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A guide to the licensing and management provisions  
in Parts 2, 3 and 4 of the Housing Act 2004

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DRAFT

# Contents

	Introduction	4
Chapter 1	Definition of a house in multiple occupation	5
Chapter 2	Licensing: general	22
Chapter 3	Licensing: houses in multiple occupation	56
Chapter 4	Licensing: Part 3 houses	72
Chapter 5	Management orders: general	80
Chapter 6	Management orders: other provisions	112
	Annex A: Links to the legislation	118

DRAFT

# Introduction

Houses in multiple occupation (HMOs) are a key source of housing for significant and often vulnerable groups of people. However, historically, HMOs have often been badly managed and poorly maintained. The Housing Act 2004 (the Act) introduced a range of measures designed to address these issues and specifically to improve the management of such properties.

The Act introduced mandatory licensing of all HMOs which have three or more storeys and are occupied by five or more persons forming two or more households. It also introduced two types of discretionary licensing. These are additional licensing, where a council can impose a licence on other HMOs in its area which are not subject to mandatory licensing, but where the council considers that poor management of the properties is causing problems either for the occupants or the general public, and selective licensing to cover all privately rented property in areas which suffer or are likely to suffer from low housing demand and also to those that suffer from significant and persistent anti-social behaviour. Other measures include management orders and rent repayment orders.

The purpose of this guidance is to provide a detailed explanation of the provisions in the Act. It is primarily aimed at practitioners in local housing authorities, but may also form a useful guide to the legislation for private landlords and tenants. The guidance sets out the requirements of the Act. It cannot, however, provide a definitive interpretation of the legislation or provide answers to all the questions or types of cases that might arise. Only the courts can provide an authoritative interpretation of the law.

# DRAFT

# Chapter 1 Definition of a house in multiple occupation

## Introduction

1. The Housing Act 2004 (the 2004 Act) introduced a new definition of an HMO - sections 254 to 260 (see Annex A), replacing that which previously applied in section 345 of the Housing Act 1985.<sup>1</sup> (the 1985 Act)
2. The 2004 Act limits the range of houses that can be included within the HMO definition. Although the definition in the 1985 Act was relatively concise (in comparison with the new one), the reality was its brevity led to uncertainty and sometimes unintended results. For example, a 'house' under the 1985 definition applied to a wide range of buildings, including **any** building converted, built or adapted for multiple occupation. Thus sometimes buildings that were not typically regarded as HMOs, such as conference centres<sup>2</sup> and those which had been converted to provide modern flats<sup>3</sup>, were caught by the legislation.
3. The 2004 Act provides that a house cannot be an HMO unless it is occupied by persons as their residence. The 1985 definition did not qualify the mode or purpose of occupation, and it had been held by the courts that 'occupation' could amount to 'live in' without any qualification.<sup>4</sup> Thus any person staying at (and sleeping in) a 'house' for whatever purpose, could be held to be an occupier. As a result of this broad definition, persons sharing property for short periods of time were held to be 'occupiers'<sup>5</sup> as were the children, numbering up to ninety at a time, staying in a holiday hostel.<sup>6</sup>
4. What constituted a 'single household' was not defined by the 1985 Act. This led to difficulty because clearly it would be open to interpretation as to the nature of the relationship of the occupiers to determine the question. For example in the cases of *Barnes v Sheffield City Council*<sup>7</sup> and *Rogers v Islington London Borough of Council*.<sup>8</sup> Both cases involved 'unrelated' persons sharing a 'house'. In the former case, the persons occupying the house were students (studying at the same university) who knew each other prior to renting the property, whereas in the latter case they were unconnected young professionals. Whilst there were

<sup>1</sup> Housing Act 1985 c.68.

<sup>2</sup> *Living Waters Christian Centres Ltd v Conwy County Borough Council* (1998) 77 P & CR 54.

<sup>3</sup> *Stanley v Ealing LBC* [2003] All ER (D) 306 (Apr). In this case the house, including additions to it, had been converted into 11 self-contained flats.

<sup>4</sup> *Siblers v Southwark LBC* (CA 1977).

<sup>5</sup> As in the case referred to at footnote 2.

<sup>6</sup> *Reed v Hastings Corporation* (1964) 62 LGR 588, 108 Sol Jo 480.

<sup>7</sup> *Barnes v Sheffield City Council* (1995) 27 HLR 719.

<sup>8</sup> *Rogers v Islington London Borough of Council* [1999] All ER (D) 925.

DRAFT

distinguishing features between the two cases<sup>9</sup>, these judgments led to potential confusion as to whether or not a property was occupied as a 'single household'. In the former case the students were classed as a 'single household' whereas in the later case each individual young professional was deemed to form a separate household. The 2004 Act therefore provides for a clear definition of 'single household'.

## General principles

5. The Housing Act 2004 definition of an HMO now applies to all HMOs, however Schedule 14 of the 2004 Act defines those buildings that cannot be HMOs for the purpose of the Act, other than Part 1 (Housing Conditions). Of course, local housing authorities (LHAs) must apply the definition of HMO<sup>10</sup> to those buildings when determining a relevant issue under that part of the 2004 Act.
6. The intention of the legislation is not to extend the definition of an HMO, but rather limit it. Although the 2004 Act's definition is certainly more detailed than that in the 1985 Act, it is the detail which actually limits the definition of a property that can properly be regarded as an HMO. Thus there is no (except to the extent of its application to tenure<sup>11</sup>) radical departure from the basics of the definition contained in the 1985 Act.

## Meaning of HMO

7. In order for a building, or part of a building, to form an HMO it must fall within the meaning of one of the following descriptions:
  - a building in which more than one household shares a basic amenity e.g. a bathroom, toilet or cooking facilities. This is called 'the standard test'<sup>12</sup>
  - a flat in which more than one household shares a basic amenity (all of which are in the flat) e.g. a bathroom, toilet or cooking facilities. This is called 'the self-contained flat test'<sup>13</sup>
  - a building which has been converted and does not entirely comprise of self contained flats. This is called 'the converted building test'<sup>14</sup>
  - a building which is comprised entirely of converted self-contained flats and the standard of the conversion does not meet, at a minimum, the standard required by the 1991 Building Regulations, and less than two

<sup>9</sup> Such as the sizes of the houses, the number of occupiers and that the court established in Barnes the existence of a common thread between the occupants of the household.

<sup>10</sup> Sections 254 to 260.

<sup>11</sup> Schedule 14.

<sup>12</sup> Section 254(2).

<sup>13</sup> Section 254(3).

<sup>14</sup> Section 254(4).



DRAFT

thirds of the flats are owner occupied.<sup>15</sup> This type of building is also known as a section 257 HMO

Each of these tests is explored in more detail below.

### The standard test

8. The most common types of HMOs that local housing authorities (LHAs) are likely to deal with come under the standard test. In order to meet the test there must be some sharing of one or more amenities between at least two households.<sup>16</sup> These amenities are defined as a toilet, personal washing facilities or cooking facilities.<sup>17</sup> The degree of sharing is not relevant and there is no requirement that all the households share those amenities. Thus, a building which comprises both self-contained flats and non-self contained accommodation, where the occupying householders of that accommodation share facilities, will meet this test despite the fact that some of the units are entirely self-contained.<sup>18</sup>
9. There is no requirement that the building is converted or adapted in any way (although that may indeed be the case). It applies, therefore, to houses whose characteristics resemble those of a conventional house in single occupancy, but which is an HMO by virtue only of its use, for example 'shared' houses as well as the more traditional bed-sit type HMOs.
10. The standard test can also apply to a purpose built building which contains shared amenities, such as a hostel.<sup>19</sup> However, a hostel or other purpose built establishment, comprising entirely of self-contained accommodation will not fall within the standard test. Indeed such a building is not an HMO at all.
11. The alternative criteria by which this test can be met is that "*the living accommodation is lacking in one or more basic amenities*".<sup>20</sup> If the living accommodation lacks an amenity, but that amenity is provided elsewhere, the building meets the lack of amenity test. This could apply, for example, to hotel staff accommodation separate from the hotel which has a staff canteen at which employees are expected to take their meals. This is important in considering the amenity standards required for licensable HMOs under The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006.<sup>21</sup>

### The self-contained flat test

12. The self-contained flat test is identical to the standard test except that it applies to any flat (whether converted or purpose built) which is in

<sup>15</sup> Section 257.

<sup>16</sup> Section 254(2)(f).

<sup>17</sup> Section 254(8).

<sup>18</sup> Critchell v L.B of Lambeth [1957] 2 QB 535, 539.

<sup>19</sup> R v Camden LBC Ex p Rowton (Camden Town) Ltd (1983) 82 LGR 614, 10 HLR 28.

<sup>20</sup> Section 254(2)(f).

<sup>21</sup> SI 2006/373.

DRAFT

multiple occupation. However, a purpose built or converted building which meets the 1991 Building Regulation<sup>22</sup> standards, which contains flats in multiple occupation will not be an HMO for the purpose of the standard test, although the individual flats will, of course, meet the self contained flat test.

### **The converted building test**

13. This test applies to any building that has been converted and in which one or more of the units of living accommodation is not a self-contained flat.<sup>23</sup> There has to be a degree of conversion of the building since its original construction to create living accommodation.<sup>24</sup> Thus a house converted into bed-sits may meet the test, but so could a family house, where only a part of it has been converted to provide separate living accommodation. The building cannot therefore be purpose built, such as a hostel or a house built for single occupancy. Such buildings could nevertheless meet the standard test, if there is any sharing of facilities between two or more households.
14. The building must comprise at least one unit of living accommodation which is not a self-contained flat. It does not matter whether the building also comprises of self-contained flats.

### **The tests for self-contained and non self-contained**

15. The definition of self-contained flat is:
- “... a separate set of premises (whether or not on the same floor) –*
- (a) which forms part of a building;*
  - (b) either the whole or part of which lies above or below some other part of the building; and*
  - (c) in which all three basic amenities are available for the exclusive use of its occupants.”<sup>25</sup>*

The key requirement is that the flat has to be a “*separate set of premises*” and one in which “*all basic amenities are available ...*”. The basic amenities are a toilet, personal washing facilities and cooking facilities and must be for the exclusive use of the occupants.

16. The parts of the flat can be on different floors within the building, but each must lie in whole, or in material part, above or below some other part of the building which must form part of the separate premises (e.g. a maisonette). So, a self-contained flat is a premise where all the basic amenities are contained behind the front door of the flat (i.e. within the living accommodation).

<sup>22</sup> SI 1991/2768.

<sup>23</sup> Section 254(4).

<sup>24</sup> For the definition of “converted building” see section 254(8).

<sup>25</sup> Section 254(8).

DRAFT

17. The Residential Property Tribunal in the case *Kaufman and Antil Ltd v L.B Camden*<sup>26</sup> (Kaufman) confirmed in its determination that this was the meaning of the definition in section 254(8). In the Kaufman case the appellants had applied to the council for temporary exemption from licensing because they intended to 'self-contain' the living accommodation. That application was refused and on appeal the central question was whether the proposed works would amount to self-containment, so as to render the HMO no longer subject to mandatory licensing. The layout of the building was such that each flat had its own bathroom and kitchen, but a toilet on the landing was shared between two flats. The appellants proposed to alter one of each pair of flats so as to incorporate a toilet within it and the other flat would then have exclusive use of the landing toilet. The tribunal held that providing exclusive use to a toilet situated outside of the main body of the flat did not amount to self-containment for the purpose of the 2004 Act. So the appeal was dismissed.
18. A non self-contained flat includes living accommodation where not all of the basic amenities are within the living accommodation, even if the amenity or amenities outside of it are provided for the exclusive use of the occupiers of the living accommodation, as well as those where basic amenities are shared between household.

