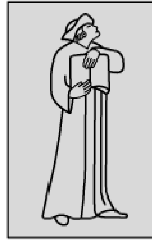

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PROPERTY LAW BULLETIN

SEPTEMBER 2008

CASE LAW UPDATE

ANCIENT RIGHTS

Mr Roberts' claim to various ancient rights over the Pembrokeshire foreshore, based on his ownership of the lordship marcher of St Davids and the manor of Trevine in Pembrokeshire, has succeeded in part. In particular a prescriptive right to a moiety of a wreck, namely half of any wreck washed up on the foreshore, was established. A right to estrays, ownership of tame animals found straying in the manor and whose owner was unknown, had been established in relation to the manor of Trevine but was not exercisable over the foreshore. Although fascinating, the judgment does not seem likely to have extensive application. ***Crown Estate Commissioners v Roberts & anor*** [2008] EWHC 1302 (Ch); [2008] 24 EG 141 (CS).

ASSIGNMENT

A purchaser of a headlease failed to provide a guarantee that satisfied the landlord and so the landlord refused to consent to the assignment. The purchaser's deposit of £105,000 was forfeited. A claim to recover it on the basis that the landlord had unreasonably withheld consent to the assignment was unsuccessful. A guarantee had been offered by a Mr Reid, the sole director of the purchasing company. The landlord's requirement that *"a reasonable alternative security"* should be provided by the assignee before Mr Reid should be released from liability on any subsequent assignment of the lease effected with the landlord's consent was a reasonable and proper one. The purchaser's refusal to comply with it was a breach of the sale contract. Had the landlord persisted in requiring that a reasonable alternative **guarantor** should be provided, this would have fallen foul of the principle that it will not normally be reasonable for a landlord to seek to impose a condition which is designed to increase or enhance the rights that he enjoys under the lease. The landlord plainly had no entitlement to a guarantor throughout the term of the headlease. However, reasonable alternative security is capable of being provided by the covenant of the proposed assignee itself, which would not give the landlord any additional benefit. It does not necessarily have to be provided by a third party. ***Landlord Protect Ltd v St Anselm Development Company Ltd*** [2008] EWHC 1582 (Ch); [2008] 28 EG 113 (CS).

BANKRUPTCY

Ss.12 to 15 Trusts of Land and Appointment of Trustees Act 1996 do not provide an exhaustive regime for compensation for exclusion of a beneficiary from occupation of property held subject to a trust of land. An essential prerequisite of the power to award compensation under s.13(6) is the right of that beneficiary under s.12 to occupy the land at any time by reason of that interest. What triggers the award of compensation is the exclusion or restriction of that right of occupation. Where a person such as a trustee in bankruptcy who is entitled for the benefit of the bankrupt's creditors to an interest in possession of land subject to such a trust has no such right of occupation, s.13 does not apply but an occupation rent can still be payable under the pre-existing principles of equitable accounting. ***Stack v Dowden*** was a case where both parties had a right of occupation, and did not affect the situation where one of the parties had no statutory right of occupation. Mrs Barcham's half-share in the property was liable to be reduced by a sum equal to one-half of the property's letting value from time to time since Mr Barcham's bankruptcy. ***French (trustee in bankruptcy of Peter Barcham) v Peter & Bernadette Barcham*** [2008] EWHC 1505 (Ch); [2008] 28 EG 112 (CS).

BOUNDARY DISPUTES

In ***Bradford & Bradford v James & ors*** [2008] EWCA Civ 837 the Court of Appeal bemoaned the fact that there were too many *'calamitous neighbour disputes in the courts'* and urged the earliest possible attempts at mediation in such cases. The dispute between the owners of a farm and its neighbouring converted barn related to a patch of cobbles 3.7m wide, used for parking and access. In 1976 the original owners, W, sold the farm to the Defendant's mother. In 1977 W sold the barn, now converted, to the Appellant Claimants' predecessors in title, with a plan which clearly showed the cobbled ground included. However the Judge held that the small scale plan (OS 1:2500) attached to the 1976 conveyance was so clear in including the cobbled area as conveyed with the farm that no extrinsic evidence was admissible to demonstrate otherwise and W had not retained it to convey with the barn in 1977. He therefore dismissed the claim. The Court of Appeal, whilst not wishing to throw doubt on the value of contemporaneous small scale conveyancing plans generally and despite the markings on the 1976 plan having been described as 'more particularly delineated', did hold the plan to be unclear. Therefore extrinsic evidence in the form of the conversion plans for the barn, the terms of the 1977 conveyance and evidence about subsequent user was admissible as probative of what the parties intended in 1976 (***Ali v Lane*** [2007] 1 EGLR 71 at 36 and ***Haycocks v Neville*** [2007] 1 EGLR 78 at 30 & 31 applied). The extrinsic evidence showed that contrary to the judge's finding the cobbled area had in fact been retained by W in 1976 and conveyed with the barn in 1977. The appeal was therefore allowed. The Court urged the use of large scale plans in current and future partitioning of land.

