



## 2016 CHAPTER 22

### PART 5

#### Supplementary

VALID FROM 01/04/2019

#### *HMO register*

##### **HMO register**

**62.**—(1) Every council must keep a register containing the information required by subsections (2) to (4).

(2) The register must contain details of each application for an HMO licence made to the council, including—

- (a) the name of the applicant,
- (b) the address of the living accommodation in question,
- (c) the name of any managing agent specified in the application,
- (d) the date on which the application was made.

(3) The register must contain a note of the council's decision on each application, including in the case of decision to grant a licence—

- (a) the name of the licence holder;
- (b) the number of persons authorised to occupy the HMO (as specified in the licence under section 7(3)(c));
- (c) any conditions included in the licence;

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- (d) any variation, revocation or surrender of the licence under section 22, 23 or 27.
- (4) The register must contain a note of—
  - (a) any revocation order or disqualification order made in relation to the HMO, its owner or any managing agent of it;
  - (b) any Part 4 notice issued in respect of the HMO.
- (5) The register may contain such other information as the council considers appropriate.
- (6) The council must exclude from its register any information which it would otherwise enter in the register, if the council considers that entering the information is likely to jeopardise—
  - (a) the safety or welfare of any person, or
  - (b) the security of any premises.
- (7) The council must make any entry relating to an HMO available for inspection, by any person who falls within subsection (9) in relation to that entry—
  - (a) at its head office at all reasonable times, and
  - (b) in such other manner as the council considers appropriate.
- (8) The council must supply a certified copy of an entry relating to an HMO to any person who falls within subsection (9) in relation to that entry and requests such a copy.
- (9) A person falls within this subsection in relation to an entry if the person appears to the council—
  - (a) to have an interest or prospective interest in the HMO,
  - (b) to be a resident of the HMO, or
  - (c) to be otherwise sufficiently concerned with the information contained in the entry.
- (10) In subsection (9), an “interest” is—
  - (a) a freehold or leasehold estate;
  - (b) a mortgage, charge or lien.
- (11) The council must, on the request of any statutory authority—
  - (a) make its register available for inspection by the authority;
  - (b) supply a certified copy of its register, or of an extract from it, to the authority.
- (12) The council may charge a reasonable fee for supplying a copy under subsection (8) or (11) (see also section 84 in relation to such fees).

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(13) A copy of a register, or of an entry in or other extract from a register, which is certified by an officer of the council to be a true copy is evidence of the matters contained in it.

VALID FROM 01/04/2019

### *Code of practice*

#### **Code of practice**

**63.**—(1) The Department may make regulations approving a code of practice laying down standards of conduct and practice to be followed with regard to the management of houses in multiple occupation.

(2) The standards laid down in the code may, in particular, relate to—

(a) the repair, maintenance, cleansing and good order of—

(i) all means of water supply and drainage in the house,

(ii) all means of escape from fire and all apparatus, systems and other things provided by way of fire precautions,

(iii) kitchens, bathrooms and water closets,

(iv) sinks and wash-basins,

(v) staircases, corridors and passage ways, and

(vi) outbuildings, yards and gardens;

(b) the making of satisfactory arrangements for the disposal of refuse and litter from the house; and

(c) the making of satisfactory arrangements to ensure that all means of escape from fire are kept clear of obstructions.

(3) The code may—

(a) specify the persons who are, for the purposes of the code, to be treated as the managers of houses;

(b) impose a duty on the person managing the house to cause a copy of the code to be displayed in a suitable position in the house.

(4) The Department may by regulations—

(a) approve a modification of a code of practice under this section, or

(b) withdraw its approval of such a code or modification.

(5) The code, and any modification, may be prepared by the Department or by another person.

(6) The Department may approve a code of practice or a modification of a code only if satisfied that—

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- (a) the code or modification has been published (whether by the Department or by another person) in a manner that the Department considers appropriate for the purpose of bringing the code or modification to the attention of those likely to be affected by it, or
  - (b) arrangements have been made for the code or modification to be so published.
- (7) Before approving a code of practice or a modification of a code, the Department must consult—
- (a) persons involved in the management of HMOs, or such persons as appear to the Department to be representative of them, and
  - (b) persons occupying HMOs, or such persons as appear to the Department to be representative of them.
- (8) A failure to comply with a code of practice for the time being approved under this section—
- (a) does not of itself make a person liable to civil or criminal proceedings, but
  - (b) in accordance with section 10(4)(e), may be taken into account as a relevant matter in deciding whether a person is a fit and proper person for the purposes of this Act.

