



# Housing Act 2004

## 2004 CHAPTER 34

### PART 2

#### LICENSING OF HOUSES IN MULTIPLE OCCUPATION

##### *Introductory*

#### **55 Licensing of HMOs to which this Part applies**

- (1) This Part provides for HMOs to be licensed by local housing authorities where—
  - (a) they are HMOs to which this Part applies (see subsection (2)), and
  - (b) they are required to be licensed under this Part (see section 61(1)).
- (2) This Part applies to the following HMOs in the case of each local housing authority—
  - (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
  - (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.
- (3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).
- (4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.
- (5) Every local housing authority have the following general duties—
  - (a) to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part;
  - (b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time; and

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- (c) to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions that ought to be exercised by them in relation to the premises in respect of which such applications are made.
- (6) For the purposes of subsection (5)(c)—
  - (a) “Part 1 function” means any duty under section 5 to take any course of action to which that section applies or any power to take any course of action to which section 7 applies; and
  - (b) the authority may take such steps as they consider appropriate (whether or not involving an inspection) to comply with their duty under subsection (5)(c) in relation to each of the premises in question, but they must in any event comply with it within the period of 5 years beginning with the date of the application for a licence.

#### *Designation of additional licensing areas*

### **56 Designation of areas subject to additional licensing**

- (1) A local housing authority may designate either—
  - (a) the area of their district, or
  - (b) an area in their district,
 as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.
- (2) The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
- (3) Before making a designation the authority must—
  - (a) take reasonable steps to consult persons who are likely to be affected by the designation; and
  - (b) consider any representations made in accordance with the consultation and not withdrawn.
- (4) The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.
- (5) In forming an opinion as to the matter mentioned in subsection (2), the authority must have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question.
- (6) Section 57 applies for the purposes of this section.

### **57 Designations under section 56: further considerations**

- (1) This section applies to the power of a local housing authority to make designations under section 56.
- (2) The authority must ensure that any exercise of the power is consistent with the authority’s overall housing strategy.

- (3) The authority must also seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector, both—
  - (a) as regards combining licensing under this Part with other courses of action available to them, and
  - (b) as regards combining such licensing with measures taken by other persons.
- (4) The authority must not make a particular designation under section 56 unless—
  - (a) they have considered whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question, and
  - (b) they consider that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well).
- (5) In this Act “anti-social behaviour” means conduct on the part of occupiers of, or visitors to, residential premises—
  - (a) which causes or is likely to cause a nuisance or annoyance to persons residing, visiting or otherwise engaged in lawful activities in the vicinity of such premises, or
  - (b) which involves or is likely to involve the use of such premises for illegal purposes.

## **58 Designation needs confirmation or general approval to be effective**

- (1) A designation of an area as subject to additional licensing cannot come into force unless—
  - (a) it has been confirmed by the appropriate national authority; or
  - (b) it falls within a description of designations in relation to which that authority has given a general approval in accordance with subsection (6).
- (2) The appropriate national authority may either confirm, or refuse to confirm, a designation as it considers appropriate.
- (3) If the appropriate national authority confirms a designation, the designation comes into force on the date specified for this purpose by that authority.
- (4) That date must be no earlier than three months after the date on which the designation is confirmed.
- (5) A general approval may be given in relation to a description of designations framed by reference to any matters or circumstances.
- (6) Accordingly a general approval may (in particular) be given in relation to—
  - (a) designations made by a specified local housing authority;
  - (b) designations made by a local housing authority falling within a specified description of such authorities;
  - (c) designations relating to HMOs of a specified description.

“Specified” means specified by the appropriate national authority in the approval.

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- (7) If, by virtue of a general approval, a designation does not need to be confirmed before it comes into force, the designation comes into force on the date specified for this purpose in the designation.
- (8) That date must be no earlier than three months after the date on which the designation is made.

## **59 Notification requirements relating to designations**

- (1) This section applies to a designation—
  - (a) when it is confirmed under section 58, or
  - (b) (if it is not required to be so confirmed) when it is made by the local housing authority.
- (2) As soon as the designation is confirmed or made, the authority must publish in the prescribed manner a notice stating—
  - (a) that the designation has been made,
  - (b) whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 58 applied to it (giving details of the approval in question),
  - (c) the date on which the designation is to come into force, and
  - (d) any other information which may be prescribed.
- (3) After publication of a notice under subsection (2), and for as long as the designation is in force, the local housing authority must make available to the public in accordance with any prescribed requirements—
  - (a) copies of the designation, and
  - (b) such information relating to the designation as is prescribed.
- (4) In this section “prescribed” means prescribed by regulations made by the appropriate national authority.

