EXPLANATORY MEMORANDUM TO

THE RESIDENTIAL PROPERTY TRIBUNAL PROCEDURE AND FEES (ENGLAND) REGULATIONS 2011

2011 No. 1007

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. Purpose of the instrument

2.1 The instrument sets out the procedure to be followed by residential property tribunals (*RPTs*) in determining applications and appeals in England under the Housing Act 2004 (*the 2004 Act*), Part 9 of, and paragraph 11(4) of Schedule 5 to, the Housing Act 1985 (*the 1985 Act*), and the Mobile Homes Act 1983 (*the 1983 Act*). It also sets out the fees that are payable where specified appeals and applications are made to an RPT under those Acts.

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

3.1 The Secretary of State has previously exercised the power to make procedure regulations for RPTs in making the Residential Property Tribunal (Right to Buy Determinations) Procedure (England) Regulations 2005 (S.I. 2005/1509), the Residential Property Tribunal (Fees) (England) Regulations 2006 (S.I. 2006/830) and the Residential Property Tribunal Procedure (England) Regulations 2006 (S.I. 2006/831). The Committee in its 27th report of the 2005-2006 Parliamentary session reported the 2006 Fees Regulations for defective drafting. Those Regulations are now being revoked and re-enacted with minor amendments, correcting the errors noted by the Committee, and making provision for fees to be payable in respect of certain specified applications made to an RPT under the 1983 Act.

4. Legislative Context

4.1 The 2004 Act transferred jurisdiction from the county court to RPTs where proceedings were brought in relation to demolition orders under sections 269, 272 and 317 of the 1985 Act and under section 318 of that Act where a person applies for authorisation to enter land which is harmful to health and safety to carry out works. It also transferred the appellate function of the Secretary of State under paragraph 11 (4) of Schedule 5 to the 1985 Act, concerning the exclusion from right to buy of premises suitable for elderly persons, to RPTs .

4.2 The 2004 Act also gives jurisdiction to RPTs to deal with appeals and applications in relation to–

- housing conditions under Part 1 of that Act;
- licensing of HMOs under Part 2 ;
- selective licensing of other residential accommodation under Part 3; and
- management orders, empty dwelling management orders and overcrowding notices under Part 4 of the Act.

4.3 By section 229(1) of the 2004 Act, any jurisdiction conferred on an RPT is exercisable by a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977; but by section 229(2) of the 2004 Act where so constituted for exercising such jurisdiction, the rent assessment committee is known as an RPT.

4.4 By section 229(3) of the 2004 Act, the appropriate national authority may by order make provision for and in connection with conferring on RPTs, in relation to any such matters as are specified in the order, such jurisdiction as is so specified.

4.5 By the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011 (*the Jurisdiction Order*), jurisdiction has been conferred on RPTs to determine questions arising under the 1983 Act or under any agreement to which it applies. A separate explanatory memorandum and impact assessment has been prepared in respect of that instrument.

4.6 By Schedule 13 to the 2004 Act the appropriate national authority may make regulations governing the procedures of RPTs. Under paragraph 11 of Schedule 13 the power to make regulations includes the power to make provision requiring the payment of fees in respect of applications or appeals to tribunals.

4.7 By section 261(1) of the 2004 Act, "the appropriate national authority" is, in relation to England, the Secretary of State.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales but only applies to proceedings of residential property tribunals for determining applications in respect of premises in England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The driver behind the new regulations has been the Government's proposed decision to transfer dispute resolution under the 1983 Act from county courts to RPTs. The Minister for Housing and Local Government announced that proposal in a statement to the House of Commons on 14 July 2010.

7.2 The policy decision and consultation process relating to the transfer of the jurisdiction is set out in the Explanatory Memorandum to the Jurisdiction Order.

7.3 To give effect to the new jurisdiction of RPTs it is necessary to provide regulations governing the procedure to be adopted by tribunals in processing, hearing, determining and disposing of applications made to them under the 1983 Act and the level of fees payable in respect of such applications.

7.4 The Government has decided that the transfer of jurisdiction under the 1983 Act is an appropriate opportunity to consolidate in one set of regulations the procedures relating to the various jurisdictions exercised by RPTs and include a consolidated fee list for those jurisdictions.

7.5 The instrument sets out certain rules for cases under the 1983 Act. These include:

- the fee payable for certain types of applications to the tribunal (normally £150) with a sliding scale for multiple applications and references - although some types of applications do not attract a fee;
- specific rules to deal with urgent applications relating to the buying and selling of mobile homes and
- procedural rules for determining whether there are grounds to terminate an agreement on the grounds that a mobile home is in disrepair.

Consolidation

7.6 The instrument revokes:

- The Residential Property Tribunal (Right to Buy Determinations) Procedure (England) Regulations 2005;
- The Residential Property Tribunal Procedure (England) Regulations 2006, and
- The Residential Property Tribunal (Fees) (England) Regulations 2006.

7.7 The first set of regulations above laid down procedures to be adopted by tribunals in relation to appeals against social and local authority landlord decisions to refuse applications under the right to buy scheme in the 1985 Act because the premises is particularly suitable for occupation of elderly persons.

7.8 The second set of regulations above laid down procedures to be adopted by tribunals in determining applications and appeals in relation to housing conditions under the 2004 Act and the 1985 Act; licensing of HMOs and certain other privately rented housing; overcrowding in HMOs and local housing authorities' powers to make management orders in respect of empty private sector housing and certain privately rented housing.