VALID FROM 01/04/2019

*Fixed penalty as alternative to prosecution*

**Fixed penalty: service of notice**

**64.**—(1) This section applies where an authorised officer of a council has reason to believe that a person has committed an offence under any of the following provisions—

- (a) section 30, 31, 32 or 33;
- (b) section 37(1);
- (c) section 49;
- (d) section 60;
- (e) section 75;
- (f) section 80(5);
- (g) section 82(4);
- (h) paragraph 14 of Schedule 2;
- (i) paragraph 8 of Schedule 3.

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- (2) The officer may serve on the person a notice which—
- (a) offers the person the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty,
  - (b) contains the information required by subsections (3) to (5) and (7),
  - (c) contains such other information as may be specified in regulations made by the Department, and
  - (d) is in such form as the council specifies by general notice.
- (3) The notice must give particulars of the circumstances alleged to constitute the offence.
- (4) The notice must state the amount of the fixed penalty, which is to be determined by the council but must not exceed—
- (a) in the case of an offence under section 30(1) or (2), 31(1) or 60(1), (2) or (4), £5,000;
  - (b) in the case of an offence under section 30(3), 31(2) or (3), 32, 33 or 37(1), £2,500;
  - (c) in the case of an offence under section 60(6), 80(5) or 82(4) or paragraph 8 of Schedule 3, £500;
  - (d) in the case of an offence under section 49, section 75 or paragraph 14 of Schedule 2, £200.
- (5) The notice must state the period during which (in accordance with section 65(1)) proceedings will not be commenced for the offence.
- (6) The fixed penalty is to be payable to the council.
- (7) The notice must state the arrangements for paying the fixed penalty; and those arrangements must include, at the least, a person to whom and an address at which the fixed penalty may be paid.
- (8) An “authorised officer” of a council is an officer who is authorised in writing by the council for the purposes of this section.

**Fixed penalty: effect of notice**

- 65.**—(1) Where a notice under section 64 is served on a person in respect of an offence—
- (a) no proceedings may be commenced against the person for the offence before the end of the period of 14 days, or such other longer period as may be specified in the notice, following the date on which the notice is served; and
  - (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.
- (2) In any proceedings a certificate which—

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- (a) purports to be signed on behalf of the clerk of the council, and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(3) A council may use amounts paid to it in pursuance of notices under section 64 only for the purposes of its functions under this Act or such other of its functions as may be specified in regulations made by the Department.

#### **Fixed penalty: power to alter amounts**

**66.**—(1) The Department may by order substitute for any sum specified in section 64(4) such other sum as appears to the Department—

- (a) to be justified by a change in the value of money appearing to the Department to have taken place since the passing of this Act or since the last occasion on which an order was made under this section, or
- (b) to be appropriate to take account of an order which has been made, or is proposed to be made, under Article 17(2) of the Fines and Penalties (Northern Ireland) Order 1984 altering the standard scale set out in Article 5(2) of that Order.

(2) An order under subsection (1)—

- (a) is subject to negative resolution, and
- (b) does not affect the punishment for an offence committed before that order comes into force.

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### *Appeals*

#### **Appeals**

**67.**—(1) This section applies to the following decisions of a council—

- (a) to issue a household notice;
- (b) to refuse to cancel a continuation notice;
- (c) to grant an HMO licence (including any decision as to its terms or any conditions included in it);
- (d) to refuse an application for an HMO licence, unless the refusal is solely because the council is not satisfied as mentioned in section 8(2)(a) (planning control);