## **60 Duration, review and revocation of designations**

- (1) Unless previously revoked under subsection (4), a designation ceases to have effect at the time that is specified for this purpose in the designation.
- (2) That time must be no later than five years after the date on which the designation comes into force.
- (3) A local housing authority must from time to time review the operation of any designation made by them.
- (4) If following a review they consider it appropriate to do so, the authority may revoke the designation.
- (5) If they do revoke the designation, the designation ceases to have effect at the time that is specified by the authority for this purpose.
- (6) On revoking a designation the authority must publish notice of the revocation in such manner as is prescribed by regulations made by the appropriate national authority.

### *HMOs required to be licensed*

#### **61 Requirement for HMOs to be licensed**

- (1) Every HMO to which this Part applies must be licensed under this Part unless—
  - (a) a temporary exemption notice is in force in relation to it under section 62, or
  - (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.
- (2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.
- (3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.
- (4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.
- (5) The appropriate national authority may by regulations provide for—
  - (a) any provision of this Part, or
  - (b) section 263 (in its operation for the purposes of any such provision),to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations.

A “section 257 HMO” is an HMO which is a converted block of flats to which section 257 applies.
- (6) In this Part (unless the context otherwise requires)—
  - (a) references to a licence are to a licence under this Part,
  - (b) references to a licence holder are to be read accordingly, and
  - (c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

#### **62 Temporary exemption from licensing requirement**

- (1) This section applies where a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.
- (2) The authority may, if they think fit, serve on that person a notice under this section (“a temporary exemption notice”) in respect of the house.
- (3) If a temporary exemption notice is served under this section, the house is (in accordance with sections 61(1) and 85(1)) not required to be licensed either under this Part or under Part 3 during the period for which the notice is in force.
- (4) A temporary exemption notice under this section is in force—
  - (a) for the period of 3 months beginning with the date on which it is served, or
  - (b) (in the case of a notice served by virtue of subsection (5)) for the period of 3 months after the date when the first notice ceases to be in force.
- (5) If the authority—

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- (a) receive a further notification under subsection (1), and
  - (b) consider that there are exceptional circumstances that justify the service of a second temporary exemption notice in respect of the house that would take effect from the end of the period of 3 months applying to the first notice,
- the authority may serve a second such notice on the person having control of or managing the house (but no further notice may be served by virtue of this subsection).
- (6) If the authority decide not to serve a temporary exemption notice in response to a notification under subsection (1), they must without delay serve on the person concerned a notice informing him of—
    - (a) the decision,
    - (b) the reasons for it and the date on which it was made,
    - (c) the right to appeal against the decision under subsection (7), and
    - (d) the period within which an appeal may be made under that subsection.
  - (7) The person concerned may appeal to a residential property tribunal against the decision within the period of 28 days beginning with the date specified under subsection (6) as the date on which it was made.
  - (8) Such an appeal—
    - (a) is to be by way of a re-hearing, but
    - (b) may be determined having regard to matters of which the authority were unaware.
  - (9) The tribunal—
    - (a) may confirm or reverse the decision of the authority, and
    - (b) if it reverses the decision, must direct the authority to serve a temporary exemption notice that comes into force on such date as the tribunal directs.

#### *Grant or refusal of licences*

### **63 Applications for licences**

- (1) An application for a licence must be made to the local housing authority.
- (2) The application must be made in accordance with such requirements as the authority may specify.
- (3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority.
- (4) The power of the authority to specify requirements under this section is subject to any regulations made under subsection (5).
- (5) The appropriate national authority may by regulations make provision about the making of applications under this section.
- (6) Such regulations may, in particular—
  - (a) specify the manner and form in which applications are to be made;
  - (b) require the applicant to give copies of the application, or information about it, to particular persons;
  - (c) specify the information which is to be supplied in connection with applications;

- (d) specify the maximum fees which are to be charged (whether by specifying amounts or methods for calculating amounts);
  - (e) specify cases in which no fees are to be charged or fees are to be refunded.
- (7) When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account—
- (a) all costs incurred by the authority in carrying out their functions under this Part, and
  - (b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to HMOs (so far as they are not recoverable under or by virtue of any provision of that Chapter).

