

HOUSING ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Licensing of Houses in Multiple Occupation

Section 55: Licensing of HMOs to which this Part applies

178. **Section 55** sets out the scope of the licensing provisions under Part 2 and the general duties on LHAs in relation to their licensing functions. The section provides that LHAs are required to license the types of HMOs prescribed in an order made by the appropriate national authority (that is initially to be those of 3 storeys and above occupied by at least 5 persons who constitute more than one household). It also provides that an LHA may license other categories of HMOs designated by it under an additional licensing scheme (see section 56).
179. Under subsection (5) certain duties are imposed on the LHA in connection with its functions. The LHA is required to promote the implementation of licensing; to ensure that it deals with licensing applications promptly and satisfy itself that no Part 1 functions remain to be discharged in respect of licensed HMOs as soon as possible and in any case within 5 years of the first application for a licence.

Section 56: Designation of areas subject to additional licensing

180. **Section 56** permits an LHA to extend licensing beyond the scope of mandatory licensing (see section 55). An LHA can designate part or all of its area as subject to additional licensing for specified types of HMOs. An LHA must consider that a significant proportion of the HMOs (of the type it is considering licensing) are being managed ineffectively so as to give rise problems for the occupiers or members of the public. In considering the quality of management, LHAs must take into account the degree to which relevant codes of practice (if any) are being adhered to (see section 233).
181. Before making a designation an LHA must consult with those likely to be affected by it and take account of any representations.

Section 57: Designations under section 56: further considerations

182. **Section 57** sets out further requirements that the LHA must consider before extending licensing to additional categories of HMO. These are:
- - ensuring the use of additional licensing is in accordance with the LHA's overall housing strategy and is part of a co-ordinated approach to deal with wider issues such as anti-social behaviour;
 - examining whether there are other courses of action that could be used to deal with the problems identified (e.g. voluntary accreditation schemes) and
 - concluding that additional licensing, whether on its own or in conjunction with other policies, will make a significant contribution to dealing with the problems.

183. Subsection (5) provides a definition of anti-social behaviour for the purposes of the Act.

Section 58: Designation needs confirmation or general approval to be effective

184. Section 58 provides that designations for additional licensing schemes need to be confirmed (unless covered by a general approval, see below) by the appropriate national authority. A designation comes into force no earlier than 3 months after it has been confirmed. The section also provides that the appropriate national authority may give general approval to certain types of designations or specified LHAs. Where a designation has been made under a general approval it cannot come into force until at least 3 months after the designation is made.

Section 59: Notification requirements relating to designations

185. Section 59 requires an LHA to publicise an additional licensing designation in accordance with requirements contained in regulations.

Section 60: Duration, review and revocation of designations

186. Section 60 provides that a designation must from time to time be reviewed and can be revoked following a review, but in any case must end 5 years after it has been made. When a scheme is revoked notice of the revocation must be publicised in accordance with requirements contained in regulations.

Section 61: Requirement for HMOs to be licensed

187. Section 61 provides that every HMO to which this Part applies must be licensed unless a temporary exemption notice is in force or it is subject to an IMO or FMO. However, section 72(4) makes clear that if a valid application has been made for a licence or temporary exemption notice, that no offence is committed.
188. An HMO is licensed for occupation by a maximum number of persons or households. An LHA is under a duty to take reasonable steps to ensure that applications for licences are made on behalf of all relevant HMOs in their area (that do not already have a licence).
189. Subsection (5) provides that the appropriate national authority may make regulations setting out how licensing provisions apply in the case of certain converted blocks of flats (as defined in section 257).

Section 62: Temporary exemption from licensing requirement

190. Section 62 provides that an LHA may grant a temporary exemption from licensing for an HMO which would otherwise be required to be licensed, where the managers/owners intend to take steps to ensure that the HMO no longer require a licence. A temporary exemption notice lasts for 3 months but is renewable for another 3 months in exceptional circumstances. Where the exemption is refused there is a right of appeal to the RPT.