COMMONS

The Claimant's application to declare land used as a golf course a town or village green under the Commons Act 2006 had failed. He sought to have the decision quashed, on two grounds. He succeeded on ground 1 because the Respondent was wrong to have found that the notices on the golf course which read *'Cleveland Golf Club Warning It is dangerous to*

trespass on the golf course' were prohibitory notices. They did not make it clear that the landlord did not acquiesce in the local usage of the golf course for recreation. This conclusion was confirmed by the surrounding context from which it was clear that the notices had not had any practical effect whatever. However on ground 2, which concerned whether the local users had deferred to the landowner's use of the land, it was held that the critical question was how the matter would have appeared to the golf club. Sullivan J concluded that it would have appeared that the local people had deferred to the golf club's use of the land. Therefore the land could not have been declared a town or village green and the application for judicial review failed. In ***R on the Application of Lewis v Redcar and Cleveland Borough Council & Persimmon Homes plc*** [2008] EWHC 1813 (Admin).

COSTS: HOUSING DISREPAIR PROTOCOL

Birmingham City Council v Lee [2008] EWCA Civ 891 concerned housing disrepair claims brought by the tenant in which, pursuant to the Protocol, the landlord conducts the necessary repairs, leaving the only outstanding issue one of consequential damages below £5,000, so that the claim is allocated to the small claims track. It was held that pre-allocation costs could be the subject of an order pursuant to CPR 44.9(2) so that, if successful, the claimant should have her costs on the fast track basis up to the date of allocation. As was pointed out in the proceedings below, had the claimant not followed the Protocol her claim would have been for both specific performance and damages and would have been allocated to the fast track. The Court of Appeal concluded that in order to make the Protocol operate fairly, pre-allocation costs should be recoverable. In reaching this conclusion the Court drew attention to CPR 44.11 as explained by 44PD.9, which provides that before a claim is allocated the court is not restricted by any of the special 'track' rules.

DISREPAIR

A tenant brought an action for disrepair under s.11 Landlord and Tenant Act 1985 and s.4 Defective Premises Act 1972, alleging damp in her residential flat. She failed to adduce any expert evidence and the claim failed. The judge held that there were no structural problems of damp and that the cause might well be condensation. Permission to appeal was refused. In a subsequent action the tenant again claimed damages for disrepair in respect of damp in the same premises, among other things. The claim in respect of dampness was struck out, despite expert evidence suggesting that the cause was lack of a damp proof membrane or possibly concealed leaking pipework. The tenant was estopped *per rem judicatam* from claiming that the cause of damp in the flat was other than condensation. It was right to say that the landlord's duty to keep the premises in repair was an ongoing duty. However the tenant was estopped from claiming in respect of any damp that had been in existence prior to judgment in the first action in December 2005, even if the damp had continued after that date. A valid claim could only be based on a new cause of dampness. It was well recognised that the principles of *res judicata* prevented a party from re-litigating a claim he had lost, even if he was able to show subsequently that the earlier decision was wrong. ***Onwuama v Ealing LBC*** [2008] EWHC 1704 (QB).

HOUSING

For the purposes of s.24(3) National Assistance Act 1948 (as amended) an individual of no fixed abode in urgent need of accommodation and support may seek it from an authority by reason simply of actual physical presence in the area of the authority at the time of the application. This construction had the benefit of certainty, avoiding unsightly disputes between local authorities and the prospect of needy applicants travelling away from a place of temporary support to an uncertain reception by a local authority in whose area they had a good reason to wish to settle. The case was distinguishable from ***Mohammed N*** [2003] EWHC 3419 (Admin) in which the applicants had not presented themselves in person before Redbridge LBC to which they made application, but had written from their temporary accommodation within Camden LBC. ***R on the Application of S v Lewisham LBC, Lambeth LBC & Hackney LBC*** [2008] EWHC 1290 (Admin).