## **64 Grant or refusal of licence**

- (1) Where an application in respect of an HMO is made to the local housing authority under section 63, the authority must either—
- (a) grant a licence in accordance with subsection (2), or
  - (b) refuse to grant a licence.
- (2) If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either—
- (a) to the applicant, or
  - (b) to some other person, if both he and the applicant agree.
- (3) The matters are—
- (a) that the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67;
  - (b) that the proposed licence holder—
    - (i) is a fit and proper person to be the licence holder, and
    - (ii) is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;
  - (c) that the proposed manager of the house is either—
    - (i) the person having control of the house, or
    - (ii) a person who is an agent or employee of the person having control of the house;
  - (d) that the proposed manager of the house is a fit and proper person to be the manager of the house; and
  - (e) that the proposed management arrangements for the house are otherwise satisfactory.
- (4) The maximum number of households or persons referred to in subsection (3)(a) is—
- (a) the maximum number specified in the application, or
  - (b) some other maximum number decided by the authority.
- (5) Sections 65 and 66 apply for the purposes of this section.

## **65 Tests as to suitability for multiple occupation**

- (1) The local housing authority cannot be satisfied for the purposes of section 64(3)(a) that the house is reasonably suitable for occupation by a particular maximum number of households or persons if they consider that it fails to meet prescribed standards for occupation by that number of households or persons.
- (2) But the authority may decide that the house is not reasonably suitable for occupation by a particular maximum number of households or persons even if it does meet prescribed standards for occupation by that number of households or persons.
- (3) In this section “prescribed standards” means standards prescribed by regulations made by the appropriate national authority.
- (4) The standards that may be so prescribed include—
  - (a) standards as to the number, type and quality of—
    - (i) bathrooms, toilets, washbasins and showers,
    - (ii) areas for food storage, preparation and cooking, and
    - (iii) laundry facilities,which should be available in particular circumstances; and
  - (b) standards as to the number, type and quality of other facilities or equipment which should be available in particular circumstances.

## **66 Tests for fitness etc. and satisfactory management arrangements**

- (1) In deciding for the purposes of section 64(3)(b) or (d) whether a person (“P”) is a fit and proper person to be the licence holder or (as the case may be) the manager of the house, the local housing authority must have regard (among other things) to any evidence within subsection (2) or (3).
- (2) Evidence is within this subsection if it shows that P has—
  - (a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);
  - (b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
  - (c) contravened any provision of the law relating to housing or of landlord and tenant law; or
  - (d) acted otherwise than in accordance with any applicable code of practice approved under section 233.
- (3) Evidence is within this subsection if—
  - (a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) has done any of the things set out in subsection (2)(a) to (d), and
  - (b) it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder or (as the case may be) the manager of the house.
- (4) For the purposes of section 64(3)(b) the local housing authority must assume, unless the contrary is shown, that the person having control of the house is a more appropriate person to be the licence holder than a person not having control of it.



- (5) In deciding for the purposes of section 64(3)(e) whether the proposed management arrangements for the house are otherwise satisfactory, the local housing authority must have regard (among other things) to the considerations mentioned in subsection (6).
- (6) The considerations are—
  - (a) whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved;
  - (b) whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved; and
  - (c) whether any proposed management structures and funding arrangements are suitable.
- (7) Any reference in section 64(3)(c)(i) or (ii) or subsection (4) above to a person having control of the house, or to being a person of any other description, includes a reference to a person who is proposing to have control of the house, or (as the case may be) to be a person of that description, at the time when the licence would come into force.

