



# Housing Act 2004

## 2004 CHAPTER 34

### PART 4

#### ADDITIONAL CONTROL PROVISIONS IN RELATION TO RESIDENTIAL ACCOMMODATION

### CHAPTER 3

#### OVERCROWDING NOTICES

#### **139 Service of overcrowding notices**

- (1) This Chapter applies to any HMO—
  - (a) in relation to which no interim or final management order is in force; and
  - (b) which is not required to be licensed under Part 2.
- (2) The local housing authority may serve an overcrowding notice on one or more relevant persons if, having regard to the rooms available, it considers that an excessive number of persons is being, or is likely to be, accommodated in the HMO concerned.
- (3) The authority must, at least 7 days before serving an overcrowding notice—
  - (a) inform in writing every relevant person (whether or not the person on whom the authority is to serve the notice) of their intention to serve the notice; and
  - (b) ensure that, so far as is reasonably possible, every occupier of the HMO concerned is informed of the authority's intention.
- (4) The authority must also give the persons informed under subsection (3) an opportunity of making representations about the proposal to serve an overcrowding notice.
- (5) An overcrowding notice becomes operative, if no appeal is brought under section 143, at the end of the period of 21 days from the date of service of the notice.
- (6) If no appeal is brought under section 143, an overcrowding notice is final and conclusive as to matters which could have been raised on such an appeal.

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- (7) A person who contravenes an overcrowding notice commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) In proceedings for an offence under subsection (7) it is a defence that the person had a reasonable excuse for contravening the notice.
- (9) In this section “relevant person” means a person who is, to the knowledge of the local housing authority—
- (a) a person having an estate or interest in the HMO concerned, or
  - (b) a person managing or having control of it.
- [<sup>F1</sup>(10) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (11) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.]

#### Textual Amendments

- F1** S. 139(10)(11) inserted (6.4.2017) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), **Sch. 9 para. 5**; [S.I. 2017/281](#), reg. 4(f)

#### Modifications etc. (not altering text)

- C1** S. 139 modified (E.) (1.10.2007) by The Houses in [Multiple Occupation \(Certain Blocks of Flats\) \(Modifications to the Housing Act 2004 and Transitional Provisions for section 257 HMOs\) \(England\) Regulations 2007 \(S.I. 2007/1904\)](#), {reg 11}
- C2** S. 139 modified (W.) (5.12.2007) by The Houses in [Multiple Occupation \(Certain Blocks of Flats\) \(Modifications to the Housing Act 2004 and Transitional Provisions for section 257 HMOs\) \(Wales\) Regulations 2007 \(S.I. 2007/3231\)](#), **reg. 11**

#### Commencement Information

- II** S. 139 wholly in force at 16.6.2006; s. 139 not in force at Royal Assent see s. 270(4)(5); s. 139 in force for E. at 6.4.2006 by [S.I. 2006/1060](#), **art. 2(1)(a)** (with [Sch.](#)); s. 139 in force for W. at 16.6.2006 by [S.I. 2006/1535](#), **art. 2(a)** (with [Sch.](#))

## 140 Contents of overcrowding notices

- (1) An overcrowding notice must state in relation to each room in the HMO concerned—
- (a) what the local housing authority consider to be the maximum number of persons by whom the room is suitable to be occupied as sleeping accommodation at any one time; or
  - (b) that the local housing authority consider that the room is unsuitable to be occupied as sleeping accommodation.
- (2) An overcrowding notice may specify special maxima applicable where some or all of the persons occupying a room are under such age as may be specified in the notice.
- (3) An overcrowding notice must contain—
- (a) the requirement prescribed by section 141 (not to permit excessive number of persons to sleep in the house in multiple occupation); or

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- (b) the requirement prescribed by section 142 (not to admit new residents if number of persons is excessive).
- (4) The local housing authority may at any time—
- (a) withdraw an overcrowding notice which has been served on any person and which contains the requirement prescribed by section 142, and
  - (b) serve on him instead an overcrowding notice containing the requirement prescribed by section 141.

#### Commencement Information

- I2** S. 140 wholly in force at 16.6.2006; s. 140 in force for certain purposes at Royal Assent see s. 270(2)(b); s. 140 in force for E. at 6.4.2006 by S.I. 2006/1060, art. 2(1)(a) (with Sch.); s. 140 in force for W. at 16.6.2006 by S.I. 2006/1535, art. 2(a) (with Sch.)

### 141 Requirement as to overcrowding generally

- (1) The requirement prescribed by this section is that the person on whom the notice is served must refrain from—
- (a) permitting a room to be occupied as sleeping accommodation otherwise than in accordance with the notice; or
  - (b) permitting persons to occupy the HMO as sleeping accommodation in such numbers that it is not possible to avoid persons of opposite sexes who are not living together as [<sup>F2</sup>a married couple or civil partners] sleeping in the same room.
- (2) For the purposes of subsection (1)(b)—
- (a) children under the age of 10 are to be disregarded; and
  - (b) it must be assumed that the persons occupying the HMO as sleeping accommodation sleep only in rooms for which a maximum is set by the notice and that the maximum set for each room is not exceeded.

#### Textual Amendments

- F2** Words in s. 141(1)(b) substituted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), Sch. 3 para. 26(2)

#### Commencement Information

- I3** S. 141 wholly in force at 16.6.2006; s. 141 in force for certain purposes at Royal Assent see s. 270(2)(b); s. 141 in force for E. at 6.4.2006 by S.I. 2006/1060, art. 2(1)(a) (with Sch.); s. 141 in force for W. at 16.6.2006 by S.I. 2006/1535, art. 2(a) (with Sch.)