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- (e) to issue a temporary exemption notice (including any decision as to the inclusion of safety and security requirements under section 17);
  - (f) to refuse an application for a temporary exemption notice;
  - (g) to revoke a temporary exemption notice, or to refuse to grant an extension of one;
  - (h) to renew an HMO licence (including any decision as to its terms or any conditions included in it as from its renewal);
  - (i) to refuse an application to renew an HMO licence;
  - (j) to vary an HMO licence, or to refuse an application to vary one;
  - (k) to revoke an HMO licence;
  - (l) to refuse to extend the period for which a licence has effect under section 29 (death of sole licence holder);
  - (m) to issue a rectification notice (including any decision as to the terms of it), or to refuse to revoke such a notice;
  - (n) to issue a Part 4 notice (including any decision as to the terms of it);
  - (o) to vary or revoke a Part 4 notice, or to refuse an application to vary or revoke one;
  - (p) to demand recovery of expenses under paragraph 9 of Schedule 3.
- (2) An appeal may be made to the county court against any decision to which this section applies.
- (3) An appeal may be made only by a person on whom notice is required to be served under the provision of this Act in question.
- (4) An appeal must be made before—
- (a) the end of the period of 28 days beginning with the date on which notice was served on the person, or
  - (b) if later, the end of the period of 7 days beginning with date on which reasons for the decision were served under section 68.
- (5) But the court may allow an appeal to be made after that date, if it considers that there are special circumstances which make it just to do so.
- (6) Where—
- (a) a person makes an application, in accordance with this Act, for a decision to which this section applies (except an application for an HMO licence or for the renewal of one), and
  - (b) the council does not notify the applicant of its decision within the period of 35 days beginning with the date on which the application was made (or such further period as the applicant may in writing allow),
- the applicant may make an appeal under this section as if the council had refused the application.

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- (7) In this section, references to the service of notice are—
- (a) in the case of a decision to issue a notice, to the service of that notice;
  - (b) otherwise, to service of notice of the decision.

#### **Council's statement of reasons for decisions which may be appealed**

**68.**—(1) In the case of any decision to which section 67 applies, the notice must (in addition to any other matters required by any provision of this Act) include or be accompanied by a statement informing the person—

- (a) that the person may request a statement of the council's reasons for the decision, and
- (b) of the right to appeal under section 67 and the period within which such an appeal must be made (as to which, see section 67(4)).

(2) A person on whom any such notice has been served may, within 7 days of service of the notice, request the council to give a statement of its reasons for the decision.

(3) Where a council receives a request in accordance with subsection (2), it must within 14 days of doing so serve a statement of its reasons for the decision on—

- (a) the person who made the request, and
- (b) any other person on whom the notice was served.

(4) The duties under subsections (1)(a) and (3) to give notice of the right to request reasons and to give a statement of reasons do not apply where (whether or not in accordance with any provision of this Act) the notice includes or is accompanied by a statement of reasons.

(5) In this section, “the notice” means—

- (a) in the case of a decision to issue a notice, that notice;
- (b) otherwise, notice of the decision.

#### **Powers of court on appeal**

**69.**—(1) An appeal under section 67—

- (a) is to be by way of a re-hearing, but
- (b) may be determined having regard to matters of which the council were unaware.

(2) The court may confirm, reverse or vary the decision of the council.

(3) If the appeal is against a decision to refuse an application, the court may direct the council to grant the application in such terms as the court may direct.



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### *Information*

#### **Powers to require information and documents: introductory**

**70** The powers conferred by sections 71, 72 and 73 are exercisable by a council for the purposes of—

- (a) enabling or assisting the council to exercise any function conferred on it by this Act in relation to any premises;
- (b) investigating whether any offence has been committed under this Act in relation to any premises.

#### **Power to obtain information from persons connected to premises**

**71.**—(1) The council may, by serving notice on a relevant person, require the person to provide the following information in writing to the council—

- (a) the nature of the person's estate (if any) in premises specified in the notice,
- (b) the name and address of any other person known to that person as having an estate in the premises, and
- (c) any other information about the premises that the council may reasonably request and which is in the person's custody or under the person's control.

(2) Where a notice under this section is served—

- (a) on a person who appears to the council to be the occupier of premises, and
- (b) for the purpose of enabling or assisting the council to decide whether the premises are, or contain, an HMO,

the notice may also require the person to disclose the relationship (if any) between that person and any other occupants.

(3) A notice under this section must—

- (a) specify a date, not less than 21 days after the date on which the notice is served, by which the information must be provided,
- (b) specify a person to whom the information must be provided, and
- (c) include information about the possible consequences of not complying with the notice.