## **67 Licence conditions**

- (1) A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following—
  - (a) the management, use and occupation of the house concerned, and
  - (b) its condition and contents.
- (2) Those conditions may, in particular, include (so far as appropriate in the circumstances)—
  - (a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;
  - (b) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;
  - (c) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;
  - (d) conditions requiring such facilities and equipment to be kept in repair and proper working order;
  - (e) conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;
  - (f) conditions requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233.
- (3) A licence must include the conditions required by Schedule 4.
- (4) As regards the relationship between the authority's power to impose conditions under this section and functions exercisable by them under or for the purposes of Part 1 ("Part 1 functions")—
  - (a) the authority must proceed on the basis that, in general, they should seek to identify, remove or reduce category 1 or category 2 hazards in the house by the exercise of Part 1 functions and not by means of licence conditions;

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- (b) this does not, however, prevent the authority from imposing licence conditions relating to the installation or maintenance of facilities or equipment within subsection (2)(c) above, even if the same result could be achieved by the exercise of Part 1 functions;
  - (c) the fact that licence conditions are imposed for a particular purpose that could be achieved by the exercise of Part 1 functions does not affect the way in which Part 1 functions can be subsequently exercised by the authority.
- (5) A licence may not include conditions imposing restrictions or obligations on a particular person other than the licence holder unless that person has consented to the imposition of the restrictions or obligations.
- (6) A licence may not include conditions requiring (or intended to secure) any alteration in the terms of any tenancy or licence under which any person occupies the house.

## **68 Licences: general requirements and duration**

- (1) A licence may not relate to more than one HMO.
- (2) A licence may be granted before the time when it is required by virtue of this Part but, if so, the licence cannot come into force until that time.
- (3) A licence—
- (a) comes into force at the time that is specified in or determined under the licence for this purpose, and
  - (b) unless previously terminated by subsection (7) or revoked under section 70, continues in force for the period that is so specified or determined.
- (4) That period must not end more than 5 years after—
- (a) the date on which the licence was granted, or
  - (b) if the licence was granted as mentioned in subsection (2), the date when the licence comes into force.
- (5) Subsection (3)(b) applies even if, at any time during that period, the HMO concerned subsequently ceases to be one to which this Part applies.
- (6) A licence may not be transferred to another person.
- (7) If the holder of the licence dies while the licence is in force, the licence ceases to be in force on his death.
- (8) However, during the period of 3 months beginning with the date of the licence holder's death, the house is to be treated for the purposes of this Part and Part 3 as if on that date a temporary exemption notice had been served in respect of the house under section 62.
- (9) If, at any time during that period (“the initial period”), the personal representatives of the licence holder request the local housing authority to do so, the authority may serve on them a notice which, during the period of 3 months after the date on which the initial period ends, has the same effect as a temporary exemption notice under section 62.
- (10) Subsections (6) to (8) of section 62 apply (with any necessary modifications) in relation to a decision by the authority not to serve such a notice as they apply in relation to a decision not to serve a temporary exemption notice.

### *Variation and revocation of licences*

#### **69 Variation of licences**

- (1) The local housing authority may vary a licence—
- (a) if they do so with the agreement of the licence holder, or
  - (b) if they consider that there has been a change of circumstances since the time when the licence was granted.

For this purpose “change of circumstances” includes any discovery of new information.

- (2) Subsection (3) applies where the authority—
- (a) are considering whether to vary a licence under subsection (1)(b); and
  - (b) are considering—
    - (i) what number of households or persons is appropriate as the maximum number authorised to occupy the HMO to which the licence relates, or
    - (ii) the standards applicable to occupation by a particular number of households or persons.
- (3) The authority must apply the same standards in relation to the circumstances existing at the time when they are considering whether to vary the licence as were applicable at the time when it was granted.

This is subject to subsection (4).

- (4) If the standards—
- (a) prescribed under section 65, and
  - (b) applicable at the time when the licence was granted,
- have subsequently been revised or superseded by provisions of regulations under that section, the authority may apply the new standards.
- (5) A variation made with the agreement of the licence holder takes effect at the time when it is made.
- (6) Otherwise, a variation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under paragraph 35 of Schedule 5 (time when period for appealing expires without an appeal being made or when decision to vary is confirmed on appeal).
- (7) The power to vary a licence under this section is exercisable by the authority either—
- (a) on an application made by the licence holder or a relevant person, or
  - (b) on the authority’s own initiative.
- (8) In subsection (7) “relevant person” means any person (other than the licence holder)—
- (a) who has an estate or interest in the HMO concerned (but is not a tenant under a lease with an unexpired term of 3 years or less), or
  - (b) who is a person managing or having control of the house (and does not fall within paragraph (a)), or
  - (c) on whom any restriction or obligation is imposed by the licence in accordance with section 67(5).