### **Converted blocks of flats – section 257 HMOs**

19. This test<sup>27</sup> applies where the building is converted and comprises entirely of self-contained flats **and both** of the following also applies:
- the standard of conversion does **not** meet, as a minimum, the standard required by the Building Regulations 1991<sup>28</sup> and
  - less than two-thirds of the flats are owner-occupied
- Each of the limbs to the test is considered below.
20. In considering whether the first limb is met the LHA must consider:
- if the conversion was carried out before 1 June 1992<sup>29</sup>, whether its standards met those that were required by the Building Regulations 1991 or
  - if the conversion was carried out on, or after, 1 June 1992, but before the Building Regulations 2000 came into force, the requirements of the Building Regulations 1991 are met or
  - if the conversion was carried out on or after the date the Building Regulations 2000 came into force, the requirements of the Building Regulations in force at the date of the conversion are met

<sup>26</sup> Lon/OOAG/HMT/2006/0002 and 0003 (2006).

<sup>27</sup> Section 257(1).

<sup>28</sup> SI 1991/2768.

<sup>29</sup> The date the 1991 Regulations came into force.

DRAFT

If a building meets any of those requirements/standards it will not be an HMO

21. The date of conversion is important because any conversion carried out on, or after, the date of the most recent building regulations has to meet the requirements then in force. For example, a building will be an HMO if having been converted in January 2001, it does not meet the requirements of the Building Regulations 2000, even though it meets the standards of the 1991 (or subsequent) Regulations (provided the second limb of the test is also satisfied).
22. The requirements/standards that the LHA should in particular consider are those relating to 'the common parts' as the Act refers to 'converted blocks of flats' and not to the individual dwellings within those converted blocks.<sup>30</sup> The LHA, therefore, does not have to enquire into, or satisfy itself, that the flats within the building meet the appropriate standards/requirements in deciding whether the building is an HMO.
23. The standards are set out in Schedule 1 to the 1991 Regulations. These relate to:
  - structure (loading and ground movement)
  - fire safety (means of escape, internal fire spread: linings and structure, external fire spread, access and facilities for the fire service)
  - site preparation and resistance to moisture
  - toxic substances
  - resistance to the passage of sound (walls, floors, stairs)
  - ventilation (means of ventilation and condensation)
  - hygiene (hot water storage)
  - drainage and waste disposal (foul water/rain water drainage, solid waste storage)
  - heat producing appliances
  - stairs, ramps and guards
  - conservation of fuel and power
  - access and facilities for disabled people
  - glazing – materials and protection
24. A building, which at the relevant time of conversion, did not meet the appropriate standards, can nevertheless by further upgrade/conversion meet those standards, provided the requirements of the relevant regulations at the time of the works are met. If such works are carried out the building will cease to be an HMO. A building, which at the relevant time of conversion did meet the appropriate standards, will not be an

<sup>30</sup> Section 257(1).

DRAFT

HMO, even if the condition of the building has deteriorated to the extent that those standards are no longer being met.

25. In considering the relevant requirements/standards the LHA must have regard to the requirements in respect of common parts, including hallways, landings, stairs, common rooms, roofs, roof spaces, plant rooms, walls, floors and fixtures and fittings. It is a matter for the LHA to determine as to whether at the relevant time of conversion the appropriate standards/requirements were met. The LHA can do this, in one of two ways:
- it can inspect the common parts (in so far as it is possible without entering individual flats to which has no authority to enter) or
  - it can require the landlord/manager of the building to provide documentary evidence to prove that the standards were met at the relevant time.<sup>31</sup> These documents can include building work completion certificates, schedules of works and completion and other supporting evidence (for example, a certificate from an appropriately qualified person that the works conformed to the standards). Such evidence should be regarded as conclusive, unless the LHA has strong evidence to the contrary
26. The second limb of the test is satisfied if less than two-thirds of the flats are 'owner-occupied'.<sup>32</sup> Owner-occupier is defined as a person:
- who has a lease of a flat for a term exceeding 21 years
  - who is the freeholder of the block of flats (including a person who has a share of the freehold if there are joint freeholders) or
  - who is a member of the household of a person who is the owner<sup>33</sup>
27. Thus the second limb of the test applies if more than one-third of flats are occupied by tenants, licensees or under other arrangements. It does not matter who has granted the tenancy or licence (e.g. whether the freeholder of the building or a leaseholder of a flat), or otherwise as to how it arose. It is also irrelevant whether the occupiers have a legal right to occupy a flat, or whether the person granting occupation has done so in breach of a covenant in his or her lease. Accordingly, whether a converted block of flats is or is not an HMO may vary from time to time depending on the composition of the people living in the flats.
28. Where a leasehold interest or the freehold interest belongs to a company and the flat in question is occupied under licence of that company, for example by the owner of that company, the person occupying the flat is to be counted as a person for the purpose of deciding the question of whether the building is an HMO. This is because in law a company cannot

<sup>31</sup> Section 235.

<sup>32</sup> Section 257(2)(b).

<sup>33</sup> Section 257(4).

DRAFT

'occupy' premises<sup>34</sup> and, therefore, cannot be an 'owner-occupier' within the meaning of subsection (4).

29. If the owner of the building occupies a flat within it that does not affect the status of the building for the purpose of section 257.<sup>35</sup>
30. In order to assist it in determining whether the second limb of the test is satisfied, the LHA can use its powers under section 235 of the 2004 Act to require the recipient of the notice to supply any relevant document relating to ownership or occupation. It can also use its powers under section 16 of Local Government (Miscellaneous Provisions) Act 1976 to require relevant information to be supplied to it in that regard. The documents and/or information can be required from the owner, manager or any occupier of the block in question. The LHA can also use its powers under section 237 of the 2004 Act to assist it in determining whether the test is satisfied by using any information held by the local authority in respect of council tax or housing benefit relating to the block, or any flat in the block.

## Living accommodation

31. The 2004 Act does not define 'living accommodation'. This has led to some commentators suggesting that living accommodation includes the whole of a building 'in multiple occupation', such as a shared house. Communities and Local Government does not share that view. It is contrary to the concept of a building being occupied in 'multiple occupation' contained in the definition of HMO.

## Building/part of a building

32. Section 254 (1) provides "... a building or part of a building is ... [an HMO]" if it meets one of the tests specified in that subsection. Therefore if the whole building constitutes an HMO then the building is an HMO. However, an HMO can also be part only of a building. The part can be formed by the horizontal or vertical (or both) division from the remainder. The division does not necessarily have to be physical or permanent, since it is the use of the part which is relevant. So for example, if a number of rooms off a staircase in a hotel were used exclusively to accommodate members of staff, although that part was in no other way physically divided from the remainder of the hotel, that use could constitute the staircase being deemed to be the means of access to the HMO.

<sup>34</sup> *Firstcross v East West Ltd* (1980) 255 EG 355 is a case where tenants formed a company, which then had a property let to it successfully preventing a statutory tenancy being created. As to the position of leases granted to companies owned by occupiers. See also *Eaton Square Properties Ltd v O'Higgins* (CA 2001) and *Hiller v. United Dairies* (London), LD [1934] 1 KB 57.

<sup>35</sup> Schedule 14, paragraph 6(2).

DRAFT

33. Thus, if only part of a building constitutes 'living accommodation', the means of access to that accommodation and such other parts enjoyed with that accommodation (such as shared amenities, storage space, common rooms and laundry facilities<sup>36</sup>) will form part of the HMO.
34. A building which has been created by the conversion of two or more buildings will form a single HMO and an extension to a building will also form part of the HMO.<sup>37</sup>
35. When determining the number of storeys in an HMO, if part of the building is higher than the remainder then it is that part which determines the overall number of storeys in the HMO.
36. In the remainder of this guidance any reference to a 'building', 'property' or 'premises', should be treated to include a flat or part of a flat (when taken in context).

## Meaning of occupied

37. As a general rule for a building to be an HMO it must be occupied by persons as their only or main residence, those persons occupation of the living accommodation must constitute the only use of that accommodation and rents are payable or some other form of consideration is payable in respect of at least one person's occupation of the living accommodation.<sup>38</sup>

### **Occupied as only or main residence**

38. It will usually be self evident if a person occupies a property as his only or main residence. However, there will be cases where the issue is not always clear cut and the Act and secondary legislation<sup>39</sup> make special provisions about these. In the following specified cases persons are to be regarded as occupying a property as their only or main residence (whether or not otherwise as a matter of fact of law they are doing so). Persons to be so treated are:
- those who are staying in a refuge. A refuge is defined narrowly as a building managed by a voluntary organisation and used wholly or mainly for temporary accommodation for people who have left their homes because of physical violence or mental abuse or the threat of either of those.<sup>40</sup> Persons escaping domestic violence by staying temporarily at a hostel will not qualify under this section unless the hostel's client group is entirely made up, or mainly composed, of such

<sup>36</sup> SI 2006/371.

<sup>37</sup> Stanley v Ealing LBC [ 2003] EWCA Civ 679 and Norwich City Council v Billings (1999) 29 H.L.R. 679.

<sup>38</sup> Section 254 (2)(c), (d) and (e).

<sup>39</sup> The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373).

<sup>40</sup> Section 259 (2)(b) and (3).



DRAFT

persons. However, such a hostel may nevertheless still be an HMO under the standard test

- those who occupy a building as their residence for the purpose of undertaking a full time course of further or higher education.<sup>41</sup> This applies to students during term time. The rationale behind this provision is to rebut the assumption that students who live with their parents (or indeed elsewhere) outside of term time are not occupying the properties in term time as their main or only residences. It does not apply to students who occupy properties outside of term time as well as during it, since such occupation would be on the basis of only or main residence. A building does not have to be entirely occupied by students for it to be regarded as an HMO. A building which has been purchased by a student's parent(s) for occupation by the student and which is also occupied by other non related (to the student) persons is not exempt from the HMO definition, even if the student manages the building or collects the rent on behalf of his/her parents. However, if the student is himself the owner of the building he will be treated as a resident landlord and, therefore, provided he occupies the property with no more than two other persons (not being members of his family), the building will be exempt.<sup>42</sup> A building occupied by students which is managed and controlled by the education provider will in certain circumstances be exempt from the HMO definition<sup>43</sup>
- those who occupy a building and are migrant workers and the accommodation is provided by their employers or is provided on their behalf or is provided by an agent of an employer, such as a gang master.<sup>44</sup> This provision is to remove any doubt that tied accommodation provided to migrant workers can be HMOs. The provision does not provide a rule that a building occupied by migrant workers which is rented from a person other than the employer is not an HMO. The circumstances of the occupation in such cases will determine whether the building is occupied as the persons' main or only residence in such cases
- those who occupy tied accommodation as seasonal workers.<sup>45</sup> Whilst in many cases seasonal workers will also be migrant workers, special provision has been made for seasonal workers because they may have a main residence elsewhere in the United Kingdom. For the purpose of the legislation such persons are to be treated as occupying the tied accommodation as their main residence during the period of their employment. Where a seasonal worker occupies accommodation not provided for him by his employer different rules will apply because the LHA will need to be satisfied that he/she occupies the accommodation as a main residence
- those who occupy accommodation as asylum seekers and which accommodation is funded part or wholly by the UK Border Agency

<sup>41</sup> Section 259 (2)(a).

<sup>42</sup> SI 2006/373, paragraph 6 of schedule 14 and SI 2006/373, regulation 6.

<sup>43</sup> See paragraph 63.

<sup>44</sup> SI 2006/373, regulation 5.

<sup>45</sup> SI 2006/373, regulation 5.