Section 63: Applications for licences

191. Section 63 provides that an application for a licence must be made to an LHA in accordance with its particular requirements, which may include the payment of a fee. The appropriate national authority may prescribe by regulations various matters concerning applications, including the content and format of application forms, the manner in which applications are made and the maximum fees that an LHA can charge. Subject to these regulations, an LHA can take account of all its costs of running the licensing scheme when setting the licence fee.

Section 64: Grant or refusal of licence

192. **Section 64** describes the grounds on which an LHA must decide whether or not to grant a licence. A licence must be granted if:
- the house is suitable for occupation by a certain number of persons or households as specified in the application or by the LHA, or can be rendered suitable for that number by imposition of conditions in the licence (see section 65 for tests of suitability);
 - the proposed licence holder is a fit and proper person (see section 66 for definition of 'fit and proper'), as well as being the most appropriate person to be granted a licence i.e. they have management responsibility and are locally resident - this is intended to ensure that unfit landlords cannot use "front men" to apply for licences;
 - the proposed manager of the HMO is the person having control of the house or an agent or employee of that person and is also a fit and proper person; and
 - the proposed management arrangements are satisfactory.

Section 65: Tests as to suitability for multiple occupation

193. **Section 65** sets out what needs to be considered for a house to be suitable for occupation by a particular maximum number of households or persons. Regulations may prescribe minimum standards such as to the number, type and quality of toilets, washing facilities and food preparation facilities and certain other standards of facilities or equipment to be provided. An LHA may require different, but not lower, standards than those prescribed in the regulations when determining whether the HMO is reasonably suitable for the number of occupants.

Section 66: Tests for fitness etc. and satisfactory management arrangements

194. **Section 66** sets out the evidence that must be considered in determining whether someone is a fit and proper person to be a licence holder or a manager. These include whether that person (or a relevant associate e.g. a spouse or business partner) has committed offences involving fraud, dishonesty, violence, drugs or sexual offences. Spent convictions are not, in this context, taken into account. Evidence of unlawful discrimination in business, contravention of housing law or breach of any applicable code of practice (see section 233) is also relevant.
195. In addition the section sets out the matters to be addressed when considering whether or not the management arrangements for a HMO are satisfactory (in terms of the competence of the manager, management structure and funding).

Section 67: Licence conditions

196. **Section 67** provides that an LHA may include conditions in a licence relating to its management, use and occupation and its content and condition. Such conditions may include:
- restrictions or prohibitions on the use of parts of the house by occupants
 - requirements to take reasonable and practicable steps to prevent or reduce anti-social behaviour of the occupants or visitors
 - installing and making facilities and equipment available in good working order to meet prescribed standards under section 65
 - carrying out necessary works to such facilities and equipment within specified periods

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197. Any such conditions will be in addition to those laid out in Schedule 4 which sets out mandatory conditions.
198. An LHA is required, as a general rule, to address health and safety issues through its Part 1 functions and not by means of licence conditions and it cannot set conditions which require changes to the terms or conditions of person's occupation of the HMO. For example, this means that a LHA would not be permitted to impose any condition limiting the level of rent payable.

Section 68: Licences: general requirements and duration

199. **Section 68** provides that a person controlling or managing an HMO must have a separate licence for each property and that each licence is valid for maximum of five years. Licences are non-transferable. Upon the death of a licence holder, a 3-month temporary exemption is automatically granted. This may be renewed for a further 3 months and there is a right of appeal to the RPT against any refusal to renew it.

