



Housing Act 2004

2004 CHAPTER 34

PART 3

SELECTIVE LICENSING OF OTHER RESIDENTIAL ACCOMMODATION

Introductory

79 Licensing of houses to which this Part applies

- (1) This Part provides for houses to be licensed by local housing authorities where—
 - (a) they are houses to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 85(1)).
- (2) This Part applies to a house if—
 - (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
 - (b) the whole of it is occupied either—
 - (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or
 - (ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4).
- (3) A tenancy or licence is an exempt tenancy or licence if it is granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996 (c. 52).
- (4) In addition, the appropriate national authority may by order provide for a tenancy or licence to be an exempt tenancy or licence—
 - (a) if it falls within any description of tenancy or licence specified in the order; or
 - (b) in any other circumstances so specified.
- (5) Every local housing authority have the following general duties—

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- (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; and
- (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.

Designation of selective licensing areas

80 Designation of selective licensing areas

- (1) A local housing authority may designate either—
 - (a) the area of their district, or
 - (b) an area in their district,
 as subject to selective licensing, if the requirements of subsections (2) and (9) are met.
- (2) The authority must consider that—
 - (a) the first or second set of general conditions mentioned in subsection (3) or (6), or
 - (b) any conditions specified in an order under subsection (7) as an additional set of conditions,
 are satisfied in relation to the area.
- (3) The first set of general conditions are—
 - (a) that the area is, or is likely to become, an area of low housing demand; and
 - (b) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, contribute to the improvement of the social or economic conditions in the area.
- (4) In deciding whether an area is, or is likely to become, an area of low housing demand a local housing authority must take into account (among other matters)—
 - (a) the value of residential premises in the area, in comparison to the value of similar premises in other areas which the authority consider to be comparable (whether in terms of types of housing, local amenities, availability of transport or otherwise);
 - (b) the turnover of occupiers of residential premises;
 - (c) the number of residential premises which are available to buy or rent and the length of time for which they remain unoccupied.
- (5) The appropriate national authority may by order amend subsection (4) by adding new matters to those for the time being mentioned in that subsection.
- (6) The second set of general conditions are—
 - (a) that the area is experiencing a significant and persistent problem caused by anti-social behaviour;
 - (b) that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and
 - (c) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with

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the local housing authority, lead to a reduction in, or the elimination of, the problem.

“Private sector landlord” does not include a registered social landlord within the meaning of Part 1 of the Housing Act 1996 (c. 52).

- (7) The appropriate national authority may by order provide for any conditions specified in the order to apply as an additional set of conditions for the purposes of subsection (2).
- (8) The conditions that may be specified include, in particular, conditions intended to permit a local housing authority to make a designation for the purpose of dealing with one or more specified problems affecting persons occupying Part 3 houses in the area.
“Specified” means specified in an order under subsection (7).
- (9) Before making a designation the local housing 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.
- (10) Section 81 applies for the purposes of this section.

81 Designations under section 80: further considerations

- (1) This section applies to the power of a local housing authority to make designations under section 80.
- (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, 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 80 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 achieving the objective or objectives that the designation would be intended to achieve, and
 - (b) they consider that making the designation will significantly assist them to achieve the objective or objectives (whether or not they take any other course of action as well).

82 Designation needs confirmation or general approval to be effective

- (1) A designation of an area as subject to selective 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).

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- (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 a 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 Part 3 houses of a specified description.
 “Specified” means specified by the appropriate national authority in the approval.
- (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.
- (9) Where a designation comes into force, this Part applies in relation to the occupation by persons of houses in the area on or after the coming into force of the designation even if their occupation began before, or in pursuance of a contract made before, it came into force.

83 Notification requirements relating to designations

- (1) This section applies to a designation—
 - (a) when it is confirmed under section 82, 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 82 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.

84 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 on the date 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.

