

Draft Order laid before the National Assembly for Wales under section 250(6) of the Housing Act 2004 and paragraph 34 of Schedule 11 to the Government of Wales Act 2006, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2012 No. (W.)

MOBILE HOMES, WALES

**The Mobile Homes Act 1983
(Jurisdiction of Residential Property
Tribunals) (Wales) Order 2012**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies in Wales only, confers upon a residential property tribunal (“tribunal”) jurisdiction under the Mobile Homes Act 1983 (c. 34) (“the 1983 Act”) by modifying provisions contained in that Act and the Housing Act 2004 (“the 2004 Act”). The 1983 Act, which extends to England and Wales, and Scotland, applies to any agreement under which a person is entitled to station a mobile home on land forming part of a protected site and to occupy the mobile home as that person’s only or main residence.

The 1983 Act and the 2004 Act have been modified in England by the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011 (S.I. 2011/1005) as a consequence of conferring jurisdiction on tribunals in relation to England. This Order makes corresponding amendments to the 1983 Act as modified and to the 2004 Act as a consequence of conferring jurisdiction on tribunals in relation to Wales.

Article 3 makes amendments to the 1983 Act that are consequential to conferring jurisdiction on tribunals. In particular article 3(5) amends section 4 of the 1983 Act (which confers jurisdiction on courts) so that a tribunal has jurisdiction to determine any question arising under the 1983 Act or any agreement to which that Act applies and to entertain any proceedings brought under that Act or any such agreement in relation to a protected site situated in Wales. The only questions over which jurisdiction will remain with the court are

those concerned with deciding whether an agreement may be terminated on any of the grounds in paragraphs 4, 5 or 5A(2)(b) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act (“the termination provisions”). Additionally, section 4 provides that where there is a pre-existing arbitration agreement the tribunal, rather than the arbitrator, will have jurisdiction to determine questions, including those arising under the termination provisions.

Article 3(7) amends the implied terms in Chapter 2 of Part 1 of Schedule 1 to the 1983 Act. These are the implied terms which apply to pitches on all protected sites in England and Wales except local authority gypsy and traveller sites. In particular—

- (a) amendments are made to paragraph 5A of Chapter 2 of Part 1 of Schedule 1 in relation to protected sites in Wales which provides for the court to retain jurisdiction to determine whether it is reasonable for a site owner, having regard to the tribunal’s findings of fact, to terminate an agreement where the mobile home is having a detrimental affect on the amenity of a site; and
- (b) paragraphs 8 and 17 of Chapter 2 of Part 1 of Schedule 1 are amended to place a time limit on an occupier’s right to make an appeal to the tribunal under those provisions. The tribunal may accept applications outside of the time limit if there are good reasons.

Article 4 makes amendments to the 2004 Act. Section 230(1) and (2) of the 2004 Act gives a residential property tribunal a general power by order to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue raised in or in connection with them. Article 4(2) inserts a new section 230(5A) into the 2004 Act which provides that when exercising jurisdiction under the 1983 Act the directions which may be given by a tribunal include those listed in that subsection. Article 4(3) amends Schedule 13 to the 2004 Act, in particular the level of costs which a tribunal may award in exceptional cases is amended so that the maximum for an application under the Mobile Homes Act 1983 is £5,000.

Article 5 makes transitional and saving provisions.

An impact assessment has been prepared in respect of this instrument. A copy can be obtained from the Housing Directorate, Welsh Government, Merthyr Tydfil Office, Rhydycar, Merthyr Tydfil, CF48 1UZ.

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DRAFT WELSH STATUTORY
INSTRUMENTS

2012 No. (W.)

MOBILE HOMES, WALES

**The Mobile Homes Act 1983
(Jurisdiction of Residential Property
Tribunals) (Wales) Order 2012**

Made

Coming into force

21 March 2012

The Welsh Ministers, in exercise of the powers conferred on them by sections 229(3) and (4) and 250(2) of the Housing Act 2004(1) make the following Order.

A draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales in accordance with section 250(6) of the Housing Act 2004 and paragraph 34 of Schedule 11 to the Government of Wales Act 2006.

Title, commencement and interpretation

1.—(1) The title of this Order is the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012 and it comes into force on 21 March 2012.

(2) In this Order—

“the 1983 Act” (“*y Ddeddf 1983*”) means the Mobile Homes Act 1983(2); and

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- (1) 2004 c. 34. The powers conferred by section 229(3) and (4) of the Housing Act 2004 are exercisable, by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 by the Welsh Ministers. *See* the definition of the “appropriate national authority” in section 261(1) of the 2004 Act.
- (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

“the commencement date” (“*y dyddiad cychwyn*”) 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.

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) In section 4 (jurisdiction of a tribunal or the court: England and Wales)—

- (a) in subsections (1) and (3), after “England” insert “or in Wales”;
- (b) omit subsection (7).

(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(1) or, where the parties have

Act 2004 and by the Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007 (S.I. 2007/3151 (W. 268)) in relation to Wales.

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 1 (duration of agreement) for “or 6” substitute “or 5A”,
- (b) in paragraph 4 (termination by owner) for “court” substitute “appropriate judicial body”,
- (c) in paragraph 5 (termination by owner) for “court” substitute “appropriate judicial body”,
- (d) in paragraph 5A, omit sub-paragraph (1),
- (e) omit paragraph 6,
- (f) in paragraph 8 (sale of mobile home to a person approved by the owner)—
 - (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.”

- (g) in paragraph 9 (gift of mobile home), in sub-paragraph (2) for “(1G)” substitute “(1I)”,

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

- (h) in paragraph 10 (re-siting of mobile home), in sub-paragraphs (1)(a) and (2), for “court” substitute “appropriate judicial body”,
 - (i) in paragraph 16 (the pitch fee), in paragraph (b), for “court” substitute “appropriate judicial body”,
 - (j) in paragraph 17 (pitch fee review)—
 - (i) for “court”, wherever it appears, substitute “appropriate judicial body”,
 - (ii) in sub-paragraph (5) omit the words “, in the case of an application in relation to a protected site in England,”,
 - (iii) in sub-paragraph (9) omit the words “, in the case of an application in relation to a protected site in England,” and
 - (iv) in sub-paragraph (9A) omit the words “in relation to a protected site in England”,
 - (k) in paragraph 18 (pitch fee determination), in sub-paragraph (1)(a)(iii), for “court” substitute “appropriate judicial body”
 - (l) in paragraph 19 (pitch fee determination), in sub-paragraph (2) omit the words “In the case of a protected site in England,” and
 - (m) in paragraph 28 (qualifying residents’ association), in sub-paragraph (1)(h), for “court” substitute “appropriate judicial body”.
- (8) In the heading of Part 2 of Schedule 1 (matters concerning which terms can be implied by court) for “court” substitute “appropriate judicial body”.

Amendments to the Housing Act 2004

4.—(1) The Housing Act 2004 is amended in accordance with the following paragraphs.

(2) In section 230 (powers and procedure of residential property tribunals) after subsection (5) insert—

“(5A) When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by a tribunal under its general power include (where appropriate)—

- (a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;
- (b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as can be specified in the directions;
- (c) directions requiring cleaning, repairs, restoration, re-positioning or other

works to be carried out in connection with a mobile home, pitch or the protected site in such manner as may be specified in the directions;

- (d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.

(5B) In subsection (5A)—

“mobile home” and “protected site” have the same meaning as in the Mobile Homes Act 1983 (see section 5 of that Act);

“pitch” has the meaning given by paragraph 1(4) of Chapter 1 of Part 1 of Schedule 1 to that Act;

“pitch fee” has the meaning given in paragraph 29 of Chapter 2, paragraph 13 of Chapter 3, or paragraph 27 of Chapter 4, of Part 1 of Schedule 1 to that Act, as the case may be.”

