EXPLANATORY MEMORANDUM TO

THE RENT REPAYMENT ORDERS (SUPPLEMENTARY PROVISIONS) (ENGLAND) REGULATIONS 2007

2007 No. 572

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations supplement the provisions in Parts 2 and 3 of the Housing Act 2004 ("the Act") which give power to local housing authorities to apply to a residential property tribunal for a rent repayment order ("RRO") to be made in respect of a house in multiple occupation ("HMO") required to be licensed under Part 2 of the Act, or a house that is required to be licensed under Part 2 of the Act, but which is not so licensed.

2.2 The Regulations specify the purposes for which monies received by a local housing authority under a RRO may be applied and require a local housing authority to pay into the Consolidated Fund any amounts received under an RRO that are not applied for a purpose specified in these Regulations These Regulations also enable a local housing authority to amend its application for a RRO where it comes to the notice of the local housing authority that there may have been an overpayment made of housing benefit in respect of the part or parts of the HMO, or the whole or part of the house to which its application relates. In that case, the local housing authority may seek leave to amend its application by substituting for the total amount of the housing benefit paid, such part of that amount as they believe is properly payable.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 By Section 73(5) (in respect of HMOs required to be licensed under Part 2 of the Act) and 96(5) (in respect of houses required to be licensed under Part 3 of the Act), on an application by a local housing authority, a residential property tribunal must make a RRO if it is satisfied that:

> (a) a person has been convicted of an offence relating to the operation of an HMO or house without a licence when it is required to be licensed under Part 2 or 3 of the Act; and
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> (b) housing benefit has been paid in respect of periodical payments connected with the occupation of a part or parts of the licensable HMO, or the whole or part of the licensable house during a period during which it appears to the tribunal that such an offence was being committed.

4.2 Under Sections 74(9)(b) and 97(9)(b) of the Act any amount payable to a local housing authority under a RRO does not, when recovered by the authority, constitute an amount of housing benefit recovered by them.

4.3 Under section 74(15) the "appropriate national authority" may make regulations which it considers appropriate for supplementing the provisions in sections 73 and 74 of the Act. Under section 97(15) the appropriate national authority may make regulations which it considers appropriate for supplementing the provisions in sections 96 and 97 of the Act. In respect of both sections 74(15) and 97(15) the regulations may in particular make provision for securing that persons are not unfairly prejudiced by RROs, and for requiring or authorising amounts received by local housing authorities by virtue of such orders to be dealt with in such manner as is specified in the regulations.

4.4 The Secretary of State is empowered to make such regulations in relation to England. This is the first time the powers in section 74(15) or 97(15) have been exercised in relation to England.

5. Extent

5.1 This instrument applies to England .

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 RROs were introduced by the Act both as an enforcement tool and as a means of compensating a local housing authority or tenant when a landlord fails to comply with the licensing requirements. The making of RROs will also prevent exploitation of public resources, through the retention of housing benefit receipts, by landlords who have acted illegally.

7.2 Where a local housing authority is satisfied that a landlord operates a licensable property under Parts 2 (Houses in Multiple Occupation) or 3 (Selective Licensing) of the Act without a licence, it can apply to a residential property tribunal for an RRO, to recover a sum equivalent to no more than twelve months' housing benefit in respect of a claimant's occupation of the property.

7.3 An occupier (or former occupier) can also apply to a tribunal for a RRO in respect of rent he paid for a period of up to twelve months, less any amount paid by housing benefit that was paid during that period, but only if the landlord has been convicted of the offence of operating the property without a licence, or if the local housing authority has previously obtained an order in respect of the property.

7.4 The Act does not specify how monies a local housing authority recovers under a RRO are to be applied. These Regulations permit a local housing authority to apply the monies only in relation to the exercise of its functions connected with the licensing

of the property to which the order relates, or, in the event that the property cannot be licensed, for the making of a management order in connection with the property. Any excess revenues must be paid into the Consolidated Fund. Both these provisions are intended to ensure that RRO monies received by a local housing authority are not applied for more general purposes. It is hoped that the power for a local housing authority to make an order will be a deterrent against landlords failing in their duty to licence their property, rather than as a device by which local housing authorities can increase their revenues.

7.5 These Regulations also permit a local housing authority (with the permission of a residential property tribunal) to amend its application for an RRO so that it excludes any amount of overpayment of housing benefit which it believes may have been included in the amount for which it originally applied. Housing benefit legislation contains detailed provisions enabling overpaid housing benefit to be recovered, and so the intention is that the RRO legislation should not be used for the recovery of such overpayments.. Since monies recovered under an RRO are no longer be treated as housing benefit, even if they were originally paid to the landlord in the form of housing benefit, they cannot be recovered as housing benefit. Consequently it is important for an authority to ensure that the right recovery mechanism is used, and to be able to adjust its RRO application should an overpayment come to light. .

8. Impact

8.1 No regulatory impact assessment has been provided as this instrument has no impact on the costs of business, charities or the voluntary sector.

9. Contact

9.1 Robert Skeoch of the Department for Communities and Local Government, Tel: 020 7944 3568 or e-mail: Robert.skeoch@communities.gsi.gov.uk can answer any queries regarding the instrument.