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## **70 Revocation of licences**

- (1) The local housing authority may revoke a licence—
- (a) if they do so with the agreement of the licence holder;
  - (b) in any of the cases mentioned in subsection (2) (circumstances relating to licence holder or other person);
  - (c) in any of the cases mentioned in subsection (3) (circumstances relating to HMO concerned); or
  - (d) in any other circumstances prescribed by regulations made by the appropriate national authority.
- (2) The cases referred to in subsection (1)(b) are as follows—
- (a) where the authority consider that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition;
  - (b) where the authority no longer consider that the licence holder is a fit and proper person to be the licence holder; and
  - (c) where the authority no longer consider that the management of the house is being carried on by persons who are in each case fit and proper persons to be involved in its management.

Section 66(1) applies in relation to paragraph (b) or (c) above as it applies in relation to section 64(3)(b) or (d).

- (3) The cases referred to in subsection (1)(c) are as follows—
- (a) where the HMO to which the licence relates ceases to be an HMO to which this Part applies; and
  - (b) where the authority consider at any time that, were the licence to expire at that time, they would, for a particular reason relating to the structure of the HMO, refuse to grant a new licence to the licence holder on similar terms in respect of it.
- (4) Subsection (5) applies where the authority are considering whether to revoke a licence by virtue of subsection (3)(b) on the grounds that the HMO is not reasonably suitable for the number of households or persons specified in the licence as the maximum number authorised to occupy the house.
- (5) The authority must apply the same standards in relation to the circumstances existing at the time when they are considering whether to revoke the licence as were applicable at the time when it was granted.

This is subject to subsection (6).

- (6) If the standards—
- (a) prescribed under section 65, and
  - (b) applicable at the time when the licence was granted,
- have subsequently been revised or superseded by provisions of regulations under that section, the authority may apply the new standards.
- (7) A revocation made with the agreement of the licence holder takes effect at the time when it is made.
- (8) Otherwise, a revocation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under paragraph 35 of Schedule 5

(time when period for appealing expires without an appeal being made or when decision to vary is confirmed on appeal).

- (9) The power to revoke a licence under this section is exercisable by the authority either—
- (a) on an application made by the licence holder or a relevant person, or
  - (b) on the authority’s own initiative.
- (10) In subsection (9) “relevant person” means any person (other than the licence holder)—
- (a) who has an estate or interest in the HMO concerned (but is not a tenant under a lease with an unexpired term of 3 years or less), or
  - (b) who is a person managing or having control of that house (and does not fall within paragraph (a)), or
  - (c) on whom any restriction or obligation is imposed by the licence in accordance with section 67(5).

### *Procedure and appeals*

## **71 Procedural requirements and appeals against licence decisions**

Schedule 5 (which deals with procedural requirements relating to the grant, refusal, variation or revocation of licences and with appeals against licence decisions) has effect for the purposes of this Part.

### *Enforcement*

## **72 Offences in relation to licensing of HMOs**

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if—
- (a) he is a person having control of or managing an HMO which is licensed under this Part,
  - (b) he knowingly permits another person to occupy the house, and
  - (c) the other person’s occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
- (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
  - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
- (a) a notification had been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 63,
- and that notification or application was still effective (see subsection (8)).

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- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
- (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for permitting the person to occupy the house, or
  - (c) for failing to comply with the condition,
- as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding £20,000.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of a residential property tribunal) has not expired, or
  - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

### **73 Other consequences of operating unlicensed HMOs: rent repayment orders**

- (1) For the purposes of this section an HMO is an “unlicensed HMO” if—
- (a) it is required to be licensed under this Part but is not so licensed, and
  - (b) neither of the conditions in subsection (2) is satisfied.
- (2) The conditions are—
- (a) that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as defined by section 72(8));
  - (b) that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).
- (3) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of—
- (a) any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of a part of an unlicensed HMO, or
  - (b) any other provision of such a tenancy or licence.