Section 69: Variation of licences

Section 70: Revocation of licences

200. Normally the conditions of an HMO licence will remain the same for its duration. However, it may be necessary for the local authority to vary the licence in particular circumstances, particularly in relation to either to the maximum occupancy or the standards required for a particular number of occupants. Section 69 allows the local authority to vary a licence.
201. **Section 70** provides for the circumstances in which an LHA may revoke a licence. These are:
- with the agreement of the licence holder e.g. if the house is converted to single occupancy
 - where the licence holder has committed a serious breach of a condition of the licence or repeated breaches of such a condition
 - where the LHA no longer believes that the licence holder is a fit and proper person
 - where the LHA believes the property is no longer meets the standards required for a licence
202. There is also a power for the appropriate national authority to make regulations setting out other circumstances in which a licence may be revoked.
203. **Part 2** of Schedule 5 sets out the procedure to be followed in respect of a variation or revocation of a licence and Part 3 of Schedule 5 sets out the right of appeal to the RPT against variation and revocation decisions.
204. A variation or revocation made with the agreement of the licence holder takes effect immediately. Otherwise it does not come into effect until the time for making an appeal has expired, or any appeal against it is disposed of or withdrawn.
205. **Section 71: Procedural requirements and appeals against licence decisions**
206. **Section 71** gives effect to the procedural requirements and appeals procedure set out in Schedule 5.

Section 72: Offences in relation to licensing of HMOs

207. **Section 72** makes it an offence punishable by a fine of up to £20,000 if a person controlling or managing an HMO does not have the required licence. However, no offence is committed by a person who has an outstanding application either for a licence

or for a temporary exemption. An offence is also committed when a licence holder knowingly permits the HMO to be occupied by more persons than are permitted to occupy it under the licence. This too is punishable with a fine of up to £20,000. It is also an offence to breach any condition of a licence, punishable by a fine not exceeding level 5 (currently £5,000).

208. It is a defence for any of these offences if the person accused can demonstrate a reasonable excuse.

Section 73: Other Consequences of operating unlicensed HMOs: rent repayment orders

209. **Section 73** confirms that notwithstanding any common law rule that unlawful contracts are not enforceable, a tenancy or licence in respect of an HMO remains enforceable, even if the landlord is required to obtain a licence under Part 2 of the Act but fails to do so. The section provides, however, that a landlord who receives rent while operating an unlicensed property could be liable to a penalty equivalent to any rent received during the period of the offence, up to a maximum of 12 months. The RPT has the power to make a 'rent repayment order', imposing this penalty where it determines that an offence has been committed under section 72(1).
210. An LHA is entitled to make an application for a rent repayment order to the RPT where a landlord or managing agent has committed an offence under section 72(1) (irrespective of whether there has been a prosecution), and Housing Benefit has been paid during any period when such an offence was being committed. An occupier who has paid money to the landlord is also permitted to make an application to the RPT for a rent repayment order where any rent was not paid out of Housing Benefit and where the landlord has been convicted of an offence under section 72(1), or an order has already been granted to an LHA in respect of the same property.

Section 74: Further provisions about rent repayment orders

211. **Section 74** provides that where a landlord is actually convicted of an offence under section 72(1), and the LHA makes an application, the RPT is required to make a rent repayment order in respect of all Housing Benefit received by the landlord unless exceptional circumstances apply. In all other cases the RPT has discretion to make a rent repayment order for such an amount as is reasonable in the circumstances.

Section 75: Other Consequences of operating unlicensed HMOs: restriction on terminating tenancies

212. **Section 75** provides that a landlord who is required to have a licence in respect of an HMO, but who does not have a licence, loses the right to automatic possession by use of section 21 of the 1988 Housing Act in relation to assured shorthold tenancies. This restriction ceases to apply if the landlord makes an application for a licence or for a temporary exemption notice.

Section 76: Transitional arrangements relating to introduction and termination of licensing

213. **Section 76** contains provisions for transitional arrangements dealing with the case of an HMO that becomes licensed for the first time. If the HMO is occupied by more people than is permitted under the licence, it is a defence under section 76(4) that the licence holder is taking reasonable steps to reduce the number of residents to comply with the terms of the licence.
214. The section also provides that an order made under section 270 may make provision for HMOs that are part of a registration scheme with control provisions (under Part 11 of the Housing Act 1985) when the licensing provisions commence. This is designed

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to smooth the process of licensing for LHAs who run registration schemes for HMOs by allowing them to passport registered HMOs directly into a licensing scheme.

Section 77: Meaning of "HMO"

215. **Section 77** provides that "HMO" means a house in multiple occupation as defined in sections 254 to 260 and includes any yard, garden, outhouses etc.