(4) Information provided by a person in response to a notice under this section may be used in criminal proceedings as evidence against the person only where subsection (5) or (6) applies.

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(5) This subsection applies where the person is being prosecuted for an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements).

(6) This subsection applies where the person is being prosecuted for any other offence and—

- (a) in giving evidence the person makes a statement inconsistent with the information provided in response to the notice, and
- (b) evidence relating to that information is adduced, or a question about it is asked, by or on behalf of the person.

(7) In this section “relevant person” means any person who—

- (a) is, or is proposed to be, the holder of an HMO licence in respect of the premises,
- (b) is, or is proposed to be, a person named in such an HMO licence as a person on whom a restriction or obligation is imposed under section 14,
- (c) is, or is proposed to be, a managing agent of the premises,
- (d) is, or appears to the council to be, the owner or occupier of the premises, or
- (e) receives, or appears to the council to receive, any rent (directly or indirectly) in respect of the premises.

#### **Power to require persons connected to premises to produce documents**

**72.—**(1) The council may, by serving notice on a relevant person, require the person to produce to the council any documents which—

- (a) are specified or described in the notice, or fall within a category of document which is specified or described in the notice, and
- (b) are in the person's custody or under the person's control.

(2) A notice under this section must—

- (a) specify a date, not less than 21 days after the date on which the notice is served, by which the documents must be produced,
- (b) specify a person to whom the documents must be produced, and
- (c) include information about the possible consequences of not complying with the notice.

(3) A person to whom any document is produced in accordance with the notice may copy the document.

(4) Nothing in this section requires a person to produce a document if the person would be entitled to refuse to produce it in proceedings in the High Court on grounds of legal professional privilege.

(5) In this section—

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“relevant person” has the same meaning as in section 71,

“document” includes information recorded otherwise than in legible form,  
and

in relation to information so recorded, any reference to the production of a document is a reference to the production of a copy of the information in legible form.

### **Power to obtain information from other persons**

**73.**—(1) The council may, by serving notice on a relevant person, require the person to provide to the council, in writing, any relevant information which is in the person's custody or under the person's control.

(2) “Relevant person” means any of the following—

- (a) the Department of Finance and Personnel;
- (b) the Northern Ireland Housing Executive;
- (c) a scheme administrator of a tenancy deposit scheme under regulations under Article 5A of the Private Tenancies (Northern Ireland) Order 2006;
- (d) a registrar of landlords appointed under regulations under Article 65A of that Order;
- (e) any person acting as a gangmaster in relation to work in Northern Ireland;
- (f) a utilities undertaker;
- (g) an institution of further education;
- (h) a higher education institution;
- (i) any person carrying on estate agency work or lettings agency work in the course of a business.

(3) “Relevant information” means—

- (a) information which indicates that a building or part of a building is or may be an HMO;
- (b) the following information about any living accommodation which is or may be an HMO—
  - (i) information as to its location, condition, size or description;
  - (ii) information as to the number of its occupants;
- (c) the name and address of the owner of any such accommodation, or of any person acting as an agent of the owner;
- (d) the name and date of birth of any person who is, or appears to be, an occupant of any such accommodation;

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- (e) the date on which any tenancy or other arrangement to occupy any such accommodation begins or ends.
- (4) But information is “relevant information” only if—
  - (a) in the case of information held by the Department of Finance and Personnel, it is held for the purpose of that Department's functions—
    - (i) under the Rates (Northern Ireland) Order 1977 or the Rates (Capital Values, etc) (Northern Ireland) Order 2006, or
    - (ii) in relation to the administration of housing benefit;
  - (b) in the case of information held by the Northern Ireland Housing Executive, it is held for the purposes of the Executive's functions in relation to the administration of housing benefit.
- (5) A notice under this section must—
  - (a) specify a date, not less than 21 days after the date on which the notice is served, by which the information must be provided,
  - (b) specify a person to whom the information must be provided, and
  - (c) include information about the possible consequences of not complying with the notice.
- (6) Information provided by a person in response to a notice under this section may be used in criminal proceedings as evidence against the person only where subsection (7) or (8) applies.
- (7) This subsection applies where the person is being prosecuted for an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements).
- (8) This subsection applies where the person is being prosecuted for any other offence and—
  - (a) in giving evidence the person makes a statement inconsistent with the information provided in response to the notice, and
  - (b) evidence relating to that information is adduced, or a question about it is asked, by or on behalf of the person.
- (9) This section—
  - (a) has effect notwithstanding any restriction on the disclosure of information imposed by any statutory provision or rule of law, and
  - (b) does not limit the circumstances in which information may be used or provided apart from this section.
- (10) Schedule 6 contains definitions for the purposes of this section.
- (11) The Department may by regulations amend the definitions of “relevant person” and “relevant information”, as set out in this section and Schedule 6, in such manner as it considers appropriate.