7.9 The third set of regulations above set out fees payable for certain applications under the 1985 and 2004 Acts and set out rules for their waiver and reimbursement in certain circumstances.

7.10 The new instrument re-enacts all of the repealed regulations in one set of regulations with some minor and technical changes. In particular the opportunity has been taken to update the applicable amounts applying to waiver of fees, but there is no change the level of fees payable. Certain procedure rules have been included to require assistance to be provided to participants who are blind or partially sighted or who lack literacy skills.

7.11 As the instrument consolidates all of the jurisdictions of RPTs under one set of procedure regulations, it has been welcomed by the Residential Property Tribunal Service (the body which administers the RPT and its sister tribunals).

7.12 Without the consolidation and with the advent of the mobile homes (commonly called park homes) jurisdiction there would have been five different sets of regulations relating to the RPTs' jurisdictions.

8. Consultation outcome

8.1 The Department for Communities and Local Government has consulted with the Administrative Justice and Tribunals Council, as required under The Tribunals, Courts and Enforcement Act 2007. The Council raised no objections.

8.2 It also consulted and worked closely with the Residential Property Tribunal Service on the drafting and content of the instrument.

8.3 There has been no public consultation on the consolidation because there have been no substantive changes to the procedures or fees payable and such modifications that have been made do not affect or attract public interest.

8.4 However, as part of the public consultation on the transfer of jurisdiction published in May 2008-"A new approach for resolving disputes and to proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)"- the Department consulted on procedures and fees for applications to the RPT brought under the 1983 Act.

8.5 There were 1760 responses to the consultation paper. 1650 were in the form of a campaign letter from residents; 80 were individual responses from residents; 12 were from residents' associations, including two of the national resident groups; 6 were from site owners, including the two national trade bodies and 12 were from other interested organisations, including local authorities, professional bodies and representatives of Gypsy and Traveller interests.

8.6 Chapter 5 of the consultation paper concerned fees and procedures for applications made under the 1983 Act including such matters as time limits for making certain applications; urgency procedures; powers to dismiss cases and award costs and fees payable for applications. Not all consultees responded to the questions in this chapter, although most of those who did were generally supportive of the proposal. The two principal areas of concern were the proposals relating to time limits which the majority of consultees disagreed with and the rules concerning hearings in private, which most residents thought should not be permitted.

8.7 In May 2009 the Department for Communities and Local Government set out the response to the May 2008 consultation which announced the intention to transfer most disputes from the courts to RPTs. It was agreed that hearings should not be held in private (except under exceptional circumstances) and that extended time limits should apply to certain applications.

8.8 As part of the consultation response, the Department undertook a mini consultation on whether the "fact finding" role of the court in the termination of agreement cases should be transferred to RPTs i.e. whether the tribunal should decide whether the facts were proven before an application could proceed to the court to decide whether it was reasonable to terminate the agreement. There were 18 responses to that consultation, 13 of whom disagreed with the proposal (mainly the trade organisations and representatives of the Gypsies and Travellers' interests), the remaining supporting it (including the national residents' groups).

8.9 In December 2009 the Department announced that it would not proceed with the transfer of "fact finding" to RPTs, except in relation to proceedings for termination on account of disrepair, since we agreed with the minority of consultees who supported the transfer, that RPTs were better qualified than the courts to evaluate property conditions and repairs that might be required.

8.10 The rules regarding fees, costs and urgency procedure have been legislated for in the instrument (see paragraph 7.5 above). Those concerning time limits for making applications are in the Jurisdiction Order (as an amendment to the 1983 Act).

8.11 Regarding termination cases on account of disrepair the required amendments to the 1983 Act have been made through the Jurisdiction Order, but the procedural rules for dealing with such applications in the tribunal have been enacted through the instrument (see paragraph 7.5 above).

9. Guidance

9.1 The Department for Communities and Local Government does not intend to publish any Guidance in respect of this instrument.

9.2 The Department intends to publish information in the form of a fact sheet aimed at tribunal users, outlining the regime for proceedings and disputes under the 1983 Act, including the jurisdiction of RPTs. This will be published on the DCLG website.

10. Impact

10.1 These regulations will impact on businesses (e.g. private sector landlords and owners of mobile home sites), some social and local authority landlords and local authorities in their regulatory capacity.

10.2 However, no impact assessment has been prepared because this is essentially a consolidation instrument (see paragraphs 7.6 to 7.12) and such modifications that have been made have no impact upon existing tribunal users.

10.3 The impact of extending the tribunal jurisdiction to mobile homes has been included in the Explanatory Memorandum to the Jurisdiction Order and an Impact Assessment has been prepared for that order.

11. Regulating small business

11.1 The regulations apply to small business, as most landlords and owners of mobile home sites in the private sector are owned by businesses that meet the definition. However, as indicated in section 10 above they do not have any greater impact on small landlords than the existing regulations. In terms of owners of mobile home sites as indicated in the Impact Assessment, the Department does not believe the proposals have any significant impact upon them, other than to the extent of the potential savings outlined in the Explanatory Memorandum to the Jurisdiction Order.

12. Monitoring & review

12.1 The Department for Communities and Local Government does not intend to review the regulations, except to the extent that it will undertake a review of RPTs' jurisdiction in relation to the 1983 Act three years after the jurisdiction has come into force.

13. Contact

Robert Skeoch at the Department for Communities and Local Government Tel: 0303 444 3701 email: Robert.Skeoch@communities.gsi.gov.uk can answer any queries regarding the instrument.