Houses required to be licensed

85 Requirement for Part 3 houses to be licensed

- (1) Every Part 3 house must be licensed under this Part unless—
- (a) it is an HMO to which Part 2 applies (see section 55(2)), or
 - (b) a temporary exemption notice is in force in relation to it under section 86, or
 - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.
- (2) A licence under this Part is a licence authorising occupation of the house concerned under one or more tenancies or licences within section 79(2)(b).
- (3) Sections 87 to 90 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 houses in their area which are required to be licensed under this Part but are not so licensed.
- (5) In this Part, unless the context otherwise requires—
- (a) references to a Part 3 house are to a house to which this Part applies (see section 79(2)),
 - (b) references to a licence are to a licence under this Part,
 - (c) references to a licence holder are to be read accordingly, and
 - (d) references to a house being (or not being) licensed under this Part are to its being (or not being) a house in respect of which a licence is in force under this Part.

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86 Temporary exemption from licensing requirement

- (1) This section applies where a person having control of or managing a Part 3 house which is required to be licensed under this Part (see section 85(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 section 85(1)) not required to be licensed under this Part 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—
 - (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 issue a temporary exemption notice with effect from such date as the tribunal directs.

Grant or refusal of licences

87 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 may 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 Part 3 houses (so far as they are not recoverable under or by virtue of any provision of that Chapter).

88 Grant or refusal of licence

- (1) Where an application in respect of a house is made to the local housing authority under section 87, 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 proposed licence holder—
 - (i) is a fit and proper person to be the licence holder, and

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- (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;
 - (b) 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;
 - (c) that the proposed manager of the house is a fit and proper person to be the manager of the house; and
 - (d) that the proposed management arrangements for the house are otherwise satisfactory.
- (4) Section 89 applies for the purposes of this section.

89 Tests for fitness etc. and satisfactory management arrangements

- (1) In deciding for the purposes of section 88(3)(a) or (c) 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; or
 - (c) contravened any provision of the law relating to housing or of landlord and tenant law.
- (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 (c), 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 88(3)(a) 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 88(3)(d) 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 88(3)(b)(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.

90 Licence conditions

- (1) A licence may include such conditions as the local housing authority consider appropriate for regulating the management, use or occupation of the house concerned.
- (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.
- (3) A licence may also include—
- (a) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed for the purposes of this section by regulations made by the appropriate national authority;
 - (b) conditions requiring such facilities and equipment to be kept in repair and proper working order;
 - (c) 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.
- (4) A licence must include the conditions required by Schedule 4.
- (5) 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;
 - (b) this does not, however, prevent the authority from imposing (in accordance with subsection (3)) licence conditions relating to the installation or maintenance of facilities or equipment within subsection (3)(a) 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.
- (6) 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.
- (7) 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.

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91 Licences: general requirements and duration

- (1) A licence may not relate to more than one Part 3 house.
- (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 93, 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 house concerned subsequently ceases to be a Part 3 house or becomes an HMO to which Part 2 applies (see section 55(2)).
- (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 as if on that date a temporary exemption notice had been served in respect of the house under section 86.
- (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 86.
- (10) Subsections (6) to (8) of section 86 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

92 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) A variation made with the agreement of the licence holder takes effect at the time when it is made.

- (3) 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).
- (4) 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.
- (5) In subsection (4) “relevant person” means any person (other than the licence holder)—
 - (a) who has an estate or interest in the house 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 90(6).

93 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 house 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 89(1) applies in relation to paragraph (b) or (c) above as it applies in relation to section 88(3)(a) or (c).

- (3) The cases referred to in subsection (1)(c) are as follows—
 - (a) where the house to which the licence relates ceases to be a Part 3 house;
 - (b) where a licence has been granted under Part 2 in respect of the house;
 - (c) 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 house, refuse to grant a new licence to the licence holder on similar terms in respect of it.
- (4) A revocation made with the agreement of the licence holder takes effect at the time when it is made.

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- (5) 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).

This is subject to subsection (6).