DRAFT

(UKBA).<sup>46</sup> In general in deciding who the responsible person to hold a licence is, that person will be the person who manages the tenancy. Thus in the case of accommodation providers it will be for them to obtain a licence rather than the owners of the buildings. In the case of non funded UKBA accommodation the asylum seeker will normally be considered as occupying the property as his only or main residence unless he/she has another residence within the United Kingdom provided consideration is paid in connection with the occupation. However, the building will not be an HMO if it is managed by an exempted body or is one to which section 34 of the Nationality, Immigration and Asylum Act 2002 or the Detention Centre Rules 2001 apply<sup>47</sup>

39. Finally on the issue of main or only residence it should be noted that a hostel or night shelter providing accommodation for homeless persons can be an HMO, even if the homeless persons are only accommodated overnight. This is because during that stay the hostel or shelter will be the person's only residence. However, there has to be consideration paid for the occupation, so a night shelter which provides the accommodation subject to no consideration will be exempt from the HMO definition.

### **Only use of the living accommodation**

40. The living accommodation must be occupied by persons as their main or only residence and that occupation must be the only use of that accommodation (the sole use condition). This means that certain mixed use buildings are excluded from being HMOs. An example would be a hotel where some of the living accommodation was occupied by 'permanent' residents, but other parts of the living accommodation are occupied by tourists. It can also mean that if a house was shared by a number of unrelated persons, but one or more (but not all of them) only lived there for a set number of days each week and at all other times resided elsewhere, the house may not be regarded as those persons' main residence. Thus the other resident's occupation of the house would not be the only use of the house, so it would not be an HMO.

### **HMO declarations**

41. If the accommodation is not used solely for living accommodation but there is a significant use of the building as a persons' only or main residence, the LHA may declare it to be an HMO for that reason.<sup>48</sup>
42. An HMO declaration relates to the 'use' of the building by the residents in the sense of the proportion of numbers of residents occupying it as their only or main residences as opposed to those who occupy it otherwise. It is not about determining any question of the nature of the occupation i.e. whether it is being occupied as a main or only residence by certain persons.

<sup>46</sup> SI 2006/373, regulation 5.

<sup>47</sup> SI 2006/373, schedule 14 and Regulation 6(1).

<sup>48</sup> Section 255.

DRAFT

43. 'Significant use' is not defined in the 2004 Act, but in this context significant means some use, rather than mainly or predominantly, although each case will depend on its own facts.
44. Once an HMO declaration comes into force the property is an HMO for all purposes in the 2004 Act, and so can, for example, be required to be licensed.
45. An HMO declaration must be in writing and the notice served upon the relevant persons.<sup>49</sup> The declaration comes into force 28 days after it has been made. If a person served with a notice disagrees that it ought to have been served, he/she can appeal to a residential property tribunal, who may confirm or revoke the declaration. Once a declaration has been made it remains in force until the LHA revokes it.
46. An LHA may revoke an HMO declaration if it considers that the building is no longer significantly used as persons' only or main residence.<sup>50</sup> An example of this might be a hotel which previously provided temporary accommodation for homeless persons as well as accommodation for tourists. If the use of the hotel for housing homeless persons ceased, the significant use condition would also cease, and therefore the LHA may revoke the declaration.
47. If an LHA revokes a declaration the building ceases to be an HMO for the purpose of the 2004 Act. Certain transitional arrangements apply when it ceases to be an HMO. An LHA may revoke a declaration on its own initiative or upon the application of a relevant person. If the LHA decides not to revoke the declaration it must serve a notice on the person who made the application explaining the reasons for its decision. There is a right of appeal against a refusal to revoke an HMO declaration, but the declaration continues in force until the appeal is disposed of (and the tribunal has revoked the declaration).

### **Sole use and significant use conditions**

48. Once an LHA has made a declaration, in any proceedings, including for example an appeal against an HMO declaration, the court or tribunal must assume the conditions are satisfied, unless the contrary is proven.<sup>51</sup> This means, for example, if a landlord disputed that a shared house was an HMO or that it should be subject to an HMO declaration, it would be for him or her to prove that the sole or significant use condition (as the case may be) was not met. As a general rule, however, the burden of proof as to whether a property is an HMO lies on the LHA and this is an exception to that rule. Nevertheless, an LHA must still demonstrate that the conditions apply.

<sup>49</sup> Subsection 255(12) defines "relevant persons". Further discussion on "relevant persons" for the purpose of the Act is in chapter 2.

<sup>50</sup> Section 256.

<sup>51</sup> Section 260.

DRAFT

**Rents and other consideration**

49. When determining whether a building is an HMO the rule is that *“rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation.”*<sup>52</sup> Where no rent is payable or no consideration is provided at all by any occupier, the building cannot be an HMO. Thus a night shelter providing accommodation for destitute homeless persons who do not pay any charge cannot be an HMO.
50. Rent must be payable or consideration made in respect of at least one person’s occupation of the accommodation. Thus, if a landlord lets premises to person A (at a rent) who invites (with the consent of the landlord) persons B and C to live with him ‘rent free’, provided B and C were not related to A the building could be an HMO.
51. The rent does not have to be paid by the person directly. The rule is that rent is **payable**, or other consideration is **to be provided**, in respect of the accommodation. It may be payable by a third party, for example by a student’s parent or in the case of asylum seekers by UKBA. However, it has to be payable in respect of the person’s occupation; so a grant-aided housing project providing accommodation for the destitute homeless is unlikely to qualify under this rule because the funding is not likely to be ‘rent’ or ‘consideration’ in respect of a specific person’s occupation of the premises. If an occupier withheld payment of rent that was payable, this does not mean the building is not an HMO.
52. ‘Consideration’ could be payment for occupation of the accommodation other than in the form of rent, such as a licence fee or other charge. It is unlikely to include payments which are made as a result of the occupation, such as in respect of council tax or for the use of utilities. However, mesne profit and damages for the use of the accommodation could be included.
53. ‘Consideration’ does not have to be in monetary form. So a person will also provide consideration if he/she occupies accommodation as part of a contract for employment or to provide services. An example of consideration arising out of employment would be the provision of ‘rent free’ accommodation for bar staff above the public house where they are employed. (It should be noted that certain domestic employment will not make a building an HMO – see next section.) An example of consideration arising out of the provisions of services might be an agreement to permit a group of friends to occupy an empty house free of charge in exchange for them caretaking it. Whilst in most circumstances it will be relatively straightforward to establish if the consideration is in the form of employment or services, an LHA should be slow to assume that it applies unless there is clear evidence. For example, if a group of friends simply occupy a house rent free and by doing so they are incidentally acting as caretakers of the property that would not constitute consideration. Where there is doubt all the surrounding circumstances

<sup>52</sup> Section 254(2)(e).

DRAFT

will need to be considered, for example how the persons came to find the accommodation, what the relationship between them and the owner is, what was the owner's intention in making the arrangements and so on.

## Not occupied as a single household

54. The 2004 Act does not define positively what constitutes 'multiple occupation'. It defines it negatively by defining which relationships constitute a single household. It therefore follows that unless the living arrangements are such as to constitute a single household, those arrangements will constitute multiple occupation.

55. A single household is formed by:

- a family
- an employer and certain specified domestic employees
- a carer and the person receiving the care and
- a foster parent and a foster child

Any occupation of a building not falling within the above will constitute 'multiple occupation'. Each of the above relationships is examined in more detail below.

56. A single person also constitutes a single household.<sup>53</sup>

57. A family comprises:

- a couple (whether or not married, and including same sex couples)
- persons related to one another as:
  - a parent or grandparent
  - a brother or sister
  - a child, grand child or step child
  - a cousin
  - a niece or nephew
  - an uncle or aunt

58. Members of the family of one of the couple are treated as members of the family of the other. A relationship of half-blood is treated as a relationship of full blood.

59. The relationship between the various family members will determine whether they are living in the same family together. For example, a married couple living with their children will, as the more obvious

<sup>53</sup> Schedule 14, paragraph 7

DRAFT

example, constitute a single household. So will an aunt living with her nephew and his son because the aunt is a relative of the nephew who in turn is a relative of the son, but if the aunt lived with the son of the nephew only that would not be a single household because they are not 'relatives' of one another as defined by the 2004 Act, even though they are blood relations.<sup>54</sup>

60. Certain domestic employees are in certain circumstances to be treated as members of the household of their employers:<sup>55</sup>

- the employee must be employed by the householder or a member of his family or perform a service to such a person and the nature of that employment/service must be domestic
- the employee (and any member of his family living with him) must occupy the same building as the employer
- the employee must not pay rent or other consideration in respect of the accommodation he occupies (other than consideration by way of the work or providing the service)

If these criteria are met then the employee and members of his family are to be treated as part of the single household of the employer and his family residing with him.

61. The types of employees who are to be treated as members of their employer's household are:

- an au pair
- a nanny
- a nurse
- a carer
- a governess
- a servant (including maid, butler, cleaner or cook)
- a chauffeur
- a gardener
- a secretary
- a personal assistant

62. The requirement is for the employee to occupy the same building, or part of the same building, (e.g. a flat) as the employer. So person would not be treated as part of his employer's household if, for example separate accommodation was provided, say, in the grounds of a mansion house as servant accommodation, or a separate flat was provided for the

<sup>54</sup> But such a relationship would still not create an HMO because it would fall within the exemption in paragraph 7 of schedule 14.

<sup>55</sup> SI 2006/373, regulation 3.

DRAFT

occupation of servants in a block of flats. In such cases the property in question (depending on other factors) could be an HMO.

63. Provision is made for other persons to be treated as being a member of another person's household:<sup>56</sup>
- a person living with his/her foster parent(s) is to be treated as being in the same household as the foster parent
  - Up to three service users receiving care under the Adult Placement Schemes (England) Regulations 2004<sup>57</sup> are to be treated as part of the carer's household

## Buildings that are not HMOs

64. Some buildings are not HMOs for the purpose of the 2004 Act even if they meet the requirements of the HMO definition. However the housing health and safety rating system (HHSRS) in Part 1 of the 2004 Act still applies to such properties. These buildings are:
- those under the management or control of a local housing authority, a registered social landlord or certain other public bodies<sup>58</sup>
  - those regulated under other enactments, such as care homes, children homes and bail hostels etc<sup>59</sup>
  - those occupied solely or mainly by students studying a full time course of further and higher education at a specified education establishment which manages the building in question and the specified education establishment is subject to an approved code of practice and the building in question is subject to that code<sup>60</sup>
  - those that are occupied for the purpose of a religious community whose main occupation is prayer, contemplation, education or the relief of the suffering. This exemption does not apply to a converted block of flats within the meaning of section 257 of the 2004 Act occupied by such a community<sup>61</sup>
  - those that are occupied by a freeholder or long leaseholder and any member of his household (if any) and any other persons not forming part of his household and not exceeding two in number.<sup>62</sup> Thus, a building occupied by a resident landlord with no more than two other

<sup>56</sup> SI 2006/373, regulation 4.

<sup>57</sup> SI 2004/2071.

<sup>58</sup> Schedule 14, paragraph 2.

<sup>59</sup> Schedule 14, paragraph 3 and schedule 1 to SI 2006/373.

<sup>60</sup> Schedule 14, paragraph 4. The relevant codes of practice are: The Universities UK/Standing Conference of Principals Code of Practice for the Management of Student Housing dated 20 February 2006, which was approved by the Secretary of State by The Housing (Approval of Codes of Management Practice (Student Accommodation) (England) Order 2006 (SI 2006/646), and The ANUK/Unipol Code of Standards for Larger Developments for Student Accommodation Managed and Controlled by Educational Establishments dated 28<sup>th</sup> August 2008, which was approved by the Secretary of State by The Housing (Approval of a Code of Management Practice) (Student Accommodation) (England) Order 2008 (SI 2008/2345). For a list of specified educational establishments to which the codes currently apply see The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 200 (SI 2008/2346).

<sup>61</sup> Schedule 14, paragraph 5.

<sup>62</sup> Schedule 14, paragraph 6(1) and SI 2006/373, regulation 6(2) for the number of occupants.