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### **Sharing of information between councils**

**74.**—(1) A council may provide to any other council any information held by the council in connection with its functions under this Act.

(2) Information may be provided under subsection (1) only on the request of the other council; and may be used by that council only in connection with its functions under this Act.

(3) This section—

- (a) has effect notwithstanding any restriction on the disclosure of information imposed by any statutory provision or rule of law, and
- (b) does not limit the circumstances in which information may be used or provided apart from this section.

### **Failure to provide information or provision of false information**

**75.**—(1) A person commits an offence if the person—

- (a) refuses or fails to provide information as required under section 71 or 73 or to provide a document as required under section 72, and
- (b) does not have a reasonable excuse for that refusal or failure.

(2) A person commits an offence if—

- (a) the person provides information in response to a notice under section 71 or 73 or a request under section 74,
- (b) the information is false or misleading in a material particular, and
- (c) the person knows that it is, or is reckless as to whether it is, false or misleading.

(3) A person commits an offence if the person intentionally alters, suppresses or destroys any document that the person has been required to produce by a notice under section 72.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Unauthorised disclosure of information obtained under section 73 or 74**

**76.**—(1) An employee of a council commits an offence if the employee discloses without lawful authority any information—

- (a) which the employee acquired in the course of his or her employment,
- (b) which is, or is derived from, information provided to the council under section 73 or 74, and
- (c) which relates to particular living accommodation or a particular person.

(2) It is not an offence under this section to disclose information which has previously been disclosed to the public with lawful authority.

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(3) It is a defence for a person charged with an offence under this section to show that, at the time of the alleged offence, the person believed—

- (a) that the disclosure in question was being made with lawful authority and had no reasonable cause to believe otherwise, or
- (b) that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(4) For these purposes a disclosure of information is made with lawful authority if, and only if, it is made—

- (a) by an employee of the council in accordance with the employee's official duties,
- (b) in accordance with any statutory provision or order of a court,
- (c) for the purposes of any criminal proceedings, or
- (d) with the consent of the person to whom the information relates.

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

#### **Court to inform council of convictions**

77.—(1) This section applies where a court convicts a person of any offence under this Act, other than an offence under section 76.

(2) Within 6 days of the court convicting the person, the court must send to the relevant council—

- (a) notice of the conviction and sentence (if any), and
- (b) a note of any revocation order or disqualification order made by the court in consequence of the conviction.

(3) The relevant council is—

- (a) where the offence relates to an HMO or any other premises, the council for the area in which the HMO or other premises is situated;
- (b) where the offence relates to an HMO licence or any notice issued under this Act, the council which issued the licence or notice.

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### *Powers of entry*

#### **Powers of entry: without warrant**

**78.**—(1) This section applies where a council considers that a survey or examination of any living accommodation is reasonably required for the purpose of enabling or assisting the council to decide—

- (a) whether the living accommodation is an HMO,
- (b) whether to grant, vary or revoke an HMO licence in relation to the living accommodation, or
- (c) whether or how any other function under this Act should be exercised in relation to the living accommodation.

(2) A person authorised in writing by the council may, at any reasonable time, enter the living accommodation for the purpose of carrying out the survey or examination.

(3) Before entering the accommodation, the person must give at least 24 hours' notice of the intention to do so—

- (a) the owner of the accommodation (if known), and
- (b) the occupiers of the accommodation (if any).

(4) The person may not use force in the exercise of the power conferred by this section.