- (6) A revocation made in a case within subsection (3)(b) cannot come into force before such time as would be the operative time for the purposes of subsection (5) under paragraph 35 of Schedule 5 on the assumption that paragraph 35 applied—
- (a) to an appeal against the Part 2 licence under paragraph 31 of the Schedule as it applies to an appeal under paragraph 32 of the Schedule, and
 - (b) to the period for appealing against the Part 2 licence mentioned in paragraph 33(1) of the Schedule as it applies to the period mentioned in paragraph 33(2) of the Schedule.
- (7) 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.
- (8) In subsection (7) “relevant person” means any person (other than the licence holder)—
- (a) who has an estate or interest in the house 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 90(6).

Procedure and appeals

94 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

95 Offences in relation to licensing of houses under this Part

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) 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 90(6), and
 - (b) he fails to comply with any condition of the licence.

- (3) 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 86(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 87,
- and that notification or application was still effective (see subsection (7)).
- (4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,
- as the case may be.
- (5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £20,000.
- (6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) For the purposes of subsection (3) 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 (8) is met.
- (8) 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.
- (9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

96 Other consequences of operating unlicensed houses: rent repayment orders

- (1) For the purposes of this section a house is an “unlicensed house” 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 house under section 62(1) or 86(1) and that notification is still effective (as defined by section 95(7));
 - (b) that an application for a licence has been duly made in respect of the house under section 87 and that application is still effective (as so defined).

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- (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 the whole or a part of an unlicensed house, 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 97.
- (5) If—
- (a) an application in respect of a house is made to a residential property tribunal by the local housing authority or an occupier of the whole or part of the house, 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 97(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 95(1) in relation to the house (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 the whole or any part or parts of the house 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 the whole or part of the house, the tribunal must be satisfied as to the following matters—

Status: This is the original version (as it was originally enacted).

- (a) that the appropriate person has been convicted of an offence under section 95(1) in relation to the house, or has been required by a rent repayment order to make a payment in respect of housing benefit paid in connection with occupation of the whole or any part or parts of the house,
 - (b) that the occupier paid, to a person having control of or managing the house, periodical payments in respect of occupation of the whole or part of the house during any period during which it appears to the tribunal that such an offence was being committed in relation to the house, and
 - (c) that the application is made within the period of 12 months beginning with—
 - (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 the whole or a part of a house, 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 (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.

97 Further provisions about rent repayment orders

- (1) This section applies in relation to orders made by residential property tribunals under section 96(5).

Status: This is the original version (as it was originally enacted).

- (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 95(1) in relation to the house, 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 the whole or any part or parts of the house during any period during which it appears to the tribunal that such an offence was being committed in relation to the house,

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 96(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 house during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the house under section 95(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 95(1) in relation to the house;
 - (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 house, or (as the case may be) the part of it occupied by him, during the period in question.

- (8) A rent repayment order may not require the payment of an amount which—

Status: This is the original version (as it was originally enacted).

- (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 96(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 96(5);and the period to be taken into account under subsection (6)(a) above is restricted accordingly.
- (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) is, until recovered by them, a legal charge on the house 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 Part 2 or this Part in respect of the house 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 house, 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 96, 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 96(10) and (11) apply for the purposes of this section as they apply for the purposes of section 96.

Status: This is the original version (as it was originally enacted).

98 Other consequences of operating unlicensed houses: restriction on terminating tenancies

(1) No section 21 notice may be given in relation to a shorthold tenancy of the whole or part of an unlicensed house so long as it remains such a house.

(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 house” has the same meaning as in section 96 of this Act.

Supplementary provisions

99 Meaning of “house” etc.

In this Part—

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;

“house” means a building or part of a building consisting of one or more dwellings;

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

100 Index of defined expressions: Part 3

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) |
| Dwelling | Section 99 |
| House | Section 99 |
| Licence and licence holder | Section 85(5) |
| Licence (to occupy premises) | Section 262(9) |
| Local housing authority | Section 261(2) to (5) |
| Occupier (and related expressions) | Section 262(6) |

| <i>Expression</i> | <i>Provision of this Act</i> |
|----------------------------------|---|
| Part 3 house | Section 85(5), together with section 79(2) |
| Person having control | Section 263(1) and (2) (and see also section 89(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). |