- (4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74.
- (5) If—
- (a) an application in respect of an HMO is made to a residential property tribunal by the local housing authority or an occupier of a part of the HMO, and
  - (b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),
- the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).
- (6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters—
- (a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),
  - (b) that housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed, and
  - (c) that the requirements of subsection (7) have been complied with in relation to the application.
- (7) Those requirements are as follows—
- (a) the authority must have served on the appropriate person a notice (a “notice of intended proceedings”)—
    - (i) informing him that the authority are proposing to make an application under subsection (5),
    - (ii) setting out the reasons why they propose to do so,
    - (iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and
    - (iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;
  - (b) that period must have expired; and
  - (c) the authority must have considered any representations made to them within that period by the appropriate person.
- (8) If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters—
- (a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of housing benefit paid in connection with occupation of a part or parts of the HMO,
  - (b) that the occupier paid, to a person having control of or managing the HMO, periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, and
  - (c) that the application is made within the period of 12 months beginning with—

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- (i) the date of the conviction or order, or
  - (ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.
- (9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—
- (a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and
  - (b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.
- (10) In this section—
- “the appropriate person”, in relation to any payment of housing benefit or periodical payment payable in connection with occupation of a part of an HMO, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;
  - “housing benefit” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);
  - “occupier”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and “occupation” has a corresponding meaning);
  - “periodical payments” means periodical payments in respect of which housing benefit may be paid by virtue of regulation 10 of the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) or any corresponding provision replacing that regulation.
- (11) For the purposes of this section an amount which—
- (a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and
  - (b) is not an amount of housing benefit,
- is to be regarded as an amount paid by the occupier in respect of that periodical payment.

## **74 Further provisions about rent repayment orders**

- (1) This section applies in relation to rent repayment orders made by residential property tribunals under section 73(5).
- (2) Where, on an application by the local housing authority, the tribunal is satisfied—
  - (a) that a person has been convicted of an offence under section 72(1) in relation to the HMO, and
  - (b) that housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO,



the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority an amount equal to the total amount of housing benefit paid as mentioned in paragraph (b).

This is subject to subsections (3), (4) and (8).

- (3) If the total of the amounts received by the appropriate person in respect of periodical payments payable as mentioned in paragraph (b) of subsection (2) (“the rent total”) is less than the total amount of housing benefit paid as mentioned in that paragraph, the amount required to be paid by virtue of a rent repayment order made in accordance with that subsection is limited to the rent total.
- (4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by reason of any exceptional circumstances, it would be unreasonable for that person to be required to pay.
- (5) In a case where subsection (2) does not apply, the amount required to be paid by virtue of a rent repayment order under section 73(5) is to be such amount as the tribunal considers reasonable in the circumstances.

This is subject to subsections (6) to (8).

- (6) In such a case the tribunal must, in particular, take into account the following matters—
  - (a) the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);
  - (b) the extent to which that total amount—
    - (i) consisted of, or derived from, payments of housing benefit, and
    - (ii) was actually received by the appropriate person;
  - (c) whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;
  - (d) the conduct and financial circumstances of the appropriate person; and
  - (e) where the application is made by an occupier, the conduct of the occupier.
- (7) In subsection (6) “relevant payments” means—
  - (a) in relation to an application by a local housing authority, payments of housing benefit or periodical payments payable by occupiers;
  - (b) in relation to an application by an occupier, periodical payments payable by the occupier, less any amount of housing benefit payable in respect of occupation of the part of the HMO occupied by him during the period in question.
- (8) A rent repayment order may not require the payment of any amount which—
  - (a) (where the application is made by a local housing authority) is in respect of any time falling outside the period of 12 months mentioned in section 73(6)(a); or
  - (b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier’s application under section 73(5);

and the period to be taken into account under subsection (6)(a) above is restricted accordingly.

