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STATUTORY INSTRUMENTS

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**2003 No. 940**

**HOUSING, ENGLAND AND WALES  
REGULATORY REFORM**

**The Regulatory Reform (Housing  
Management Agreements) Order 2003**

*Made* - - - - 27th March 2003

*Coming into force* - - 28th March 2003

Whereas:

- (a) the First Secretary of State, as respects England, and the Secretary of State for Wales, as respects Wales, (“the Secretaries of State”) consulted<sup>(1)</sup>—
  - (i) such organisations as appeared to them to be representative of interests substantially affected by their proposals for this Order,
  - (ii) such organisations as appeared to them to be representative of statutory bodies to whose functions those proposals relate,
  - (iii) the Law Commission,
  - (iv) the National Assembly for Wales, and
  - (v) such other persons as they considered appropriate;
- (b) following the consultation mentioned in recital (a) the Secretaries of State considered it appropriate to proceed with the making of this Order;
- (c) a document containing the proposals of the Secretaries of State was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001<sup>(2)</sup> and the period for Parliamentary consideration under section 8 of that Act expired;
- (d) the Secretaries of State had regard to the representations made during that period and, in particular, to the Fifth Report of Session 2002–03 of the Regulatory Reform Committee of the House of Commons and the Eighth Report of Session 2002–03 of the Delegated Powers and Regulatory Reform Committee of the House of Lords;
- (e) a draft of this Order was laid before Parliament with a statement giving details of those representations and the changes to the proposals of the Secretaries of State in the light of them;

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(1) A consultation paper “Proposal to change the delegation of Housing Management for Local Authorities in England and Wales” was published by the Office of the Deputy Prime Minister and the Wales Office in August 2002. Copies may be obtained from the Office of the Deputy Prime Minister Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (tel: 0870 1226 236).

(2) 2001 c. 6.

- (f) the draft was approved by resolution of each House of Parliament;
- (g) this Order modifies a function of the National Assembly for Wales and the Assembly has agreed that it be made;
- (h) the Secretaries of State are of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
- (i) this Order creates burdens affecting persons in the carrying on of certain activities, and the Secretaries of State are of the opinion that—
  - (i) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created; and
  - (ii) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made:

Now, therefore, the First Secretary of State, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred by section 1 of the Regulatory Reform Act 2001, hereby make the following Order:

#### **Citation and commencement**

1.—(1) This Order may be cited as the Regulatory Reform (Housing Management Agreements) Order 2003 and shall come into force on the day after that on which this Order is made.

(2) This Order extends only to England and Wales.

#### **Section 27 of the Housing Act 1985**

2. For section 27 of the Housing Act 1985 substitute:

“27.—(1) A local housing authority may agree that another person shall exercise in relation to—

- (a) such of the authority’s houses as are specified in the agreement, and
- (b) any other land so specified which is held for a related purpose,

such of the authority’s management functions as are so specified.

(2) In this Act—

- (a) “management agreement” means an agreement under subsection (1) or a sub-agreement, and
- (b) “manager”, in relation to a management agreement, means a person by whom management functions are exercisable under the agreement.

(3) A management agreement shall set out the terms on which the authority’s functions are exercisable by a manager.

(4) An agreement under subsection (1) shall contain such provisions as may be prescribed by regulations made by the Secretary of State.

(5) A management agreement may—

- (a) include provision authorising a manager, with the consent of the authority, to agree that another person shall exercise any management function exercisable by the manager under the agreement;