Lambeth LBC v Johnston [2008] EWCA Civ 690 concerned the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999. For the purposes of a review under s.202 Housing Act 1996 of a decision under s.184 of that Act that the Respondent did not have a priority need for assistance, the Regulations provide that if the reviewer is minded to make a decision against the Applicant he 'shall' notify the applicant of his right to make oral representations (Regulation 8(2)). It was held (Rimer LJ) that Regulation 8(2) imposes a dual mandatory obligation. The review officer should first consider whether the initial decision may have been deficient or irregular. Secondly, if it was, and the review officer was still minded to make a decision adverse to the applicant, to issue a 'minded to find' notice. The Court of Appeal stressed the value of the opportunity for an applicant to address the specific provisional adverse views of the reviewer, both in writing and orally. Since the reviewer in this case was minded to deliver a review decision adverse to the applicant, her decision not to issue the 'minded to find' notice was indefensible and unlawful. The finding that the review was fatally flawed was upheld and the appeal was dismissed.

Cantrell v Wycombe District Council [2008] EWCA Civ 866 has resolved the question, much disputed by commentators, whether s.609 Housing Act 1985 overrides the ordinary rules of equity and gives a local authority power to enforce positive covenants against a subsequent purchaser from the covenantor. Wycombe DC attempted to enforce nomination rights over a property bought from a housing association by Mr Cantrell. The judge held that s.609 empowered the Council to do this. The Court of Appeal (Lewison J) disagreed and held that the final words of the section *'in like manner and to the like extent as if they had been possessed of or interested in such land'* merely mean that unlike an ordinary covenantee a local authority does not have to retain the land nor are covenants enforceable only to the extent that they benefit the land of the covenantee. However, in accordance with the ordinary rules, this would only apply to negative covenants. It was held that Parliament would have had to have used far clearer words to make the burden of positive covenants run with the land.

In ***R on the Application of Faarah v Southwark LBC*** [2008] EWCA Civ 807 the Court of Appeal considered a new allocation scheme established by Southwark under s.167 Housing Act 1996 in 2005. Ms Faarah had successfully applied for judicial review of Southwark's categorisation of her needs under their new scheme which replaced a points system with bands. The judge found that, although the qualifying requirements under the new scheme were the same as the old, Southwark had adopted an administrative practice which meant that those in the position of Ms Faarah who would have qualified under the wording of the

old scheme failed to do so under the new. The administrative practice was therefore at odds with the new published s.167 scheme. Southwark's submission that it was entitled to adopt such an administrative practice as a transitional step was roundly rejected. The Court of Appeal were also unimpressed by Southwark's suggestion that the declaration of illegality in respect of the administrative practice should be confined to Ms Faarah's case, as a general declaration would place to great an onus on the council to correct the practice. This was described as a *"surprising and rather worrying submission."* If it was true, there was all the more reason in the interests of good public administration why the judge's declaration should stand.

In ***R on the Application of G v Southwark LBC*** [2008] EWCA Civ 877 the Court of Appeal considered Southwark's interpretation of the phrase *'appears to them to require accommodation'* in s.20(1) Children Act 1989, which was based on a Local Authority Circular of June 2003 (LAC (2003) 13). The circular draws a distinction between children *'requiring accommodation'* and those *'requiring help with accommodation'*, suggesting that the latter would not qualify under s.20. The majority (Longmore and Pill LJJ) firmly concluded that the distinction drawn in the 2003 Circular was lawful. This followed the more tentative conclusions of Holman J in ***H, Barhanu and B v Wandsworth Hackney and Islington*** [2007] 2 FLR 822, 839. Pill LJ said that the local authority were entitled to conclude that some young people who satisfy other criteria in s.20(1) are sufficiently capable or resourceful or in such circumstances that they can find their own accommodation. The majority held that Southwark's decision based on the distinction in the circular was lawful. There was however a strong dissent from Rix LJ.

HUMAN RIGHTS

In ***R (on the application of Weaver) v London & Quadrant Housing Trust*** [2008] EWHC 1377 (Admin) it was held that LQHT was a public authority within the meaning of s.6(3)(b) Human Rights Act 1998. It was also held that it was amenable to judicial review of the decision to seek an order for possession against the claimant based on ground 2 in schedule 2 Housing Act 1988. LQHT was a non-profit making charity acting for the benefit of the community in providing housing for the poor and other disadvantaged groups. The case therefore lacked the private and commercial features which were present in ***YL v Birmingham City Council*** [2007] 3 WLR 112, HL and which pointed against treating the privately owned profit-earning company with whom the council had contracted to provide accommodation as a public authority. The court was also influenced in its conclusion by the high degree of state control in the area of social rented housing in which LQHT operated and the very substantial public subsidies it had received. However on the facts the alleged breach of legitimate expectation was not made out and breaches of the Convention necessarily fell away.

