

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(a), 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(b); 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.

Amendments to the 1983 Act

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

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- (a) 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).
- (b) 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.

(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^(a) 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)—

- (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

(a) 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).

- (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

 - (l) in paragraph 28 (qualifying residents’ association), in sub-paragraph (1)(h), for “court” substitute “appropriate judicial body”.

(8) In Chapter 4 of Part 1 of Schedule 1 (agreements relating to permanent pitches in England on a local authority gypsy and traveller site or a county council gypsy and traveller site)—

- (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) in paragraph 6 (termination by owner)—
 - (i) in sub-paragraph (1)(a) for “the court” substitute “a tribunal”,
 - (ii) in sub-paragraph (1)(b)—
 - (aa) for “court” substitute “appropriate judicial body”, and
 - (bb) for “its determination” substitute “the tribunal’s determination”, and

- (iii) in sub-paragraphs (2), (3) and (4), for “court”, wherever it appears, substitute “tribunal”,
 - (d) in paragraph 8 (re-siting of mobile home), for “the court”, wherever it appears, substitute “a tribunal”,
 - (e) in paragraph 14 (the pitch fee), in paragraph (b), for “the court” substitute “a tribunal”,
 - (f) in paragraph 15 (pitch fee review)—
 - (i) in sub-paragraphs (4), (8) and (11), for “the court”, wherever it appears, substitute “a tribunal”, and
 - (ii) in sub-paragraph (10), for “The court” substitute “A tribunal”,
 - (g) in paragraph 16 (pitch fee determination), in sub-paragraph (1)(a)(iii), for “the court” substitute “a tribunal”, and
 - (h) in paragraph 26 (qualifying residents’ association), in sub-paragraph (1)(h), for “the court” substitute “a tribunal”.
- (9) In the heading of Part 2 of Schedule 1 (matters concerning which terms may 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 may 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 England 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 England has served a request on an owner under paragraph 8(1A) of Part 1 of Schedule 1 to the 1983 Act (as that Act had effect before the coming into force of the 2011 orders) (or that paragraph as applied by paragraph 9(2) of that Part of that Schedule) but no application relating to that request has been made to the court under paragraph 8(1E) of that Part of that Schedule (or, as the case may be, that paragraph as applied by paragraph 9(2) of that Part of that Schedule),
- (b) an owner of a protected site in England has served a notice under paragraph 17(2) of that Part of that Schedule but no application relating to that notice has been made to the court under paragraph 17(4) of that Part of that Schedule, or
- (c) an owner of a protected site in England has served a notice under paragraph 17(6)(b) of that Part of that Schedule but no application relating to that notice has been made to the court under paragraph 17(8) of that Part of that Schedule.

(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 and are not agreements to which article 4 of the Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011 applies, 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” were omitted,
- (b) in the opening words of article 3(7), the words “Chapter 2 of” were omitted, and
- (c) article 3(8) 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” 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” and “owner” are to be construed in accordance with the 1983 Act as it had effect at the relevant time;

“pre-2005 agreements” means agreements in respect of land forming part of a protected site in England 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” 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;

“the 2011 orders” means 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.

Signed by the authority of the Secretary of State for Communities and Local Government

Name
Minister of State

Date Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which applies in England 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”). (For the extent of this Order see section 270 of 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.

Article 3 makes amendments to the 1983 Act that are consequential to conferring jurisdiction on tribunals. In particular Article 3(5) replaces the existing 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 England and 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, or paragraphs 4, 5 or 6(1)(b) of Chapter 4, of Part 1 of Schedule 1 to the 1983 Act (“the termination provisions”). Additionally, substituted 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) a new paragraph 5A is inserted into Chapter 2 of Part 1 of Schedule 1 in relation to protected sites in England 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 3(8) amends the implied terms in Chapter 4 of Part 1 of Schedule 1 to the 1983 Act. These are the implied terms which apply to pitches on local authority gypsy and traveller sites.

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. It has been deposited in the Library of each House of Parliament and is available from the Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DR or email parkhomes@communities.gsi.gov.uk

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