

# HOUSING ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 - Selective Licensing of Other Residential Accommodation**

216. (Where a provision in this Part is identical to one in **Part 2** the reader is invited to refer to the explanatory note to the relevant section in that Part, but any reference to HMO should be read as "**Part 3** house").

#### *Section 79: Licensing of houses to which this Part applies*

217. **Section 79** sets out the scope of licensing under Part 3 and the general duties on LHAs in relation to their licensing functions. The section provides that licensing can apply to all houses in a designated area other than those occupied under an exempt tenancy or licence. Exemptions apply to houses occupied under tenancies granted by a Registered Social Landlord or to circumstances specified in an order made by the appropriate national authority. Subsection (5) requires LHAs to promote the implementation of any licensing scheme and ensure all licence applications are dealt with within a reasonable timeframe.

#### *Section 80: Designation of selective licensing areas*

218. **Section 78** provides that an LHA may designate an area as subject to selective licensing if:
- it is, or may become, an area of low housing demand (subsection (4) lists some characteristics that can distinguish such an area), and/or
  - it has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor.
219. In the case of a designation under the first condition, the LHA must believe that the designation, together with other measures, will help lead to an improvement in the social or economic conditions in the area. In the case of a designation under the second condition, the LHA must believe that the designation, together with other measures, will help lead to a reduction in or elimination of the problem of anti-social behaviour.
220. The section also allows the appropriate national authority to specify other criteria for making a selective licensing scheme to deal with other housing challenges.

#### *Section 81: Designations under section 80: further considerations*

221. **Section 81** sets out further requirements that the LHA must consider before exercising the power to make designations under section 80. These are:
- ensuring the use of selective licensing is in accordance with the LHA's overall housing strategy and is part of a co-ordinated approach to deal with wider issues such as anti-social behaviour;

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- examining whether there are other courses of action that could be used to deal with the problems identified (e.g. voluntary accreditation schemes) and concluding that additional licensing, whether on its own or in conjunction with other policies, will make a significant contribution to dealing with the problems.

***Section 82: Designation needs confirmation or general approval to be effective***

See note to section 58.

***Section 83: Notification requirements relating to designations***

See note to section 59.

***Section 84: Duration, review and revocation of designations***

See note to section 60.

***Section 85: Requirement for Part 3 houses to be licensed***

222. **Section 85** provides that all occupied houses to which the Part applies in a designated area must be licensed except if the house is an HMO which is required to be licensed under Part 2, or a temporary exemption notice is in force or it is subject to a management order under Part 4. It also requires that LHAs take reasonable steps to ensure that applications for licences are made in respect of all relevant properties in their area (that do not already have a licence).

***Section 86: Temporary exemption from licensing requirement***

See note to section 62.

***Section 87: Applications for licences***

See note to section 63.

***Section 88: Grant or refusal of licence***

223. **Section 88** describes the grounds on which an LHA may decide whether or not to grant a licence. The Section provides that a licence must be granted if:
224. the proposed licence holder is a fit and proper person (see section 89 for definition of 'fit and proper'), as well as being the most appropriate person to be granted a licence i.e. they have management responsibility and are locally resident - this is intended to ensure that unfit landlords cannot use front men to apply for licences;
- the proposed manager of the house is the person having control of the house or an agent or employee of that person and is also a fit and proper person; and
  - the proposed management arrangements are satisfactory.

***Section 89: Tests for fitness etc. and satisfactory management arrangements***

225. **Section 89** sets out the evidence that must be considered in determining whether someone is a fit and proper person to be a licence holder or a manager. These include whether that person (or a relevant associate e.g. a spouse or business partner) has been engaged in offences of fraud, dishonesty, violence, drugs or sexual offences. Spent convictions are not, in this context, taken into account. Evidence of unlawful discrimination in business or contravention of housing law is also relevant.
226. In addition the section sets out the matters to be addressed when considering whether or not the management arrangements for a property are satisfactory (in terms of the competence of the manager, management structure and funding).

### ***Section 90: Licence conditions***

227. **Section 90** provides that an LHA may include conditions in licences it grants for the management, use or occupation of the house concerned. Such conditions may include:
- restrictions or prohibitions on the use of parts of the house by occupants
  - requirements to take reasonable and practical steps to control or reduce anti-social behaviour of the occupants or visitors
  - a licence may also include conditions requiring facilities and equipment to be made available for the purpose of complying with standards prescribed (if any) by the appropriate national authority and for keeping such facilities and equipment in repair and good order.
228. Any such conditions will be in addition to those laid out in Schedule 4, which sets out mandatory conditions.
229. An LHA is required, as a general rule, to address health and safety issues through its Part 1 functions and not by means of licence conditions and it cannot set conditions which require changes to the terms or conditions of a person's occupation of the house. For example, this means that an LHA would not be permitted to impose any condition limiting the level of rent payable.

### ***Section 91: Licences: general requirements and duration***

See note to section 68.

### ***Section 92: Variation of licences***

### ***Section 93: Revocation of licences***

230. **Section 92** allows the local authority to vary a licence if there is a change of circumstances or with the agreement of the licence holder.
231. **Section 93** provides for the circumstances in which an LHA may revoke a licence. These include:
- with the agreement of the licence holder e.g. because a new licence is to be granted to some other person
  - where the house ceases to be a Part 3 house and/or is granted an HMO licence under Part 2.
  - where the licence holder has committed a serious breach of a condition of the licence or repeated breaches of such a condition
  - where the LHA no longer believes that the licence holder is a fit and proper person or that the management of the house is no longer being carried out by fit and proper persons.
  - where the LHA believes the property is no longer meets the standards required for a licence.
232. There is also a power for the appropriate national authority to make regulations setting out other circumstances in which a licence may be revoked.
233. **Part 2** of Schedule 5 sets out the procedure to be followed in respect of a variation or revocation of a licence and Part 3 of Schedule 5 sets out the right of appeal to the RPT against variation and revocation decisions.

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***Section 94: Procedural requirements and appeals against licence decisions***

234. Section 94 gives effect to the procedural requirements and appeals procedure set out in Schedule 5.

***Section 95: Offences in relation to licensing of houses under this Part***

235. Section 95 makes it an offence punishable by a fine of up to £20,000 if a person controlling or managing a Part 3 property does not have the required licence. However, no offence is committed by a person who has an outstanding application either for a licence or for a temporary exemption. It is also an offence to breach any condition of a licence, punishable by a fine not exceeding level 5 (currently £5,000).
236. It is a defence for either of these offences if the person accused can demonstrate a reasonable excuse.

***Section 96: Other consequences of operating unlicensed Part 3 houses: rent repayment orders***

***Section 97: Further provisions about rent repayment orders***

See notes to sections 73 and 74.

***Section 98: Other Consequences of operating unlicensed Part 3 houses: restriction on terminating tenancies***

See note to section 75.

***Section 99: Meaning of "house" etc***

237. Section 99 contains the definition of "dwelling" and "house". A house comprises one or more dwellings and includes any yard, garden, outhouses etc.