(5) The person must produce for inspection the written authorisation mentioned in subsection (2), if requested to do so by the owner or occupier or any person acting on their behalf.

#### **Powers of entry: with warrant**

**79.**—(1) A lay magistrate may issue a warrant under this section authorising a person named in the warrant to enter and search premises which are specified in the warrant.

(2) A magistrate may issue such a warrant only if satisfied, on a complaint made in writing and substantiated on oath, that the first and second conditions are met.

(3) The first condition is that an officer of the council, or a person acting on behalf of the council, reasonably requires to enter or search the premises for the purpose of enabling or assisting the council to decide—

- (a) whether any offence under this Act has been committed in relation to any living accommodation,

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- (b) whether any requirement imposed by any notice issued under this Act in relation to any living accommodation is being or has been complied with, or
  - (c) any of the matters mentioned in paragraphs (a) to (c) of section 78(1).
- (4) The second condition is that—
- (a) applying to the owner or occupiers for entry (whether under section 78 or otherwise) would defeat the purpose of the entry or search,
  - (b) the premises are unoccupied,
  - (c) the premises are temporarily vacant and it might defeat the purpose of the entry to await the return of the occupiers, or
  - (d) entry to the premises has been sought in accordance with section 78 but has been refused.
- (5) A warrant under this section must specify the purpose for which the entry and search is required.
- (6) A warrant under this section may authorise the use of force.
- (7) Entry under a warrant under this section must be at a reasonable hour unless it appears to the person executing it that the purpose of the entry or search may be defeated if the entry is at a reasonable hour.
- (8) A person executing a warrant under this section may—
- (a) search for, and inspect, any document or other item;
  - (b) take copies of any document;
  - (c) require any person to provide such information or other assistance as the person executing the warrant requires for the purpose of the entry or search.
- (9) A person executing a warrant under this section must produce the warrant for inspection, if requested to do so by the owner or occupier or any person acting on their behalf.
- (10) A warrant under this section is valid for the period of one month beginning with the date on which it is issued.

#### **Powers of entry: supplementary provisions**

**80.—**(1) A person entering premises under section 78 or 79 may be accompanied by such other persons as the person considers necessary for the purpose for which the power is being exercised.

(2) If premises are unoccupied or temporarily vacant, a person entering them under section 78 or 79 must leave them as effectively secured against trespassers as the person found them.



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(3) Where any property is damaged in the exercise of any power conferred by section 78 or 79, or in the doing of anything for the purposes of which such a power is conferred, the council must compensate the person who sustained the damage, unless the damage is attributable to the fault of that person.

(4) Any question of disputed compensation under this section is to be determined by the Lands Tribunal.

(5) A person commits an offence if the person—

(a) obstructs a relevant person in the performance of anything which, by virtue section 78 or 79, the relevant person is required or authorised to do, and

(b) does not have a reasonable excuse for doing so.

(6) In subsection (5), “relevant person” means a person entering premises under section 78 or 79, or any person accompanying such a person under subsection (1).

(7) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

VALID FROM 01/04/2019

*Other supplementary provision*

**Application by person required to take action where consent withheld**

**81.**—(1) This section applies where—

(a) a person is required, by a notice served under this Act, to take any action in relation to any premises,

(b) the consent of another person is required for the action to be taken or to enter any premises in order for it to be taken,

(c) that person has, in response to a written request for consent, unreasonably refused to give it or has failed to respond to the request.

(2) A court of summary jurisdiction may, on the application of the person required to take the action, make an order—

(a) declaring that the consent has been unreasonably withheld, and

(b) granting the necessary consent.

**Obstructions etc**

**82.**—(1) This section applies where any person (“A”) is required, authorised or entitled to take any action under—

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- (a) a temporary exemption notice,
- (b) a rectification notice,
- (c) a Part 4 notice, or
- (d) paragraph 5 of Schedule 3 (power to undertake works).

(2) If—

- (a) A gives notice to any other person (“O”) that A intends to take the action, and
- (b) after receiving that notice, O prevents or obstructs A from taking that action,

A may make an application for an order under subsection (3).

(3) A court of summary jurisdiction may, on the application of A, order O to permit A to do all things which A reasonably requires to do for the purposes of taking the action in question.