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- (9) Any amount payable to a local housing authority under a rent repayment order—
  - (a) does not, when recovered by the authority, constitute an amount of housing benefit recovered by them, and
  - (b) until recovered by them, is a legal charge on the HMO which is a local land charge.
- (10) For the purpose of enforcing that charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, and of accepting surrenders of leases and of appointing a receiver.
- (11) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.
- (12) If the authority subsequently grant a licence under this Part or Part 3 in respect of the HMO to the appropriate person or any person acting on his behalf, the conditions contained in the licence may include a condition requiring the licence holder—
  - (a) to pay to the authority any amount payable to them under the rent repayment order and not so far recovered by them; and
  - (b) to do so in such instalments as are specified in the licence.
- (13) If the authority subsequently make a management order under Chapter 1 of Part 4 in respect of the HMO, the order may contain such provisions as the authority consider appropriate for the recovery of any amount payable to them under the rent repayment order and not so far recovered by them.
- (14) Any amount payable to an occupier by virtue of a rent repayment order is recoverable by the occupier as a debt due to him from the appropriate person.
- (15) The appropriate national authority may by regulations make such provision as it considers appropriate for supplementing the provisions of this section and section 73, and in particular—
  - (a) for securing that persons are not unfairly prejudiced by rent repayment orders (whether in cases where there have been over-payments of housing benefit or otherwise);
  - (b) for requiring or authorising amounts received by local housing authorities by virtue of rent repayment orders to be dealt with in such manner as is specified in the regulations.
- (16) Section 73(10) and (11) apply for the purposes of this section as they apply for the purposes of section 73.

## **75 Other consequences of operating unlicensed HMOs: restriction on terminating tenancies**

- (1) No section 21 notice may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO.
- (2) In this section—
  - a “section 21 notice” means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (c. 50) (recovery of possession on termination of shorthold tenancy);

a “shorthold tenancy” means an assured shorthold tenancy within the meaning of Chapter 2 of Part 1 of that Act;

“unlicensed HMO” has the same meaning as in section 73 of this Act.

### *Supplementary provisions*

## **76 Transitional arrangements relating to introduction and termination of licensing**

- (1) Subsection (2) applies where—
  - (a) an order under section 55(3) which prescribes a particular description of HMOs comes into force; or
  - (b) a designation under section 56 comes into force in relation to HMOs of a particular description.
- (2) This Part applies in relation to the occupation by persons or households of such HMOs on or after the coming into force of the order or designation even if their occupation began before, or in pursuance of a contract made before, it came into force.

This is subject to subsections (3) to (5).
- (3) Subsection (4) applies where—
  - (a) an HMO which is licensed under this Part, or a part of such an HMO, is occupied by more households or persons than the number permitted by the licence; and
  - (b) the occupation of all or any of those households or persons began before, or in pursuance of a contract made before, the licence came into force.
- (4) In proceedings against a person for an offence under section 72(2) it is a defence that at the material time he was taking all reasonable steps to try to reduce the number of households or persons occupying the house to the number permitted by the licence.
- (5) Subsection (4) does not apply if the licence came into force immediately after a previous licence in respect of the same HMO unless the occupation in question began before, or in pursuance of a contract made before, the coming into force of the original licence.
- (6) An order under section 270 may make provision as regards the licensing under this Part of HMOs—
  - (a) which are registered immediately before the appointed day under a scheme to which section 347 (schemes containing control provisions) or 348B (schemes containing special control provisions) of the Housing Act 1985 (c. 68) applies, or
  - (b) in respect of which applications for registration under such a scheme are then pending.
- (7) In subsection (6) “the appointed day” means the day appointed for the coming into force of section 61.

## **77 Meaning of “HMO”**

In this Part—

- (a) “HMO” means a house in multiple occupation as defined by sections 254 to 259, and

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- (b) references to an HMO include (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, it (or any part of it).

## 78 Index of defined expressions: Part 2

The following table shows where expressions used in this Part are defined or otherwise explained.

<i>Expression</i>	<i>Provision of this Act</i>
Anti-social behaviour	Section 57(5)
Appropriate national authority	Section 261(1)
Category 1 hazard	Section 2(1)
Category 2 hazard	Section 2(1)
District of local housing authority	Section 261(6)
HMO	Section 77
HMO to which this Part applies	Section 55(2)
Licence and licence holder	Section 61(6)
Licence (to occupy premises)	Section 262(9)
Local housing authority	Section 261(2) to (5)
Modifications	Section 250(7)
Occupier (and related expressions)	Section 262(6)
Person having control	Section 263(1) and (2) (and see also section 66(7))
Person having estate or interest	Section 262(8)
Person managing	Section 263(3)
Person involved in management	Section 263(5)
Residential property tribunal	Section 229
Tenant	Section 262(1) to (5).