R on the Application of Gilboy v Liverpool City Council and Secretary of State for Communities and Local Government [2008] EWCA Civ 751 is an important decision in which the Court of Appeal concluded that the demoted tenancy scheme was compatible with Article 6 of the Convention on Human Rights. It was held that the scheme was not distinguishable from the 'introductory tenancy' scheme which was held compatible with Article 6 in ***McLellan v Bracknell Forest Borough Council*** [2001] EWCA Civ 1510, based on the '*Alconbury*' principle that the decision making process was to be looked at as a whole, including any review through judicial review and was, as a whole, compliant. The Court of

Appeal derived support from the fact that these sorts of schemes had, in effect, the approval of the House of Lords and indirectly the European Court of Human Rights, in the context of Article 8 of the Convention. There was a clear correlation between the requirements for compliance with Article 8(2) and those of Article 6. Whilst it was prepared to accept that Article 6 was engaged and did not feel that the lack of independence of the officers charged with decision making under the scheme could be cured by delegation to an officer outside the particular authority, the Court of Appeal held that the need for fact finding by the officers did not prevent judicial review being a sufficient remedy. It was noted that in the demoted tenancy scheme, before termination of the tenancy is considered, the tenant will already have had a court hearing to decide that he should be demoted.

LEASEHOLD ENFRANCHISEMENT

The two month time limit within which applications for vesting orders must be made in the collective enfranchisement scheme pursuant to s.24(5) of Part I Leasehold Reform, Housing and Urban Development Act 1993 runs from the time when all of the terms of the acquisition are finally agreed between the parties, whether by final decision of the Leasehold Valuation Tribunal or as between the parties. (Provisions in s.24(6) and ***Penman v Upavon Enterprises*** [2001] EWCA Civ 956 applied). In this case, where the LVT had decided certain matters, but not the terms of the conveyance, time ran from the point when those terms were agreed between the parties, not from the date upon which the LVT's decision became final. The scheme of the Act should not be read as prohibiting the LVT from dealing with unagreed points at various stages. The fact that the LVT had had to deal with prices did not mean that the terms of the transfer could be deemed agreed at that time, especially as the parties had positively expressed themselves to the contrary. Nevertheless the Court of Appeal said that in future the parties should ensure that all points of dispute were put before the LVT for determination at the outset and the tribunal itself should identify all matters in dispute. ***Goldeagle Properties v Thornbury Court*** [2008] EWCA Civ 864.

NUISANCE

In order to establish the tort of private nuisance based on conduct which amounts to an unreasonable interference with the claimant's comfortable and convenient enjoyment of their land, because of the defendant's failure to repair allegedly 'tumbledown' buildings on his neighbouring property, it is necessary to prove both that the claimant had a subjective fear of danger from the neighbouring property and that the property was actually dangerous (i.e. that the fear was well-founded). The Court of Appeal applied ***R v Lister and anor*** Dears & Bell 209; 169 English Reports p.979 and ***Attorney-General v Corporation of Nottingham*** [1904] 1 Ch 673 in rejecting the Appellant's challenge to this principle. ***Birmingham Development Company Limited v Tyler*** [2008] EWCA Civ 859.

PLANNING: CRIMINAL OFFENCES

The Defendant was charged with an offence of unauthorised alteration by dismantling part of a listed building, under section 9(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. It was held that in deciding whether the special architectural or historic character of the building has been affected, the court may consider further unauthorised works of

reconstructional restoration, provided that the further works form part of the alteration. The Defendant was the architect responsible for the pulling down and rebuilding of a 19th century stable block, in contravention of the planning consent granted. The District Judge took the rebuilding into account in concluding that the special character of the building as a whole had not, in the end, been affected. The Administrative Court (Keene LJ) agreed and although they certified a point of general public importance, declined leave to appeal to the House of Lords. ***R on the Application of East Riding of Yorkshire Council v Hobson*** [2008] EWHC 1003 (Admin).

