

# HOUSING ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 - Additional Control Provisions in Relation to Residential Accommodation**

##### *Chapter 3: Overcrowding Notices*

##### *Section 139: Service of overcrowding notices*

297. Sections 139 - 144 deal with the operation of overcrowding notices, which are applicable in HMOs that are not required to be licensed under Part 2. Overcrowding in larger HMOs is covered in Part 2 of the Act since a licence only permits a house to be licensed for a specified number of occupants. Section 139 permits LHAs to serve overcrowding notices in respect of HMOs that are not licensed or subject to an IMO or FMO. The LHA must give 7 days notice to all relevant persons (including occupiers) of its intentions and consider their representations. An overcrowding notice becomes operative 21 days after it is served, unless an appeal is made (see section 143). Contravention of a notice is punishable with a fine of up to £2,500.

##### *Section 140: Contents of overcrowding notice*

298. Section 140 provides that an overcrowding notice must either stipulate the maximum number of persons who may occupy each room or specify that a room is unsuitable for occupation. The notice must also cover the requirements of either section 137 or section 138. A section 138 notice may be withdrawn and replaced with a section 137 notice.

##### *Section 141: Requirements as to overcrowding generally*

299. Section 141 requires that the terms of the notice must not be breached by allowing an unsuitable room to be occupied as sleeping accommodation. It also provides that residents should not have to live in a room with members of the opposite sex with whom they are not living together as husband and wife (excepting children under 10).

##### *Section 142: Requirement as to new residents*

300. Section 142 is very similar in its effect to section 141 except that it covers occupation by new residents i.e. anyone not resident when the notice was served.

##### *Section 143: Appeals against overcrowding notices*

301. Section 143 provides that appeals against the imposition of overcrowding notices may be made to a RPT within 21 days of the notice being served, with notices not taking effect until the appeal process is concluded. The section also provides that the RPT may allow an appeal to be made after the end of the period if it is satisfied that there is good reason for the failure to appeal before the end of the specified period.

*These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004*

***Section 144: Revocation and variation of overcrowding notices***

302. **Section 144** permits an LHA, on the application of a landlord, to revoke or vary an overcrowding notice. If the LHA refuses to revoke or vary the order, or fails to give a written decision within 35 days of the application, the applicant may appeal to a RPT. The section also provides that such appeals should be made within 21 days and the RPT may allow an appeal to be made after the period if it is satisfied that there is good reason for the failure to appeal before the end of the period. The section also provides the definition of relevant persons for the purposes of appeals.