(4) Any person who fails to comply with an order under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) This section does not apply in relation to rights conferred by sections 78 to 80 (powers of entry).

#### **Effect of moving from accommodation for works to be carried out**

**83.**—(1) This section applies where—

- (a) a person (“P”) occupies living accommodation under a tenancy or other occupancy arrangement, and
- (b) P moves from the accommodation for the purpose of enabling any person to carry out any work which is—
  - (i) required under a temporary exemption notice, a rectification notice or a hazard notice, or
  - (ii) specified in a statement of remedial work under section 53.

(2) It does not matter whether P moves voluntarily, or in accordance with any term of the tenancy or other occupancy arrangement, or in accordance with paragraph 6 or 7 of Schedule 3 (requirements or warrants to vacate).

(3) The tenancy or other occupancy arrangement, if P so chooses, is to be taken not to have been terminated, varied or altered by reason of P's moving.

(4) If P resumes lawful occupation, the same terms apply (except so far as otherwise agreed) in respect of that occupation as applied in respect of the occupation before P moved.

(5) In this section “lawful occupation” means occupation which is not an offence under paragraph 8 of Schedule 3.

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### *Final provisions*

#### **Fees**

**84.**—(1) The Department may by regulations make provision about the charging of fees under section 62(12) and paragraph 1(5) of Schedule 2.

(2) Regulations under subsection (1) may in particular—

- (a) set the amount, or maximum amount, of any such fee;
- (b) set out how such fees are to be arrived at;
- (c) specify circumstances in which no fee is payable;
- (d) specify circumstances in which fees are to be refunded.

(3) When fixing fees under this Act, the council may (subject to any regulations made under subsection (1)) take into account all costs incurred by the council in carrying out its functions under this Act.

#### **Guidance**

**85.**—(1) The Department may issue guidance to councils about the exercise of their functions under this Act.

(2) In exercising any function under this Act, a council must have regard to any guidance under this section which applies to it in the exercise of that function.

(3) Before issuing any guidance under this section the Department must consult—

- (a) councils, and
- (b) such other persons as the Department considers appropriate.

(4) Any guidance under this section must be—

- (a) issued in writing, and
- (b) published in such manner as the Department considers appropriate for the purpose of bringing it to the attention of councils.

(5) The Department may vary or revoke any guidance issued under this section.

#### **Regulations and orders**

**86.**—(1) Regulations under section 1(3), 3(5), 4(1)(c), 13(3) or 14(3) or paragraph 4, 5 or 9 of Schedule 1, or an order under section 90, may include such consequential, transitional and saving provision as the Department considers necessary or expedient in connection with the other provision made by those regulations or that order.

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(2) Provision made under subsection (1) may include the modification of Northern Ireland legislation.

(3) The following instruments may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Assembly—

- (a) any regulations or orders that, by virtue of subsection (2), modify Northern Ireland legislation;
- (b) any regulations under section 1(3);
- (c) any regulations under section 73(11).

(4) Any other regulations made under this Act are subject to negative resolution.

(5) Before making regulations under section 1(3), 12(1)(c), 13(3) or 14(3) or paragraph 2 of Schedule 2, the Department must consult—

- (a) councils;
- (b) such persons as appear to the Department to be representative of—
  - (i) landlords, and
  - (ii) occupiers of houses; and
- (c) such other persons as the Department considers appropriate (which may include landlords or occupiers of houses, or both).

VALID FROM 01/04/2019

### General notices

**87.**—(1) This section applies to a general notice given by a council under—

- (a) section 15(2);
- (b) section 27(2);
- (c) section 64(2)(d);
- (d) paragraph 1(1) or (2)(h) of Schedule 2.

(2) Any such notice must be—

- (a) given in writing, and
- (b) published in such manner as the council considers appropriate.

(3) The council may vary or revoke any such notice.