DRAFT

persons (in addition to any members of his family) will not be an HMO. However, if there are three or more additional residents it will be an HMO, provided it meets the other criteria for falling within the definition. The general rule of exemption for owner-occupied buildings does not apply if the owner-occupation is in respect of flats within a section 257 HMO.<sup>63</sup> In such cases, regardless of the number of other residents living in the building, occupation of a flat within it by the resident freeholder or long leaseholder of the whole block does not prevent the building from being a section 257 HMO. However, if the resident owner of the building is also a resident landlord of the flat he occupies, then the status of the building as a section 257 HMO is irrelevant to the question of whether the flat is to be treated as a flat in multiple occupation<sup>64</sup>

- those that are occupied by only two persons each of whom form a single household<sup>65</sup> e.g. a flat share of no more than two persons.

<sup>63</sup> Schedule 14, paragraph 6(2).

<sup>64</sup> Schedule 14, paragraph 6(2) and section 257(5).

<sup>65</sup> Schedule 14, paragraph 7.

DRAFT

## Chapter 2 Licensing: general

### Introduction

65. This chapter explains the licensing provisions in Part 2 (mandatory and additional licensing of HMOs) and Part 3 (selective licensing of houses) of the 2004 Act. It covers the following generic areas:

- applications for licensing
- fees
- suitability of Management arrangements (licence holders, fit and proper persons, and management standards)
- licence holders
- restrictions on licence conditions
- procedure on granting or refusal to grant a licence
- licences: general requirements and duration
- variation of licences
- revocation of licences
- licensing offences
- restriction on section 21 notices
- Rent Repayment Orders
- temporary exemption notices
- register of licences

### Applications for licences

66. LHAs may devise their own application forms for licensing but such forms must contain the prescribed information<sup>66</sup> and any other information required by the LHA must be relevant for the purpose of determining the application.

67. The application can be submitted by a person other than the proposed licence holder (e.g. a managing agent). The applicant should serve a notice (or a copy of the application) on all “relevant persons” that he/she has submitted the application. The applicant must certify that he has done so and must also provide the LHA with the contact details of those persons.<sup>67</sup>

<sup>66</sup> The information is prescribed in schedule 2 of SI 2006/373. See also SI 2006/373, regulation 7.

<sup>67</sup> SI 2006/373, regulation 7(5) and schedule 2, paragraphs 1 and 4.



DRAFT

68. The relevant persons<sup>68</sup> are:
- the landlord (unless he is the applicant)
  - any other owner of the premises to which the application relates
  - any person who is a leaseholder of any part of the premises to which the application relates (unless that person is the applicant) other than a tenant under a lease with an unexpired term of three years or less<sup>69</sup>
  - any mortgagee
  - the proposed licence holder (unless he is the applicant)
  - the proposed managing agent, if any (unless the agent is the applicant) and
  - any person who has agreed that he will be bound by any conditions in a licence if granted

## Fees

69. LHAs may set the licence fee for applications to cover their costs in administering their functions under Parts 2 and 3 of the 2004 Act (licensing) and Part 4 (management orders). The Local Government Association (LGA), Chartered Institute of Public Finance (CIPFA), Improvement and Development Agency (IDeA) worked with CLG to produce a toolkit that will help LHAs develop their licensing fees structure. The toolkit and accompanying guidance is available on [www.lga.gov.uk](http://www.lga.gov.uk)
70. There is no obligation to refund in full fees paid in the event that a licence is not granted, except where in consideration of the application for a licence (or upon appeal against the grant of a licence) it is determined the building to which the application relates, and for which the fee was paid, is not licensable because:
- in respect of an application made under part 2, the building is not an HMO or, is an HMO, but not one which is required to be licensed under that part, or
  - in respect of an application made under part 3, the house is not required to be licensed under that part (or, as the case may be, part 2)<sup>70</sup>
71. An LHA should not charge any fee in relation to any function in respect of parts 2 or 3 of the 2004 Act other than applications for a licence, but such a fee may include costs (including estimated costs) of administering

<sup>68</sup> Schedule 5 of the 2004 Act, paragraphs 13(2) and (3).

<sup>69</sup> "Unexpired term of three years or less" includes assured short hold tenancies granted for three years or less or granted as a periodic tenancy. It excludes statutory tenancies under the Housing Act 1988 or Rent Act 1977. A licence to occupy is already excluded as that does not create an interest. Most resident landlord lettings will also be excluded (except in connection with separate flats in section 257 HMOs, in certain circumstances).

<sup>70</sup> SI 2006/373, regulation 7(7).

DRAFT

all relevant functions.<sup>71</sup> An applicant has no right of appeal to a residential property tribunal on any question of the amount of fee payable, or paid, or any refund or refusal to refund any amount paid.<sup>72</sup>

## Suitability of management arrangements

72. In deciding whether a licensable property ought to be licensed an LHA must be satisfied that there are satisfactory management arrangements in place or that such arrangements can be put in place by the imposition of conditions in the licence. The provisions relating to management arrangements are identical for both mandatory licensing and selective licensing.<sup>73</sup> For convenience, any references to the legislation in this part will be to mandatory HMO licensing only, but they apply equally to additional HMO licensing and selective licensing.
73. In considering whether the management arrangements are satisfactory the LHA must have regard to the following:
- the suitability of the proposed licence holder and manager (if different) (often called the ‘fit and proper test’)
  - the competence of the proposed licence holder/manager to manage the building
  - the suitability of the management structures and
  - the adequacy of the financial arrangements

Each of these is explored in more detail below.

### The fit and proper test

74. In deciding to grant a licence the LHA must be satisfied that the proposed licence holder *“... is a fit and proper person to be the licence holder ...”* and that *“the proposed manager of the house is a fit and proper person to be the manager of the house ...”*.<sup>74</sup>
75. This requirement is to ensure that those responsible for operating the licence and managing the property are of sufficient integrity and good character to be involved in the management of the particular residential property to which the application relates and as such they do not pose a risk to the welfare or safety of persons occupying the property.
76. A licence should be refused if there is a finding that the licence holder and/or his manager is unfit, if there are doubts as to someone’s fitness

<sup>71</sup> Section 63(7) and section 87(7). This is because the only power to charge fees is in relation to applications for licensing, subject to the proviso relating to such applications as mentioned Note: there can be no cross subsidy as between functions under parts 2 and 3 and as between corresponding provisions in part 4.

<sup>72</sup> unless it was re-payable because the property was not licensable.

<sup>73</sup> Sections 66 and 89.

<sup>74</sup> Section 64(3).

DRAFT

these can be addressed through licensing conditions.<sup>75</sup> However, the question of the person's fitness must be in relation to the **management** of the property to which the application relates.<sup>76</sup>

77. When considering whether a person is 'fit and proper' the LHA must have regard to any 'wrong doings' of the person concerned.<sup>77</sup> These are evidence that the person has:
- committed any offence involving fraud or other dishonesty, violence or drugs and certain types of sexual offences
  - practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability, in connection with the carrying out of business
  - contravened any provision of housing or landlord and tenant law or
  - acted otherwise than in accordance with an approved code of practice<sup>78</sup> (This does not apply to selective licensing<sup>79</sup>)
78. The list is not intended to be exhaustive<sup>80</sup> and LHAs can and should consider whether a person has committed other relevant wrong doings, for example, discrimination under regulation 5 of the Equality Act (Sexual Orientation) Regulations 2007.<sup>81</sup> On the other hand shoddy management practices are not wrong doings, unless they are in breach of the criminal or civil law. A person cannot be deemed unfit, simply because of poor management, although that is highly relevant to determining any question of suitability or competence (as discussed below).
79. The wrong doing has to be relevant to the person's fitness to hold a licence and/or manage the particular residential building to which the application for a licence relates and, in regard to criminal offences, the LHA must only have regard to unspent convictions.
80. An LHA should not adopt a blanket policy with respect to its treatment of wrong doings. Each case must be considered on its own merits and if a licence is to be refused on the ground that a person is unfit, the LHA must be able to defend that decision with cogent reasons.
81. In an application for a licence the applicant must provide details of the following in relation to him/herself and the proposed manager (if the applicant is not to be the licence holder)<sup>82</sup>:
- unspent convictions

<sup>75</sup> Reynolds v Brent London Borough Council [2001] EWCA Civ 1843.

<sup>76</sup> The concept of fitness is not new in private rented housing. Section 348 (1) (b) Housing Act 1985 (now repealed) required an LHA to refuse a registration on the grounds that the manager was not a fit and proper person.

<sup>77</sup> Section 66(2) and (3).

<sup>78</sup> Section 233 enables the Secretary of State to approve codes of practice for the management of HMOs. No codes have been approved that relate to HMOs, so, in effect, this is not a consideration which can apply.

<sup>79</sup> Section 89.

<sup>80</sup> See section 66(1).

<sup>81</sup> SI 2007/1263.

<sup>82</sup> The requirement to provide this information in connection with an application for a licence is under regulation 7(2) (b) and paragraph 3 of the schedule 2 to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373).

DRAFT

- any findings of a court/tribunal that the person has practised unlawful discrimination
- any judgement entered against that person in relation to a contravention of housing or landlord and tenant law (and, in so far it relates to the housing or landlord and tenant law, any contravention of any enactment relating to public or environmental health)
- any control order made in respect of any HMO under his/her management or ownership (and also in respect of any former HMO he/she owned or managed)<sup>83</sup>
- any enforcement action in respect of any house or HMO under his/her management or ownership (and also any former HMO or house he/she owned or managed) under the housing health and safety rating system in Part 1 of the 2004 Act so far as that enforcement action related to a category one hazard<sup>84</sup>
- details of any refusal to grant a licence, or details of the revocation of a licence granted for non compliance of a condition or conditions in respect of any house or HMO under his/her management or ownership (and also in relation to any former HMO or house he owned or managed)
- details of any interim or final management orders made by an LHA in respect of any house or HMO under his management (and also in respect of any former HMO or house he owned or managed)

82. Since an applicant for a licence must disclose his/her and any proposed manager's wrong doings, if any, an LHA should normally have sufficient information to decide a person's fitness based on the application. If the LHA is not satisfied that it has sufficient information (being that supplied in connection with the application) to make a determination, it may require the applicant to provide further details.<sup>85</sup> In some cases it may wish to invite the applicant and/or the manager to a meeting to discuss and clarify any issues arising.<sup>86</sup> If an applicant provides false or misleading information about any wrong doings, he commits an offence and can be fined up to £5,000 on summary conviction.<sup>87</sup> If an applicant has provided false or misleading information (without reasonable excuse), that would

<sup>83</sup> Section 379 of the Housing Act 1985 (now repealed) sets out the scheme for making such orders. Under the Housing Act 2004 (Commencement No.5 and Transitional Provisions and Savings) (England) Order 2006 (SI 2006/1060), article 11, makes specific transitional provisions in relation to control orders. In summary, these are:

(a) notwithstanding the repeal of the relevant provisions referred to in the article an existing control made before 6 April 2006 continues in force until it expires or is revoked;

(b) where, the control order has expired or been revoked on or after that date, then immediately following that expiry or revocation the LHA must make a final management order in respect of the HMO provided it is satisfied that:

- the HMO is required to be licensed under part 2 or 3 of the Act and either
- the health and safety condition in section 102 is satisfied or
- there is no reasonable prospect of granting a licence in the near future

(c) Where the control order has expired or been revoked on or after the 6th April and the HMO is not required to be licensed under part 2, then immediately following that expiry or revocation the LHA must make a final management order provided it is satisfied that the health and safety condition in section 102 is satisfied.

A final management order which replaces a control order continues in force until it is ended by one of the operations specified in article 11 (8).

An LHA cannot grant a grant a licence for an HMO which is subject to these transitional provisions.

<sup>84</sup> Section 5(1) and (2).

<sup>85</sup> Section 235.

<sup>86</sup> Although neither can be compelled to attend.

<sup>87</sup> Section 238.