- (b) where a body or association is a manager, provide that the management functions of the body or association under the agreement may be performed by a committee, sub-committee, officer or employee of the body or association.
- (6) Subject to subsection (7), the approval of the Secretary of State shall be required to—
  - (a) the making of any management agreement;
  - (b) the variation of a provision of a management agreement, if the provision is specified, or is of a description specified, by the Secretary of State in giving approval to the making of a management agreement.
- (7) The Secretary of State may, in giving approval to the making of an agreement under subsection (1)—
  - (a) specify a moratorium period and the circumstances in which it is to apply;
  - (b) specify circumstances in which his approval is not required to the making of a sub-agreement under the agreement.
- (8) If a moratorium period applies in relation to a management agreement—
  - (a) during the moratorium period the approval of the Secretary of State is not required to the making of a sub-agreement under the agreement;
  - (b) any sub-agreement made under the agreement during the moratorium period without the approval of the Secretary of State is not valid unless it is approved by the Secretary of State immediately after the end of the moratorium period.
- (9) A moratorium period specified under subsection (7) must not exceed 6 months.
- (10) Where a sub-agreement has been made during a moratorium period without the approval of the Secretary of State, the Secretary of State may extend the moratorium period if he is satisfied that he will not give his approval to that sub-agreement immediately after the end of that period; and this subsection may apply more than once.
- (11) The approval of the Secretary of State to the making of an agreement under subsection (1) or to the variation of such an agreement may be given generally or to a particular local housing authority or description of local housing authority.
- (12) The approval of the Secretary of State under this section may be given—
  - (a) in relation to a particular case or description of case;
  - (b) unconditionally or subject to conditions.
- (13) Subject to subsection (15)—
  - (a) anything done, or not done, by a manager in connection with the exercise (or purported exercise) of a relevant function shall be treated as done, or not done, by the authority;
  - (b) anything done, or not done, in relation to a manager in connection with the exercise (or purported exercise) of a relevant function shall be treated as done, or not done, in relation to the authority.
- (14) In subsection (13) “relevant function” means a management function of the authority exercisable by the manager under a management agreement.
- (15) Subsection (13) shall not apply—
  - (a) to the extent that a management agreement provides otherwise as between the parties to it; or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or not done by the manager.

- (16) References in subsection (1) to the management functions of a local housing authority in relation to houses or land—
- (a) do not include such functions as may be prescribed by regulations made by the Secretary of State, but
  - (b) subject to that, include functions conferred by any statutory provision and the powers and duties of the authority as holder of an estate or interest in the houses or land in question.
- (17) Regulations under this section—
- (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas,
  - (b) may contain such incidental, supplementary or transitional provisions as appear to the Secretary of State to be necessary or expedient, and
  - (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (18) In this section, “sub-agreement” means an agreement made by a manager and another person pursuant to a provision included in an agreement by virtue of subsection (5)(a).”

#### **Wales**

**3.**—(1) The reference to the Housing Act 1985 in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999(3) is to be treated as referring to that Act as amended by this Order.

(2) Paragraph (1) does not affect the power to make further Orders varying or omitting that reference.

Signed by authority of the First Secretary of State

27th March 2003

*Jeff Rooker*  
Parliamentary Under Secretary of State,  
Office of the Deputy Prime Minister

Signed by authority of the Secretary of State for Wales

27th March 2003

*Don Touhig*  
Parliamentary Under Secretary of State, Wales  
Office

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 27 of the Housing Act 1985 (“the 1985 Act”) enables a local housing authority, with the approval of the Secretary of State, to appoint a manager to exercise specified housing management functions in respect of specified houses and associated land. This Order substitutes a new section 27 with amendments.

The amendments, principally:

- enable a manager, by a sub-agreement, to appoint another person to exercise some or all of the delegated functions provided the authority has consented and the Secretary of State has given approval.
- require the approval of the Secretary of State to the variation of a provision of a management agreement where the provision has been specified, or is within a description specified, by the Secretary of State in giving approval to the making of a management agreement.
- enable the Secretary of State to specify a moratorium period during which approval is not required to a sub-agreement and the circumstances in which this is to apply.
- enable the Secretary of State to specify circumstances when approval is not required to the making of a sub-agreement under a management agreement.
- removes the reference to a manager acting as agent of the local housing authority. The new subsections (13), (14) and (15) inserted into section 27 determine the responsibilities of the parties. Subsections (13) and (14) provide that the authority is liable for any act or omission of a manager in the exercise of the management functions under a management agreement. Two exceptions to this are provided by subsection (15). The management agreement between the authority and the manager, or between one manager and another, will determine the responsibilities and liabilities of the parties to the agreement. The second exception is where criminal liability arises from the manager’s actions or failure to act in connection with the exercise of the functions under the management agreement.

The functions of the Secretary of State under section 27 are, as respects Wales, exercisable by the National Assembly for Wales by virtue of article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999. Article 3 of this Order provides that the reference in that Order to the 1985 Act is treated as a reference to that Act as amended by this Order. Accordingly the additional functions of the Secretary of State of approving sub-agreements or variations to agreements are, as respects Wales, exercisable by the National Assembly.