(3) In Schedule 13 (residential property tribunals: procedure)—

- (a) for the italic heading before paragraph 2 substitute “Applications and appeals”,
- (b) in paragraph 3 (transfers) in sub-paragraph (6) after “this Act” insert “or the Mobile Homes Act 1983”,
- (c) in paragraph 8 (additional relief) in sub-paragraph (2) after the words “this Act” insert “or any provision of the Mobile Homes Act 1983”, and
- (d) in paragraph 12 (costs) in sub-paragraph (3)(a) after “£500” insert “or, in the case of an application to a tribunal under the Mobile Homes Act 1983, £5,000”.

Transitional and saving provisions

5.—(1) Subject as follows, the amendments made by this Order apply in relation to an agreement in respect of land forming part of a protected site in Wales to which the 1983 Act applies which was made before the coming into force of this Order as well as in relation to such an agreement made on or after the coming into force of this Order.

(2) No amendment made by this Order affects the validity of anything done by the court before the coming into force of the Order.

(3) The amendments made by this Order do not apply—

- (a) for the purposes of any proceedings begun, or applications made to the court, before the coming into force of this Order, or
 - (b) in relation to any matter which is the subject of any proceedings begun, or applications made to the court, before the coming into force of this Order.
- (4) Paragraph (5) applies if, before the coming into force of this Order—

- (a) an occupier of a protected site in Wales has served a request on an owner under paragraph 8(1A) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act (or that paragraph as applied by paragraph 9(2) of that Chapter) but no application relating to that request has been made to the court under paragraph 8(1E) of Chapter 2 (or that paragraph as applied by paragraph 9(2) of that Chapter),
- (b) an owner of a protected site in Wales has served a notice under paragraph 17(2) of Chapter 2 but no application relating to that notice has been made to the court under paragraph 17(4) of that Chapter, or
- (c) an owner of a protected site in Wales has served a notice under paragraph 17(6)(b) of Chapter 2 of that Schedule but no application relating to that notice has been made to the court under paragraph 17(8) of that Chapter.

(5) If the application to the court mentioned in paragraph (4)(a), (b) or (c) is made on or before the date which is one year after the commencement date, then the amendments made by this Order do not apply in relation to it.

(6) The amendments made by article 3(2) and (3), so far as they relate to provisions of the 1983 Act which were inserted by section 206(1) or (2) of the Housing Act 2004, do not apply in relation to pre-2005 agreements.

(7) But, in relation to pre-2005 agreements, sections 1 and 2 of the 1983 Act, as they apply to such agreements, have effect as if the references to the court were references to a tribunal.

(8) In its application to agreements to which the 1983 Act applies which were made before the coming into force of this Order, this Order has effect as if—

- (a) in section 4(3)(a), inserted by article 3(5) into the 1983 Act, the words “paragraph 4, 5 or 5A(2)(b) of Chapter 2, or” and “Chapter 4 of” are omitted, and
- (b) in the opening words of article 3(7), the words “Chapter 2 of” were omitted.

(9) Any reference in this article to the making of an agreement to which the 1983 Act applies includes a

reference to any variation of an agreement by virtue of which the agreement becomes one to which that Act applies.

(10) In this article—

“arbitration agreement” (“*cytundeb cymrodeddu*”) means an agreement in writing to submit to arbitration any question arising under the 1983 Act or any agreement to which it applies;

“the court” (“*y llys*”) and “owner” (“*perchennog*”) are to be construed in accordance with the 1983 Act as it had effect at the relevant time;

“pre-2005 agreements” (“*cytundebau cyn 2005*”) means agreements in respect of land forming part of a protected site in Wales to which the 1983 Act applies but to which the amendments made by section 206(1) and (2) of the Housing Act 2004 do not apply by virtue of section 206(4) of that Act;

“a tribunal” (“*tribiwnlys*”) means a residential property tribunal 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.

Minister for Housing, Regeneration and Heritage, one of the Welsh Ministers

Date