DRAFT

be a clear indication of his unfitness. LHAs should not routinely make police checks or request information on criminal convictions. This is particularly the case because any evidence relating criminal convictions is only part of the picture in assessing a person's fitness.<sup>88</sup>

83. In some circumstances it may be appropriate for the LHA to seek further information on whether a person has relevant convictions. Currently this can be done through the basic disclosure service offered by Disclosure Scotland. That service will give details of all unspent convictions, if any. However, the service is only available to the person whose record is being sought and there is no requirement in the 2004 Act for that person to seek or provide the information to an LHA. Consequently an LHA must have good reasons for asking that person to do so, especially if the LHA is to consider that a refusal to do so may indicate that the person in question is not a fit and proper person. Such reasons may include that:
- the LHA has had a history of complaints or problems with the landlord (which in themselves might not amount to 'evidence' of unfitness to meet the test), but further investigation may be required
  - the applicant has been evasive or untruthful in his application for a licence
  - the applicant, or proposed manager, is unknown to the LHA and has not demonstrated any history or competence of managing HMOs or other private rented properties
  - the LHA has reasonable grounds to suspect that the applicant, or the proposed manager, has committed an offence which is relevant to the determination of any question of his/her fitness or
  - the property is an HMO and provides accommodation mainly (outside of family units) to vulnerable persons<sup>89</sup>
84. In deciding whether a wrong doing (including a criminal offence) is relevant to the determination of a person's fitness an LHA may wish to consider the following factors:
- the relevance of the wrong doing(s) in relation to the person's character and integrity to manage residential properties and in particular the type of property to which the licence relates
  - the seriousness of the wrong doing(s) in terms of impact, or potential impact, upon the residents and the wider community, including if more than wrong doing has been carried out the cumulative impact
  - the length of time since any wrong doing
  - and any mitigating circumstances

<sup>88</sup> The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 does not apply to the 2004 Act and so it is unlawful for an LHA to obtain details of convictions from the Criminal Records Bureau for purposes connected to licence applications under the 2004 Act.

<sup>89</sup> For example, by reason of age, mental or physical disabilities, drug or alcohol dependency, persons escaping domestic violence, refugees and asylum seekers, homeless persons, sex workers, ex-offenders and persons participating in a course of rehabilitation.

DRAFT

### Consideration of ‘persons associated or formerly associated’ with the proposed licence holder or manager<sup>90</sup>

85. If there is evidence that a person associated, or formally associated<sup>91</sup>, with the person proposed to be the licence holder or manager of the property, has committed any wrong doings, that evidence may be taken into account in determining the proposed licence holder’s or manager’s fitness (even if that person has himself or herself an unblemished record). The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties. It would not be appropriate for a licence to be granted to some one, or for some one to be the manager of a property, if that person was merely acting as a ‘front’ for someone else who, if he or she were not unfit, would be entitled to be the manager or licence holder.
86. An example might be that of a husband and wife, where the husband is the landlord (or indeed both he and his partner are joint landlords), but only the wife has applied for the licence. If there is evidence that the husband has committed wrong doings and those wrong doings are relevant to the wife’s management of the property or licence then the LHA may refuse to grant her a licence. Likewise if a landlord with an unsatisfactory record nominated a “manager” who had a clean record, but had acted for him whilst the wrong doings were committed, the LHA may consider the managing agent by association to be unfit too.
87. A refusal to grant a licence in these circumstances should only be made if:
- there is actual evidence of wrong doing by the associated person<sup>92</sup> and
  - the associate’s fitness is directly relevant to the applicant or proposed licence holder’s fitness to manage the property or licence

### Management standards

88. An LHA must be satisfied that “*the proposed management arrangements ...are satisfactory*” before granting a licence.<sup>93</sup>
89. Those arrangements<sup>94</sup> include (but are not limited to) consideration of whether:
- the persons proposed to be involved in the management of the house has a sufficient level of competence to be involved
  - those persons are ‘fit and proper’ (which is discussed above)
  - and the proposed management structures and funding arrangements are suitable

<sup>90</sup> Section 66(3) and 89(3).

<sup>91</sup> “Associated” is given wide meaning to include on a personal level, through work “or otherwise”.

<sup>92</sup> Where there are suspicions or doubts about an associate’s fitness, these should be addressed through licence conditions.

<sup>93</sup> Sections 64(3)(e) and 88(3)(d).

<sup>94</sup> Sections 66(6) and 88(3).

DRAFT

90. It is the **proposed** competences and structures that need to be satisfactory, not those actually pertaining at the date of application. Thus arrangements can be made satisfactory through the imposition of conditions in the licence.
91. It is for an LHA to determine whether a person has sufficient competence to be involved in the management of a property and, of course, the level of competence required will in some measure be determined by the complexity of the management challenges posed. An LHA should, therefore, be looking at the applicant's experience and track record of managing residential property and, in particular where he/she is the existing manager, the property to which the application relates.
92. The test should not, however, be set too high. Competent managers need to know their legal obligations and work within them, but it does not mean they need a formal housing or legal qualification. Where a deficiency is identified and can be addressed this should be done through a licence condition (e.g. requirement to attend a training course). In most cases landlords who belong to a recognised trade association or are members of an accreditation scheme should be regarded as having the necessary competence to be involved in the management of the property because, at least such organisations can be called upon for advice and assistance where necessary.
93. The management structures must be such that the manager is able to comply with any licence conditions and deal with the day to day operation management issues that arise as well as being able to deal with longer term management issues. In considering whether the structures are appropriate the LHA may wish to take account of the following:
- evidence as to whether the systems in place are sufficient to enable the manager to comply with any condition of a licence
  - or, if such systems can be put in place through a condition of a licence to ensure compliance
  - evidence of the systems for dealing with:
    - emergency repairs and other issues
    - routine repairs and maintenance to the property and its curtilage
    - cyclical maintenance
    - management and the provision of services (if any) to the building and its curtilage
    - management of tenancies or occupants
    - management of the behaviour of tenants, occupants and their visitors to the property
    - neighbourhood issues (including disputes)
  - evidence of structures for engagement with the local authority, police and other agencies, where appropriate



DRAFT

94. In order to be able to demonstrate much of the above evidence it is likely that the manager will need to operate within a reasonable proximity to the property, so that he can attend to matters promptly and retain an overview on the condition of the property and the management of the tenancies. The LHA must also be satisfied that the financial arrangements relating to the property are suitable. In that regard the manager must be sufficiently funded or have access to funding to carry out his obligations under the licence and his/her general management functions.

## Licence holders

95. There is a presumption that the landlord will be the licence holder<sup>95</sup>, unless there is evidence that he is not the most suitable person to hold the licence.
96. Often the manager and licence holder will be the same person, for example the landlord, but that will not always be the case. In some instances the landlord may not be a fit and proper person and, therefore, cannot be either the manager or the licence holder. In other cases the landlord could be the licence holder, but not the manager because he is not suitable to manage the property. An example of that might be where the landlord (although fit and proper) lives a considerable distance from the property so that he is unable to effectively manage it. In such circumstances the LHA can insist that a manager is appointed under the licence. If the landlord is domiciled outside of the jurisdiction of the British courts the LHA would not normally grant him the licence as it would be unenforceable against him, unless the manager has in such circumstances agreed to be bound by the licence.
97. Where two or more individuals are the joint landlords of a property all of those persons should be granted a joint licence under which each would be jointly and severally liable, unless those persons have agreed with the LHA that only one (or more of them) should hold the licence. Where the landlord is a company, a limited liability partnership, or a board of trustees, the licence should be granted to it<sup>96</sup>.
98. An employee, director or other officer of a company should not normally be granted the licence (even if that person is the de facto manager of the property) because he is not the 'person having control', unless the company agrees to be bound by the licence. Similarly, where the landlord is another type of legal entity such as a company, limited liability partnership or a board of trustees the licence should normally be granted to the entity rather than, for example, an individual officer of the entity. In the case of the landlord being an unincorporated business (operating

<sup>95</sup> Sections 66(4) and 89(4).

<sup>96</sup> Although the licensing provisions, as well as those relating to the Housing Health and Safety Rating System in Part 1 of the 2004 Act, refer to "person" throughout, under the Interpretation Act 1978 a "person" includes a legal entity in any Act of Parliament, unless the specific Act provides to the contrary. The 2004 Act has not excluded companies from being treated as "persons".



DRAFT

under a trading name) it will be the individual owners of the business who should jointly hold the licence, unless the LHA and they agree that one or more of the owners will do so.

99. Where, in the LHA's opinion, the person who is proposed to be licence holder is not suitable for that role it may agree with the applicant (and in consultation with the relevant persons) another person to hold the licence, if that other person agrees to do so. This does not require a fresh application from that person, but the LHA must nevertheless satisfy itself that the person is suitable to be the licence holder, making such enquiries and carrying out such checks as it considers necessary.
100. Where the proposed licence holder is not suitable to manage the property and a suitable manager has not been proposed in the application the LHA may agree, without the need for a fresh application, with the applicant (and in consultation with the relevant persons) a person to manage the property under the licence. The LHA must satisfy itself that the person is suitable to be the manager, making such enquiries and carrying out such checks as it considers necessary.

## Restrictions on licence conditions

101. Different licence conditions will be applicable to HMOs than to houses under Part 3 licences. The types of conditions that may be set for either are discussed in chapters 3 and 4. This section discusses the restrictions on what can be required under a licence condition for both a Part 2 and Part 3 licence.
102. The conditions must relate to the management, use and occupation of the property concerned and, in the case of HMOs, their condition and contents.<sup>97</sup> However, there are three restrictions in that regard, namely:
- as a general rule<sup>98</sup> a licence should not normally include a condition designed to address a category 1 or 2 hazard under the Housing Health and Safety Rating System (HHSRS)<sup>99</sup>
  - a licence may not impose any obligations or restrictions on any person other than the licence holder, unless that person has agreed to be bound by the restriction or obligation<sup>100</sup>
  - and a licence may not include a condition requiring the alteration to the terms of a person's occupation of the property<sup>101</sup>
103. Where a category 1 or 2 hazard has been identified, enforcement action under HHSRS should be carried out under Part 1 of the 2004 Act. However, this does not mean that enforcement action should be taken to

<sup>97</sup> Sections 67(1) and 90(1).

<sup>98</sup> Sections 67(4) and 90(5).

<sup>99</sup> The categories are prescribed in regulations made under section 2 of the 2004 Act.

<sup>100</sup> Sections 67(5) and 90(6).

<sup>101</sup> Sections 67(6) and 90(7).

DRAFT

ensure that facilities and equipment are provided in an HMO to meet the prescribed standards.<sup>102</sup>

104. A licence cannot include any condition that imposes a restriction or obligation on any occupier of the property or any manager of it (even if he has been appointed to manage the property under the licence), unless that person is the licence holder. For instance this does not mean a condition in a licence cannot require the licence holder to take reasonable steps to combat anti-social behaviour (ASB) that may arise at the property, but it does mean that an occupier cannot be required by the licence itself to behave in a way that does not give rise to ASB.
105. If a manager has been appointed to manage the property he must do so in accordance with the licence. However, it is the licence holder who is liable for the performance of the licence. The manager is in that sense his agent or employee and if there is a breach of a licence which leads to a prosecution it is the licence holder, not the manager, who is liable to prosecution. Equally if a manager does not perform his obligations under the licence the LHA may still revoke the licence, even if the licence holder was unaware that the licence conditions were not being complied with. Therefore, where the licence holder has a manager in place, it is his/her responsibility to ensure the property is being managed in accordance with the licence.
106. A person who is not the licence holder may agree to be bound by an obligation or restriction in a licence (including all of them).<sup>103</sup> For example, if the licence holder is based overseas the manager may consent to be bound by the licence<sup>104</sup>, or a particular condition or conditions of it. A landlord may, as part of the contract for managing the property, require the manager to be so liable, but the LHA cannot insist on this unless there is already such a prior agreement between the contracting parties.
107. 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.<sup>105</sup> This prevents an LHA from requiring, as a licence condition, a licence holder to remove, add or change anything in a person's tenancy or occupancy agreement (including an oral agreement). For example, an LHA may not use the licence as a mechanism to control rents or liability for council tax, or to change the terms of tenancy so it includes provisions relating to ASB. This applies to both existing and future tenancies. It has been suggested that it only applies to 'existing' tenancies or licences and that an LHA may impose conditions relating to alterations in respect of 'new' agreements. Communities and Local Government's view is that this proposition is wrong because if the provision was intended to be limited to existing agreements it would have explicitly said so and that the words "... *intended to secure... any alterations...*", are aimed at any future tenancies.