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## Interpretation

### 88.—(1) In this Act—

the “associates” of a person (“P”) are—

- (i) any member of P's family (as to which, see subsections (2) and (3)), and
- (ii) if P is the director of a company, any person (not falling within sub-paragraph (i)) who is connected with P within the meaning of section 252 of the Companies Act 2006;

references to “buildings” do not include, in particular, mobile homes;

“building regulations” means any statutory provisions which relate to the construction of new buildings or to the carrying out of works in or to existing buildings and which are for the time being in force;

“council” means a district council (and see subsection (4));

“the Department” means the Department for Social Development;

“disqualification order” means an order under section 38(2)(b) or (c) or (3);

an “emergency hazard notice” is a hazard notice which complies with section 55(3);

an appeal against a decision is “finally determined” when—

- (i) the appeal is withdrawn, or
- (ii) a determination is made (other than a determination quashing the decision) from which no further appeal is allowed;

“fit for human habitation” has the meaning given by Article 46 of the Housing (Northern Ireland) Order 1981 (except that references in that Article to the Executive are to be read as references to the council);

“HMO” means a house in multiple occupation (see sections 1 to 6);

“HMO licence” means a licence under section 7;

“living accommodation” has the meaning given by section 2;

the “managing agent” of any living accommodation includes any person who, acting on behalf of the owner, does any of the following—

- (i) receives rents or other payments from persons who occupy the accommodation (but this is subject to subsection (7)),
- (ii) arranges for the carrying out of any repairs or refurbishment of it,
- (iii) sends or receives communications relating to it to or from the occupants or the council;

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“owner” has the meaning given by subsections (5) and (6);

“Part 4 notice” means any of the following—

- (i) an overcrowding notice under section 44,
- (ii) a suitability notice under section 50, or
- (iii) a hazard notice under section 55;

“revocation order” means an order under section 38(2)(a);

“the statutory authorities” means—

- (i) the Chief Constable,
- (ii) the Department,
- (iii) the Northern Ireland Fire and Rescue Service Board,
- (iv) the Northern Ireland Housing Executive, and
- (v) such other authorities as the Department may by regulations appoint for this purpose;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(2) For the purposes of this Act, two persons are members of the same family only if—

- (a) they are a couple,
- (b) one of them is a relative of the other, or
- (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of that couple.

(3) In subsection (2)—

- (a) a “couple” is two persons who are married to each other or are civil partners, or who live together as husband and wife or (where they are of the same sex) in an equivalent relationship,
- (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece,
- (c) a relationship of the half-blood is to be treated as a relationship of the whole blood, and
- (d) the stepchild of a person is to be treated as that person's child.

(4) The functions conferred by this Act on a council are exercisable in relation to living accommodation situated in its district (so that, in particular, “the council”, in relation to an HMO or HMO licence, means the council for the district in which the HMO is situated).

(5) In this Act, the “owner” of living accommodation is the person, other than a mortgagee not in possession, who (whether on the person's own account or as trustee for another)—

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- (a) receives or is entitled to receive the rack rent for the accommodation, or
  - (b) if the accommodation is not let at a rack rent, would be entitled to receive that rent if it were so let.
- (6) For the purposes of subsection (5)—
- (a) it does not matter whether the person receives the rent directly or through an agent;
  - (b) it does not matter whether the person receives (or would be entitled to receive) the rent alone or jointly or in common with any other person;
  - (c) “rack rent” means a rent which is not less than two-thirds of the net annual value of the accommodation, or a rent which has been fixed in accordance with the Rent (Northern Ireland) Order 1978.
- (7) Where—
- (a) a person (“the agent”) has introduced a prospective tenant or other occupier to the owner of accommodation,
  - (b) the prospective tenant or other occupier enters into a tenancy or other occupation agreement under which periodical payments are to be made in respect of the occupation, and
  - (c) the agent (acting on behalf of the owner) receives the first of those periodical payments,

then, for the purposes of the definition of “managing agent” in subsection (1), the receipt by the agent of that payment is not to be regarded as the receipt of rent or another payment from that occupier.

VALID FROM 01/04/2019

### **Consequential amendments and repeals**

- 89.**—(1) The consequential amendments set out in Schedule 7 have effect.
- (2) The repeals set out in Schedule 8 have effect.

### **Commencement**

**90.**—(1) Sections 84 to 86, this section and section 91 come into operation on the day on which this Act receives Royal Assent.

(2) The other provisions of this Act come into operation on such day as the Department may by order appoint.

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### **Short title**

**91** This Act may be cited as the Houses in Multiple Occupation Act (Northern Ireland) 2016.



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