PROPRIETARY ESTOPPEL

McGuane v Welch [2008] EWCA Civ 785; [2008] 29 EG 90 (CS) concerned a declaration of trust and deed of transfer in respect of a lease in favour of Mr Welch, apparently in consideration of advances of money made by Mr Welch to Mr McGuane. The scheme as found by the judge was that Mr McGuane was to buy the lease from the council, exercising his right to buy, funded by a loan secured by a mortgage on the lease. Mr Welch was to assume responsibility for the mortgage. Mr McGuane would then hold the lease on trust for Mr Welch for three years, before transferring it to him, in order to avoid having to repay the discount achieved through the exercise of the right to buy. In total Mr McGuane received some £27,000 from Mr Welch, for a lease bought at a discounted price of £47,000 and worth £100,000. The Court of Appeal (Mummery LJ) held that the judge had wrongly relied upon secondary evidence of the original declaration of trust and deed of transfer on the issue of the beneficial ownership of the lease, as neither had been stamped. The fact that Mr Welch gave an undertaking to have them stamped on a future date did not make the documents admissible. In addition the judge had been wrong to declare a constructive trust, where the evidence disclosed an express trust, and wrong to give effect to a proprietary estoppel in favour of Mr Welch by a declaration that he was beneficial owner of the lease. The court had a wide discretion as to how the equity resulting from a proprietary estoppel should be satisfied and would look for the minimum equity to do justice, which in this case was a reimbursement to Mr Welch of his expenditure on the property. This was especially so given certain 'unsettling' features of the way that Mr Welch had conducted the matter and the substantial undervalue of the 'sale' of the lease.

There is no special rule as to the form or nature of the promise, representation or assurance which is capable of providing the basis of a proprietary estoppel. However as regards a claim against a deceased's estate, it must be a representation which can be categorised as a promise or assurance and must be clear and unequivocal and be intended to be relied upon, although it could be made by conduct as well as words. It is particularly important to distinguish between a statement as to current testamentary intentions and a promise or assurance as to what the testator will do by his will, as the former may only be a matter of information not intended to be relied upon. In this case the representation was not express, but had to be inferred from indirect statements and conduct and there was at most an 'unspoken mutual understanding'. The claimant had simply gone on as before. There was no change in his course of conduct. This was not enough. Any other conclusion would mean that too broad a category of indications as to intended or actual testamentary dispositions were opened up to providing a basis for a claim to inheritance. This was especially undesirable as wills and succession commonly gave rise to many misconceptions. Rigorous analysis was therefore required to avoid subversion of Wills Act and the principle of freedom of testamentary disposition. The judge had not even in terms considered

whether the implicit statements he found had been intended to be relied on and there was no basis for such a finding. ***Thorner v Major & ors*** [2008] EWCA Civ 732.

RIGHTS OF WAY

In ***The Ramblers' Association v Coventry City Council*** [2008] EWHC 796 (Admin) the High Court (Michael Supperstone QC) had the first opportunity to consider the 'Gating provisions' in the Highways Act 1980. The word 'persistent' in s.129A(3)(b), which gives local authorities power to make 'Gating Orders' over a highway which is facilitating the persistent commission of criminal offences or anti-social behaviour, is an ordinary English word commonly meaning 'continuing or recurring: prolonged' and requires no further definition. The power to vary or revoke a gating order contained in s.129F(2), although expressed to be exercisable only where a restriction is 'no longer expedient' (thus implying that it was initially expedient), can be used to make a second order lifting the restriction from a part of a footpath which was only included by mistake in the first order.

SERVICE CHARGES

In ***Leonora Investment Company v Mott Macdonald*** [2008] EWCA Civ 857 the Court of Appeal dismissed an appeal against the rejection of a landlord's claim for additional service costs. The lease provided a specific procedure by which the service charge was to be claimed, including the service by the landlord of a statement of the costs and charge as soon as practicable after the end of the year. The additional costs had not been included on those statements but were invoiced later. The Court of Appeal upheld the judge's conclusion that the landlord was not entitled to payment of the invoice because he had not provided the statement in accordance with the procedure in the lease. Tuckey LJ pointed out the importance of the statement to the tenant, providing him with the information upon which he can make an informed decision whether to pay.