### 142 Requirement as to new residents

- (1) The requirement prescribed by this section is that the person on whom the notice is served must refrain from—
- (a) permitting a room to be occupied by a new resident as sleeping accommodation otherwise than in accordance with the notice; or
  - (b) permitting a new resident to occupy any part of the HMO as sleeping accommodation if that is not possible without persons of opposite sexes who

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are not living together as [<sup>F3</sup>a married couple or civil partners] sleeping in the same room.

- (2) In subsection (1) “new resident” means a person who was not an occupier of the HMO immediately before the notice was served.
- (3) For the purposes of subsection (1)(b)—
  - (a) children under the age of 10 are to be disregarded; and
  - (b) it must be assumed that the persons occupying any part of the HMO as sleeping accommodation sleep only in rooms for which a maximum is set by the notice and that the maximum set for each room is not exceeded.

#### Textual Amendments

**F3** Words in s. 142(1)(b) substituted (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), reg. 1(2), [Sch. 3 para. 26\(3\)](#)

#### Commencement Information

**I4** S. 142 wholly in force at 16.6.2006; s. 142 in force for certain purposes at Royal Assent see s. 270(2)(b); s. 142 in force for E. at 6.4.2006 by [S.I. 2006/1060](#), [art. 2\(1\)\(a\)](#) (with [Sch.](#)); s. 142 in force for W. at 16.6.2006 by [S.I. 2006/1535](#), [art. 2\(a\)](#) (with [Sch.](#))

### 143 Appeals against overcrowding notices

- (1) A person aggrieved by an overcrowding notice may appeal to [<sup>F4</sup>the appropriate tribunal] within the period of 21 days beginning with the date of service of the notice.
- (2) 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.
- (3) On an appeal the tribunal may by order confirm, quash or vary the notice.
- (4) If an appeal is brought, the notice does not become operative until—
  - (a) a decision is given on the appeal which confirms the notice and the period within which an appeal to the [<sup>F5</sup>Upper Tribunal] may be brought expires without any such appeal having been brought; or
  - (b) if an appeal is brought to the [<sup>F5</sup>Upper Tribunal], a decision is given on the appeal which confirms the notice.
- (5) For the purposes of subsection (4)—
  - (a) the withdrawal of an appeal has the same effect as a decision which confirms the notice appealed against; and
  - (b) references to a decision which confirms the notice are to a decision which confirms it with or without variation.
- (6) [<sup>F6</sup>The appropriate tribunal] may allow an appeal to be made to it after the end of the period mentioned in subsection (1) if it is satisfied that there is good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

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#### Textual Amendments

- F4** Words in s. 143(1) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 170(a)** (with Sch. 3)
- F5** Words in s. 143(4)(a)(b) substituted (1.6.2009) by [Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 5(1)(2), **Sch. 1 para. 274** (with Sch. 5)
- F6** Words in s. 143(6) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 170(b)** (with Sch. 3)

#### Commencement Information

- I5** S. 143 wholly in force at 16.6.2006; s. 143 not in force at Royal Assent see s. 270(4)(5); s. 143 in force for E. at 6.4.2006 by [S.I. 2006/1060](#), **art. 2(1)(a)** (with Sch.); s. 143 in force for W. at 16.6.2006 by [S.I. 2006/1535](#), **art. 2(a)** (with Sch.)

### 144 Revocation and variation of overcrowding notices

- (1) The local housing authority may at any time, on the application of a relevant person—
  - (a) revoke an overcrowding notice; or
  - (b) vary it so as to allow more people to be accommodated in the HMO concerned.
- (2) The applicant may appeal to <sup>[F7]</sup>the appropriate tribunal] if the local housing authority—
  - (a) refuse an application under subsection (1); or
  - (b) do not notify the applicant of their decision within the period of 35 days beginning with the making of the application (or within such further period as the applicant may in writing allow).
- (3) An appeal under subsection (2) must be made within—
  - (a) the period of 21 days beginning with the date when the applicant is notified by the authority of their decision to refuse the application, or
  - (b) the period of 21 days immediately following the end of the period (or further period) applying for the purposes of paragraph (b) of that subsection, as the case may be.
- (4) Section 143(2) applies to such an appeal as it applies to an appeal under that section.
- (5) On an appeal the tribunal may revoke the notice or vary it in any manner in which it might have been varied by the local housing authority.
- (6) <sup>[F8]</sup>The appropriate tribunal] may allow an appeal to be made to it after the end of the 21-day period mentioned in subsection (3)(a) or (b) if it is satisfied that there is good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal).
- (7) In this section “relevant person” means—
  - (a) any person who has an estate or interest in the HMO concerned, or
  - (b) any other person who is a person managing or having control of it.

#### Textual Amendments

- F7** Words in s. 144(2) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 171(a)** (with Sch. 3)

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**F8** Words in s. 144(6) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\)](#), art. 1, **Sch. 1 para. 171(b)** (with Sch. 3)

**Commencement Information**

**I6** S. 144 wholly in force at 16.6.2006; s. 144 not in force at Royal Assent see s. 270(4)(5); s. 144 in force for E. at 6.4.2006 by [S.I. 2006/1060](#), **art. 2(1)(a)** (with Sch.); s. 144 in force for W. at 16.6.2006 by [S.I. 2006/1535](#), **art. 2(a)** (with Sch.)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 66(1A) inserted by [2016 c. 22 s. 125\(3\)\(a\)](#)
- s. 66(3A)(3B) inserted by [2016 c. 22 s. 125\(3\)\(c\)](#)
- s. 89(1A) inserted by [2016 c. 22 s. 125\(6\)\(a\)](#)
- s. 89(3A)(3B) inserted by [2016 c. 22 s. 125\(6\)\(c\)](#)
- s. 139(7A)(7B) inserted by [2016 c. 22 s. 127\(3\)](#)