<sup>102</sup> For more detailed discussion on the interface issue between HMO licensing and HHSRS, see chapter 3.

<sup>103</sup> Sections 67(5) and 90(6).

<sup>104</sup> And will, therefore, be required to comply with the licence as if he/she were the licence holder.

<sup>105</sup> Sections 67(5) and 90(6).

DRAFT

## Procedure for the granting or refusal of licences

108. Before granting a licence or refusing to grant a licence, the LHA must consult with the applicant and all the relevant persons known to it on its proposals. The minimum period for consultation is 14 days.<sup>106</sup> The consultation process is designed to give the parties an opportunity to comment on the LHA's proposals and its reasons for them. Those comments must be considered before a final decision is reached.<sup>107</sup>
109. When an LHA intends to grant a licence it must serve on the applicant and the relevant persons a copy of the proposed licence, together with a notice setting out:
- the reasons for grant of the licence
  - the main terms of the licence
  - and the end of the consultation period
110. If the LHA is minded to refuse to grant the licence it must serve a notice specifying its decision and the reasons for its decision.<sup>108</sup>
111. Although it may seem obvious why the licence is being granted, there may be some matters in dispute, such as whether a licence ought to be granted at all or to whom. It may also be the case that the LHA has agreed with the applicant to grant the licence to some person other than the one originally nominated. The reasons for reaching the decision to grant the licence and to whom the licence will be granted should be made clear so that the consultees can comment on that decision.
112. The main terms of the licence must be specified in the notice because it will alert the consultees to the important provisions of the proposed licence and make it easier for them to pass any comments. The notice must specify the end of the consultation period, but in order for that to be fully understood by a recipient of a consultation document, it must also explain that the notice is a consultation, the purpose of the consultation and the rights of representation.
113. If, having regard to the representations of the consultees, the LHA decides to modify the proposed licence it must serve a notice on them specifying (a) the proposed modifications and (b) the reasons for them. It must allow a minimum of seven more days for representation.<sup>109</sup>
114. If the LHA grants a licence it must serve on the applicant and each relevant person a copy of the licence and a notice specifying:

<sup>106</sup> Schedule 5, paragraph 12 (2) (a)

<sup>107</sup> See schedule 5, paragraph 1 (b)

<sup>108</sup> This rule does not apply if the LHA has refused to grant a licence on particular terms, but are proposing to grant a licence on different terms (see schedule 5, paragraph 11).

<sup>109</sup> These rules do not apply if the LHA modifies the licence after service of notice under paragraphs 1 or 3 of schedule 5 and those modifications are not as a result of the consultation.

DRAFT

- the reason for deciding to grant the licence (and the date the decision was made) and
- the right of appeal against the decision to grant the licence (and/or the conditions of that licence) and the period during which the appeal can be made

The documents must be served within seven days of the decision being made.<sup>110</sup>

115. If following the consultation the LHA decides to refuse to grant the licence it must serve on the applicant and all relevant persons a notice setting out:

- the decision
- the reasons for the decision
- the date the decision was made
- the right of appeal against the decision
- and the period in which an appeal can be made

The notice must be served within seven days of the decision being made.<sup>111</sup>

116. The period in which an appeal may be made is 28 days from the date of the decision specified in the notice.<sup>112</sup> A residential property tribunal (RPT) may allow an appeal outside of that time if it satisfied there is good reason for the delay.<sup>113</sup> Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know where to appeal to. If the address is provided in the notice then such an excuse will not be available.

## Licences: General requirements and duration

117. A licence comes into force:

- on the day it is granted
- or on such other day as is specified in the licence<sup>114</sup>

118. A different date from the date it is granted will usually only be specified where:

- the licence has been granted pursuant to an additional licensing scheme made under Part 2 of the 2004 Act or a selective licensing

<sup>110</sup> Schedule 5, paragraph 7.

<sup>111</sup> Schedule 5, paragraph 8.

<sup>112</sup> Schedule 5, paragraph 33(1).

<sup>113</sup> Schedule 5, paragraph 33(3).

<sup>114</sup> Sections 68(3)(a) and 91(3)(a).

DRAFT

scheme made under Part 3 of the 2004 Act and at the time the licence is granted the scheme has not come into force

- the licence replaces one that is still in force at the date the replacement licence is granted and the replacement licence is to take effect on the date the existing licence expires (or is to be revoked) or
- the licence replaces an old licence that has ceased to be in force through the passage of time and the replacement licence is intended to replace the old licence and takes effect on the date the old licence ceased to be in force

119. A licence may be granted for such a period as is specified in the licence and in any case for no longer than five years from the date it comes into force. A licence should normally be granted for five years unless the LHA is satisfied that in the circumstance of the particular property a shorter period is appropriate. If a licence is granted for a shorter period the fee charges should be pro rata. If no period is specified in the licence it shall be treated as having been granted for five years. The express or implied duration of the licence does not prevent the LHA from revoking it<sup>115</sup> or the licence terminating on the death of the licence holder.<sup>116</sup>
120. A licence continues to be in force unless it is revoked or is terminated, even if the property ceases to be licensable, for example because an additional or selective licensing scheme has expired or been revoked.<sup>117</sup> However, if the licence expires or is revoked the LHA may not issue a replacement licence<sup>118</sup>, unless the LHA has made a replacement scheme. A licence may not be transferred or assigned to another person.<sup>119</sup> This means the licence continues in force and the licence holder remains responsible for the management of the licence, even if the property is sold to another person, until the LHA revokes it or the licence expires.

## Variation of licences

121. A licence may be varied by the LHA:
- on its own initiative
  - on the application of the licence holder or any relevant person; or
  - with the agreement of the licence holder<sup>120</sup>
122. The circumstances in which a Part 2 licence may be varied are wider than those in which a Part 3 licence can be varied because the conditions attached to each type of licence are different.<sup>121</sup> Nevertheless, both types of variations are considered together in this part because the rules and

<sup>115</sup> Section 70.

<sup>116</sup> Sections 68(3)(b) and (4) and 91(3)(b) and (4).

<sup>117</sup> Sections 68(5) and 91(5).

<sup>118</sup> Special rules apply in the case of HMOs that are subject to selective licenses that are revoked.

<sup>119</sup> Sections 68(6) and 91(6).

<sup>120</sup> Section 69(1)(a) and 7 and Section 92(1)(a) and (4).

<sup>121</sup> Sections 69 and 92.

DRAFT

procedures relating to variation of both types of licences are essentially the same.

123. An application to vary a licence should normally be required to be made in writing. There is no prescribed information that the applicant needs to provide, but the application should be reasonably clear as to who is making the application (and his/her standing in doing so), the purpose of the proposed variation and what variation is sought. An LHA may not charge a fee for considering an application.
124. An application may be made by, in addition to the licence holder, 'a relevant person'. Such a person is:
- the landlord (unless he/she is the licence holder)
  - any other owner of the premises to which the licence relates
  - any person who is a leaseholder of any part of the premises to which the application relates (unless that person is the licence holder) other than a tenant under a lease with an unexpired term of three years or less<sup>122</sup>
  - any mortgagee
  - the managing agent, if any (unless that person is the licence holder) and
  - any person who is bound by any conditions in a licence
125. Where:
- an application is made by the licence holder or a relevant person or
  - the LHA is minded to vary the licence on its own initiative

It must consult with the licence holder and each of the relevant persons that are known to it<sup>123</sup> before making a final decision. The minimum consultation period is 14 days.<sup>124</sup> If the LHA is minded to vary the licence it must serve a notice of consultation of at least 14 days and containing the following:

- the effect of the variation
- the reasons for the variation and
- specify the end of the consultation period<sup>125</sup>

However, an LHA does not need to follow the above consultation procedure if, in its opinion, the variation proposed is not material or it

<sup>122</sup> "Unexpired term of three years or less" includes assured short hold tenancies granted for three years or less or granted as a periodic tenancy. It also excludes statutory tenancies under the Housing Act 1988 or Rent Act 1977. A licence to occupy is already excluded as that does not create an interest. Most resident landlord lettings will also be excluded (except in connection with separate flats in section 257 HMOs, in some circumstances).

<sup>123</sup> A relevant person should be known to the LHA from when the application for a licence was made or from subsequent information provided in connection with the present application. However, the Act does not require the LHA to carry out exhaustive enquiries to ascertain who these persons might be.

<sup>124</sup> Schedule 5, paragraph 29.

<sup>125</sup> Schedule 5, paragraphs 14 & 15.

DRAFT

had already served a notice under that paragraph and following the consultation the variation now proposed is not significantly different from that which was originally proposed<sup>126</sup>, nor if the decision to vary the licence has been agreed between the LHA and the licence holder and the LHA considers it is not appropriate to consult on the proposal.<sup>127</sup>

126. If, following the consultation (or in the case of a proposed minor variation which did not require consultation), the LHA decides to vary the licence it must serve on the licence holder and all the relevant persons known to it a copy of the decision to vary the licence and a notice specifying:

- the reasons for the decision (and the date on which it was made)
- the right of appeal against that decision and
- the time limit for appealing against that decision

The documents must be served within seven days of the decision being made.<sup>128</sup>

127. If the LHA is minded to refuse to vary the licence it must consult for 14 days on its proposal with the licence holder and the relevant persons known to it. The notice of consultation must:

- specify the reasons why it proposes to refuse to vary the licence and
- the end of the consultation period<sup>129</sup>

Following the consideration of the consultees' responses (if any), if the LHA decides to refuse to vary the licence it must serve a notice on the licence holder and all the relevant persons known to it specifying:

- the decision not to vary the licence
- the reasons for the decision and the date on which it was made
- the right of appeal against the decision and
- the time limit for lodging an appeal

128. The licence holder and all relevant persons have a right of appeal against the decision to vary or refuse to vary a licence. The period in which an appeal may be made is 28 days from the date of the decision specified in the notice.<sup>130</sup> An RPT may allow an appeal outside of that time if it is satisfied there is good reason for the delay<sup>131</sup>, but the notice should not specify this. Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know where to appeal to. If the address is provided in the notice then such an excuse will not be available.

<sup>126</sup> Schedule 5, paragraph 17.

<sup>127</sup> Schedule 5, Paragraph 17(b).

<sup>128</sup> Schedule 5, paragraph 16(3).

<sup>129</sup> Schedule 5, paragraphs 19 and 20.

<sup>130</sup> Schedule 5, paragraph 33(2).

<sup>131</sup> Schedule 5, paragraph 33(3).



