypsies and travellers who currently live in their area when reviewing housing needs - requires **a commencement order on a date still to be decided**
- Enabling a Social Housing Ombudsman for Wales to be instituted - requires **a commencement order from the National Assembly for Wales**.

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PART 7 - Supplementary and final provisions

As well as the usual repeals, definitions and commencement provisions, this Part contains a variety of measures relating to earlier Parts of the Act.

In more detail

The main provisions of this part of the Act are:

- Clarification that a Residential Property Tribunal is in fact a Rent Assessment Committee doing something a bit different
- Giving powers to a local authority to obtain information in respect of its powers and duties under Parts 1-4 of the Act. Also gives the authority a power of entry subject to obtaining a warrant.

Comes into force

By commencement order on a date to be decided.

IN CONCLUSION

This is not an exhaustive or analytical guide to the Act: it is a fairly early look at some of the main provisions. Many of the changes will not be in force for some time; others come in two months after Royal Assent on 18 January. Although the Act is on the statue book, what its final effect will be is something for future review and reflection some months into the future.

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