SURVEYORS' DUTIES

A surveyor instructed to value a property for a mortgage transaction assumes an unqualified obligation to inspect the particular property to which his instructions relate. The majority of the Court of Appeal rejected submissions on behalf of the Appellant surveyors to the effect that the surveyor's duty was merely to exercise the degree of care and skill to be expected of a reasonably competent surveyor and valuer and that this standard applied equally to locating the property to be inspected. There had been no claim for negligence, so the claimant's success depended on establishing the absolute duty to inspect the correct property. The majority (Moore-Bick & Rix LJJ) held that the authorities did allow for professionals to assume unqualified obligations on a particular aspect of their work, depending on the language of the particular contract in question. The normal retainer for a surveyor will include an obligation to inspect and value the right property. Moore-Bick LJ pointed out that a surveyor is likely to be better placed than the client lender in a mortgage transaction to ensure that the property inspected is that offered as security. There was a strong dissent from Sir Anthony Clarke MR. ***Platform Funding v Bank of Scotland*** [2008] EWCA Civ 930.

TRAVELLERS

The law of trespass is not to be interpreted as requiring a public body to tolerate acts of trespass by persons who otherwise lack suitable accommodation. A possession order on the *quia timet* basis set out in ***Drury v Secretary of State*** [2004] 1 WLR 1906, in relation to an anticipated trespass, should normally be made where the ***Drury*** criterion is satisfied, i.e. where there is a real danger of trespass on the separate area which can be inferred from the evidence. There is still a discretion to refuse to make the order in exceptional circumstances, which could include failure to perform an obligation imposed by public law. However an obligation, contained in government guidance, to consider the acceptability of traveller encampments in light of the scarcity of sites, was not a sufficient ground to refuse the order. It was not a breach of the Secretary of State's public law obligations to seek the order for possession. The appropriate time for the wider issues raised in the guidance to be considered was at the enforcement stage in the County Court, in response to any subsequent notice of eviction. The majority (Arden & Pill LJJ) also held that an accompanying injunction restraining occupation of the site in question should normally also be granted and should be granted in the instant case. Again, wider issues can be considered when the Secretary of State is exercising the discretion whether or not to enforce the injunction. Wilson LJ dissented, holding that injunctions should not necessarily follow the extended possession orders and that there were good grounds for refusing to further criminalise the travellers' behaviour in this case. ***Secretary of State for the Environment Food and Rural Affairs v Meier & ors*** [2008] EWCA Civ 903.

OTHER DEVELOPMENTS

CIVIL PROCEDURE RULES

The Civil Procedure Rules are amended by the Civil Procedure (Amendment) Rules 2008 SI 2178, coming into force on 1st October 2008. There is a new part 6 (service of documents) and Part 56 is amended to provide for applications under s.214 Housing Act 2004 relating to tenancy deposit schemes.

COMMONS

Provisions relating to the registration of common land and town or village greens come into force on 1st October 2008 by virtue of the Commons Act 2006 (Commencement No.4 and Savings) (England) Order 2008 SI 1960 and the Commons Registration (England) Regulations 2008 SI 1961. The commencement order brings provisions of the Act into force in respect of the registration areas which will participate in a pilot implementation of particular provisions. The Registration Regulations contain various practical provisions relating to the making, management and determination of applications, the keeping and amendment of registers, and various transitional and supplementary provisions. There is a new power in Part 5 for the owner or occupier of land to which a right of common is attached to apply to enter in the register a declaration of entitlement to their right.

RIGHT TO MANAGE

New Regulations come into force on 1st October 2008 relating to the procedure to be followed when a tenant management organisation proposes to enter into a management agreement with a local housing authority under s.27 Housing Act 1985. They are the Housing (Right to Manage) (England) Regulations 2008 SI 2361, and impose an obligation on the authority to enter into a management agreement in specified circumstances. The Housing (Right to Manage) Regulations 1994 are revoked.

STUDENT ACCOMMODATION

The Housing (Approval of a Code of Management Practice) (Student Accommodation) (England) Order 2008 SI 2345 approves a code of practice setting down standards of conduct and practice to be followed in relation to the management of houses in multiple occupation (HMOs) and certain other buildings that are occupied solely or principally by full-time students. Approval of an earlier code under SI 2006/646 is withdrawn. The Order comes into force on 1st October 2008. Educational establishments specified under the Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2008 SI 2346 (also coming into force on 1st October 2008) are not HMOs under the Housing Act 2004, save for the purposes of Part I, which deals with housing conditions.

Note: Where the only case reference given is a universal reference, readers will find a full transcript of the decision available on www.bailii.org. Statutory instruments can be found on www.opsi.gov.uk.

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