DRAFT

129. A variation of a licence takes effect when it is made, if it has been agreed between the licence holder and the LHA, otherwise it does not take effect until the period for appealing against the decision to make the variation has expired and no appeal has been lodged or, if an appeal is lodged, the date on which the appeal is finally disposed of.<sup>132</sup>
130. A licence may be varied for a range of reasons. For example, in the case of an HMO licence there may be a need to vary it to:
- increase or reduce the number of persons permitted to occupy the property or
  - to remove conditions of the licence relating to amenities etc that are no longer applicable or
  - to add conditions in the licence relating to amenities
- In the case of a licence under part 3 (selective licensing) (as well as an HMO licence) examples might include a wish to vary it to:
- put in place more appropriate conditions for the management of ASB or
  - to strengthen existing management arrangements, by the appointment of a managing agent or
  - to give effect to (and approval of) a new manager
131. These examples are not exhaustive. However, unless the variation is made by agreement between the licence holder and the LHA, it can only be made if the LHA is satisfied there has been a change of circumstance.<sup>133</sup> A 'change of circumstance' includes the discovery of information which was not available at the time the licence was granted. An LHA cannot, therefore, vary a licence because the licence holder is, for example, unhappy with a specific condition, unless the circumstances have changed since that condition was originally applied so as to render it obsolete, unnecessary or in need of amending. Often a variation of a particular condition will lead to or require a variation of another condition, even if the applicant did not ask for the other condition to be varied. A licence may not, however, be varied to replace the name of the person holding the licence, as that would amount to a transfer or assignment, which are prohibited under the 2004 Act.
132. In relation to the variation of a licence in respect of an HMO which involves any alteration to:
- the maximum number of persons (or households) permitted to occupy the HMO or
  - the amenity standards applicable to the occupation of the HMO by a particular number of persons

<sup>132</sup> Sections 69(5) and (6) and 92(2) and (3).

<sup>133</sup> Sections 69(1) and 92(1).



DRAFT

The LHA must apply the same standards that applied when the licence was granted.<sup>134</sup> This general rule does not apply if the LHA had applied the standards prescribed under section 65 at the time the licence was granted and those standards have subsequently been revised by regulations. In those circumstances the LHA may vary the licence to apply the new standards.<sup>135</sup>

## Revocation of licences

133. A licence continues in force until it expires (due to the passage of time), is terminated (due to the death of the licence holder) or is revoked. The circumstances in which a Part 2 licence may be revoked are wider than those in which a Part 3 licence can be.<sup>136</sup> Nevertheless, both types of revocation are considered together in this part because the rules and procedures relating to variation of both types of licences are essentially the same.
134. A licence may be revoked by the LHA:
- on its own initiative or
  - on the application of the licence holder or any relevant person or
  - with the agreement of the licence holder<sup>137</sup>
135. An application to revoke a licence should normally be required to be made in writing. There is no prescribed information that the applicant needs to provide, but the application should be reasonably clear as to who is making the application (and his/her standing in doing so) and the grounds on which the revocation is sought. An LHA may not charge a fee for considering an application. A Part 2 or 3 licence can also be revoked by the LHA without the agreement of the licence holder in circumstances relating to the licence holder or other person or circumstances relating to the property.<sup>138</sup>
136. The circumstances relating to the licence holder or other persons are that:
- the licence holder or manager has committed a serious breach of a condition of the licence or has committed repeated breaches of a condition or
  - the licence holder is no longer deemed to be a fit and proper person or
  - the manager of the property is no longer deemed to be a fit and proper person

<sup>134</sup> Sections 69 (2) and (3).

<sup>135</sup> Section 69(4).

<sup>136</sup> Sections 70 and 93.

<sup>137</sup> Sections 70(1)(a) and 9 and 93(1)(a) and (7).

<sup>138</sup> Sections 70(1)(b) and (c) and 93(1)(b) and (c).

DRAFT

137. A licence may only be revoked if the breach of a condition of the licence is serious, for example one adversely affecting the health or safety of the occupiers or the community. However, if less serious breaches occur repeatedly, the licence can be revoked. An LHA may choose instead of (or in addition to) revoking the licence to prosecute the licence holder for the breach of condition.<sup>139</sup>
138. The tests for determining whether a person is fit and proper are the same as those that apply when considering an application for a licence.
139. The circumstances relating to the property are:
- that it ceases to be licensable under Part 2 or Part 3<sup>140</sup> or
  - by reason of its structure the licence should be revoked<sup>141</sup>
140. An HMO will cease to be licensable under Part 2 if ceases to be an HMO or it ceases to be an HMO that is required to be licensed under a mandatory or additional licensing scheme. An LHA will wish to satisfy itself that the HMO has ceased to be permanently licensable under Part 2 before revoking a licence. A reduction of the number of occupants will not usually be sufficiently good reason to revoke a licence unless there is evidence that the reduction is intended to be permanent.<sup>142</sup> If an HMO is licensable, for example, under the mandatory scheme but, by virtue of a permanent reduction in the number of occupants it ceases to be licensable under the scheme, if the HMO would be licensable under an additional licensing scheme, the licence should not normally be revoked, but instead should be varied to reflect the level of occupation, if that is a material change.<sup>143</sup>
141. A property will cease to be licensable under a selective licensing scheme if it ceases to be let as a house to which Part 3 applies, for example because it has become owner-occupied or is let under one of the exemptions in SI 2006/370.<sup>144</sup> Normally an LHA will not wish to revoke a licence simply because a property is not being let, unless there is a genuine intention that it will not be re-let in the near future, for example, the house has been put on the market for sale with vacant possession.
142. A property will also cease to be licensable under Part 3, if it is an HMO and a licence under Part 2 has been granted because it is subject to mandatory licensing or an additional licensing scheme under that part.
143. A property will cease to be licensable under either part 2 or 3 if it is terminated because the licence holder has died (see paragraphs 200–202).

<sup>139</sup> Sections 72(3) and 95(2).

<sup>140</sup> Sections 70(3)(a) and 93(3)(a) and (b).

<sup>141</sup> Sections 70(3)(b) and 93(3)(c).

<sup>142</sup> Such evidence might be in the form of a material change, such as the conversion of sleeping accommodation for other persons hence bringing the number of occupants below the relevant licensing threshold.

<sup>143</sup> Unless there has been a material change the number of permitted occupants should not normally be changed by variation. Hence the HMO would remain subject to mandatory licensing, since that would permit the licence holder to lawfully re-let in the future up to the permitted number in the licence.

<sup>144</sup> The Selective Licensing of Houses (Specified Exemptions) (England) Order 2006.

DRAFT

144. A licence may be revoked in respect of a house subject to Part 3 if, at the time the LHA is considering whether to revoke the licence, it would refuse to grant a licence for the property for one or more reasons relating to its structure, on similar terms under which the existing licence is held. Thus, a licence may be revoked if by reason of its condition the property is no longer suitable to be let or is not suitable to be continued to be let on the terms under which it is let. However, a new licence could be granted, if appropriate, on suitably different terms.
145. Similarly an HMO licence can be revoked under Part 2, if at the time the LHA is considering revoking the licence, it would refuse to grant a licence for the HMO, for one or more reasons relating to its structure, on similar terms under which the existing licence is held. Thus, a licence may be revoked if by reason of its condition the property is no longer suitable to be let or is not suitable to be continued to be let on the terms under which it is let.
146. If, in respect of an HMO licence, the reason for revoking it is that in the LHA's opinion the HMO is no longer suitable for occupation by the maximum number of persons specified in the licence, the LHA must apply the same standards that applied when the licence was granted.<sup>145</sup> This prevents an LHA from applying a different set of standards by revoking the existing licence. Subject to that, if the reason for revoking the licence relates to another matter relating to the structure, a new licence could be granted to replace the one revoked, if appropriate, on suitably different terms. This general rule does not apply if the LHA had applied the standards prescribed under section 65 at the time the licence was granted and those standards have subsequently been revised by regulations. In those circumstances the LHA may vary the licence to apply the new standards.<sup>146</sup>
147. If the LHA is minded to revoke the licence it must serve a notice of consultation of at least 14 days on the licence holder and all relevant persons known to it specifying:
- the reasons for the revocation and
  - the end of the consultation period<sup>147</sup>
- The requirement to consult does not apply if the revocation of the licence has been agreed between the LHA and the licence holder and the LHA considers it is not appropriate to consult on the proposal.<sup>148</sup>
148. Following the consultation (if any) if the LHA decides to revoke the licence it must serve on the licence holder and all the relevant persons known to it, a copy of the decision to revoke the licence and a notice specifying:
- the reasons for the decision (and the date on which it was made)

<sup>145</sup> Sections 70(3)(b), (4) and (5).

<sup>146</sup> Section 70(5).

<sup>147</sup> Schedule 5, paragraph 23.

<sup>148</sup> Schedule 5, Paragraph 25.

DRAFT

- the right of appeal against that decision and
- the time limit for appealing against that decision

The documents must be served within seven days of the decision being made.<sup>149</sup>

149. Following the consideration of the consultees' responses (if any), if the LHA decides to refuse to revoke the licence it must serve a notice on the licence holder and all the relevant persons known to it, specifying:
- the decision not to revoke the licence
  - the reasons for the decision and the date on which it was made
  - the right of appeal against the decision
  - and the time limit for lodging an appeal<sup>150</sup>
150. The licence holder and all relevant persons have a right of appeal against the decision to revoke or refuse to revoke a licence. The period in which an appeal may be made is 28 days from the date of the decision specified in the notice.<sup>151</sup> An RPT may allow an appeal outside of that time if it is satisfied there is good reason for the delay<sup>152</sup>, but the notice should not specify this. Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know where to appeal to. If the address is provided in the notice then such an excuse will not be available.
151. A revocation of a licence takes effect when it is made, if it has been agreed between the licence holder and the LHA. Otherwise it does not take effect until the period for appealing against the decision to make the variation has expired and no appeal has been lodged or, if an appeal is lodged, the date on which the appeal is finally disposed of.<sup>153</sup>

## Licensing offences

152. It is a criminal offence to manage or have control of an HMO which is required to be licensed under Part 2 and which is not so licensed.<sup>154</sup> It is also an offence to manage or have control of a property which is required to be licensed under a selective licensing scheme made under Part 3 and is not so licensed.<sup>155</sup> Such an offence can be committed by, for example, a landlord, licenser or any person acting in such a capacity, including an agent for that person. On summary conviction a person found guilty

<sup>149</sup> Schedule 5, paragraph 24.

<sup>150</sup> Schedule 5, paragraph 28.

<sup>151</sup> Schedule 5, paragraph 33(2).

<sup>152</sup> Schedule 5, paragraph 33(3).

<sup>153</sup> Sections 70(7) and (8) and 93(4) and (5).

<sup>154</sup> Section 72(1).

<sup>155</sup> Section 95(1).

DRAFT

of such an offence may be fined up to £20,000.<sup>156</sup> An offence is not committed (that is to say there is an absolute defence against it) if:

- a valid and effective application for a licence has been made to the LHA or
- there has been a valid and effective notification for a temporary exemption notice and
- the LHA has not determined the application or the notification; or
- has determined the application or notification and the period for appealing against the decision has not expired or
- if an appeal has been made against the decision, until such time as it is determined or withdrawn<sup>157</sup>

153. When the 2004 Act was commenced the penalties for not having a licence did not come into force until 6 July 2006.<sup>158</sup> This was to allow those operating HMOs that were required to be licensed a reasonable time frame for submitting applications before they could face criminal sanctions. It has been suggested that this was an absolute cut off date for submissions of applications and any person who manages or has control of an HMO for which no application has been made is committing an offence. In the Department's opinion that view is broadly right. It has also been suggested that if a person submits an application after 6 July, he/she still commits an offence. The Department sees some merit in that argument, especially if there has been an extremely long delay in submitting the application for which there is no reasonable excuse, but ultimately it is a matter for the courts to determine whether in all the circumstances it is appropriate to convict a person.
154. No offence can be committed at the material time once an application for a licence has been made.<sup>159</sup> It is for the LHA to determine whether the public interest is best served by prosecuting a person for previously failing to apply for a licence, although that situation has now been rectified, or whether it is better to continue processing applications that it has received and pursuing those who continue to evade their statutory duty.
155. In proceedings in respect of an offence a person may have a defence of 'reasonable excuse' for managing or having control of a property that ought to be licensed.<sup>160</sup> It is difficult to imagine the circumstances in which such a defence would be readily available in connection with mandatory licensing, given that the licensing regime has been in force since 6 April 2006, but such defences might include that the person has only recently acquired an interest in the property or even the conduct of the LHA itself. It is, of course, for the courts to decide whether the defence is reasonable and credible in all the circumstances.

<sup>156</sup> Sections 72(6) and 95(5).

<sup>157</sup> Sections 72(4), (8) and (9) and 95(3), (7) and (8).

<sup>158</sup> Licensing came into force on 6 April 2006. The commencement provisions are in Article 2 of The Housing Act 2004 (Commencement No 5 and Transitional Provisions and Savings) (England) Order 2006.

<sup>159</sup> Sections 72(4) and 95(3).

<sup>160</sup> Sections 72(5)(a) and 95(4)(a).

DRAFT

156. It is also an offence if a licence holder, or a person who has agreed to be bound by the licence, breaches a condition of a licence without a reasonable excuse.<sup>161</sup> On summary conviction that person can face a fine of up to £5,000.<sup>162</sup> A separate offence is committed by a breach of each individual condition. Where the breach is serious the LHA may, in addition to, or instead of, instigating a prosecution, revoke the licence in certain circumstances.
157. In respect of an HMO it is an offence for a person managing or having control to knowingly permit it to be occupied by more persons or households than the maximum number of such persons or households permitted under the licence.<sup>163</sup> Unlike any other offence relating to a licence, the offence can be committed not only by the licence holder (and any person bound by the licence), but also by the manager under the licence or any person acting as an agent for those persons.<sup>164</sup> A person who commits such an offence is liable, on summary conviction, to a fine of up to £20,000.<sup>165</sup>
158. Permitting an HMO to be 'occupied' means more than short term temporary arrangements. For example, friends staying with an existing occupier for the purpose of a short holiday should not constitute occupation for the purpose of the offence, since it is unlikely that the HMO will be the friends' only or main residence.
159. An offence cannot be committed unless the person has 'knowingly' permitted the person(s) whose occupation creates the overcrowding to occupy the HMO. Usually that will involve actual knowledge.<sup>166</sup> Actual knowledge can take a variety of forms from simply knowing the overcrowding exists and doing nothing about it to having deliberately caused it by, for example, creating additional tenancies. It has also sometimes been suggested that wilfully turning a blind eye may amount to knowledge.<sup>167</sup> That might include where the person has reasonable suspicion that the HMO is overcrowded, but has taken no steps to investigate that suspicion. A defence exists if a person shows that they have a reasonable excuse for permitting the HMO to be overcrowded.<sup>168</sup>

## Restrictions on section 21 notices

160. Under section 21 of the Housing Act 1988, a landlord may serve a notice<sup>169</sup> on an assured shorthold tenant giving him or her two months' minimum notice that the landlord intends to apply for possession on a no

<sup>161</sup> Sections 72(3), (5)(a) and (c) and (7) and 95 (2), (4) and (6).

<sup>162</sup> Section 32(2) Criminal Justice Act 1982 amended by section 17 Criminal Justice Act 1991.

<sup>163</sup> This does not apply to transitional arrangements.

<sup>164</sup> Section 72(5).

<sup>165</sup> Section 72(6).

<sup>166</sup> See for example, *Westminster City Council v Croyalgrange Ltd* (1986) 83 Cr. App. R. 155, HL, per Lord Bridge at paragraph 164.

<sup>167</sup> *Warner v Metropolitan Police Commissioner* (1969).

<sup>168</sup> Section 72(5).

<sup>169</sup> Sections 21(1)(b) and (4)(a) Housing Act 1988.

DRAFT

fault/accelerated procedure. Provided the statutory requirements are met, a court has to make a possession order.

161. A landlord may not give such a notice to a tenant of an HMO or house which is required to be licensed under mandatory or selective licensing if he has not complied with the licensing requirements. (However, there is nothing to prevent a landlord from seeking possession under one of the grounds in schedule 2 of the 1988 Act, if such a ground applies.) The purpose of the restriction on service of section 21 notices is twofold:
- to prevent landlords from evicting tenants to avoid licensing
  - and to encourage landlords to apply for licensing or to take formal steps to cease to be licensable
162. A court will not entertain an application for possession under the no fault procedure where it is informed that a landlord is not licensed, or has not applied for licensing or has not been granted an exemption from licensing.
163. LHAs should have systems in place to answer enquires as to whether or not a property is or is not licensed, and if it is not, whether it ought to be.

## Rent repayment orders

### Introduction

164. A failure by a landlord to apply for a licence on a licensable property can have very serious financial consequences on a landlord, since the LHA and/or an occupier (or former occupier) can apply to a residential property tribunal (RPT) for a rent repayment order (RRO).<sup>170</sup> The provisions relating to RROs are identical in respect of both mandatory and selective licensing – sections 73 and 74 and 96 and 97 of the Act respectively. For convenience any references to the legislation in this part will be to Part 2 only, but the references correspond exactly to the provisions in Part 3.
165. An RRO may only be made in respect of an ‘unlicensed’ property, which is one that is required to be licensed under Parts 2 or 3 and:
- is not licensed and
  - no valid application for a licence has been made or
  - no notification of a temporary exemption notice has been given<sup>171</sup>
166. Notwithstanding that a property is unlicensed (and even if a RRO has been applied for or made) rents and other charges remain payable (and nothing prevents any term of a tenancy or occupation agreement from being enforceable).<sup>172</sup> An occupier would, therefore, be ill advised to withhold

<sup>170</sup> An RRO can only be made by the LHA in respect of housing benefit paid and an occupier can only apply in respect of rent paid otherwise than through housing benefit.

<sup>171</sup> Sections 73(1) and (2).

<sup>172</sup> Section 73(3).



DRAFT

his/her 'rent' and a local authority must not withhold housing benefit on account that the property is unlicensed.

167. An RRO may only be made against 'an appropriate person' who is the person entitled to receive the rent or licence fee in respect of the property to which the application relates.<sup>173</sup> This will usually be the landlord or former landlord. Where the RRO is made for the recovery of housing benefit, it is not relevant as to whether it was paid to the appropriate person directly (or if paid to some other person, whether that person has passed it on to the appropriate person).<sup>174</sup>

### **LHA applications for an RRO**

168. An LHA may apply for an RRO in respect of housing benefit that the authority has paid.<sup>175</sup> It may not apply for an order to recover monies on behalf of an occupier or former occupier (but it can assist in such an application).
169. An LHA may apply for an RRO if the appropriate person has been convicted of an offence of managing or controlling an unlicensed property within a period of 12 months ending with the date the notice of intended proceedings is served on the appropriate person.<sup>176</sup> The LHA may also apply for one if it considers it has sufficient proof to satisfy the RPT that such an offence has been committed, even if the appropriate person has not been charged or convicted with the offence.<sup>177</sup>
170. Before making an application to an RPT for an RRO an LHA must serve on the appropriate person a notice of intended proceedings, specifying:
- that the LHA intends to commence proceedings (to an RPT)
  - its reasons for doing so
  - the amount (of housing benefit) it will seek to recover
  - the calculation of that amount
  - and inviting him/her to make any representations on the proposals within a period of not less than 28 days<sup>178</sup>
171. Before making the application it must also consider the representations it receives and it must not apply for the RRO before it has concluded its consideration of those representations.<sup>179</sup>
172. An LHA must also serve a copy of the notice of intended proceedings on the department within the local authority responsible for the administration of housing benefit and keep them informed of all relevant

<sup>173</sup> Section 73(10). Property, includes in this context a separate dwelling e.g. a part of an HMO or a separate letting (e.g. flat) in a part 3 house.

<sup>174</sup> Sections 73(6)(b).

<sup>175</sup> Sections 73 (6).

<sup>176</sup> Section 73(6)(a).

<sup>177</sup> The offence is under section 72(1).

<sup>178</sup> Section 73(7)(a).

<sup>179</sup> Section 73(b) and (c).



DRAFT

matters relating to that notice or subsequent proceedings, including any decision of an RPT.<sup>180</sup>

173. When submitting an application<sup>181</sup> to an RPT the LHA must include the following documents:
- a copy of the notice of intended proceedings
  - a copy of any representations received from the appropriate person concerning that notice
  - a statement of the amount of housing benefit paid in respect of the property during the period to which the application relates<sup>182</sup> and
  - either evidence that the appropriate person has been convicted of an offence of having control of or managing the property unlicensed or a statement in support of the LHA's allegation that the appropriate person has committed an offence of having control of or managing the property unlicensed
174. Once an application has been made, an LHA may apply for permission to an RPT to amend it to exclude from the application any over payment of housing benefit which has been discovered and ought to be recovered through the appropriate procedure under housing benefit regulations.<sup>183</sup>
175. Where the RPT is satisfied that the appropriate person has been convicted of the offence of having control of, or managing an unlicensed property it **must** make an order for the repayment of the amount equivalent to the housing benefit paid during the period the offence was committed.<sup>184</sup> (This will usually be for the period and the sum specified in the LHA's application.) However, this is subject to the following caveats:
- if the total amount of housing benefit received by the appropriate person is less than the total amount that was paid e.g. because the tenant did not pay some of the benefit received to the landlord, the amount specified in the order must be limited to the amount the appropriate person received.<sup>185</sup> The burden of proof that the appropriate person did not receive the amount claimed rests with the appropriate person
  - if the tribunal is satisfied that there are exceptional circumstances which make it unreasonable that an amount (including the whole amount) which would otherwise be repayable ought to be subject to the order, it may make an order for repayment of a lower amount (or no amount)<sup>186</sup>

<sup>180</sup> Section 73(9).

<sup>181</sup> Application forms can be downloaded on [www.rpts.gov.uk](http://www.rpts.gov.uk) or can be obtained from the regional residential property tribunal service office serving the local authority area.

<sup>182</sup> Paragraph 18 (2) (a) of the schedule to The Residential Property Tribunal Procedure (England) Regulations 2006 (SI 2006/831).

<sup>183</sup> Regulation 2 of The Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007 (SI 2007/572). Once the RRO is made any sums recovered under it cannot be treated as housing benefit and must be accounted for in accordance with regulations and, therefore, cannot be recovered in the way that payments are usually recovered.

<sup>184</sup> Section 74(2).

<sup>185</sup> Section 74(3).

<sup>186</sup> Section 74(5).

DRAFT

- the order may not relate to any period outside of the 12 months (or such other period if less than 12 months) specified in the notice of intention of proceedings<sup>187</sup>
176. However, where the appropriate person has not been convicted the RPT **may** make an RRO if it is satisfied that the offence has been committed. As the proceedings are not criminal, the burden of proof as to whether the offence has been committed is the civil standard (in other words on the balance of probability, rather than beyond reasonable doubt). In particular, when deciding whether the offence has been committed, the tribunal must consider whether the appropriate person had reasonable excuse for having control of or managing the property without a licence during the period it ought to have been licensed.<sup>188</sup>
177. If the RPT is satisfied that an offence has been committed it may order such housing benefit to be repaid as it considers to be reasonable in the circumstances<sup>189</sup> and the order must not relate to any period exceeding 12 months.<sup>190</sup> In such a case the tribunal must in particular have regard to:
- the total amount of payment paid in connection with the property to which the application relates during the period the offence was committed<sup>191</sup>
  - the extent to which the total amount has been derived from housing benefit<sup>192</sup> and actually been received by the appropriate person<sup>193</sup>
  - whether the appropriate person has been convicted of the offence of having control of or managing the property unlicensed<sup>194</sup>
  - and the conduct and financial circumstances of the appropriate person<sup>195</sup>
178. It will, therefore, be noted that there is a considerable difference in the way an RPT is required to consider and determine an application where there has been an actual conviction and one where the LHA is of the opinion that an offence has been committed. It is, therefore, very important that an LHA should bear these differences in mind, including the evidence base, when submitting an application.
179. The order made by the RPT must be for the full amount recovered (as determined by it) and there is no statutory authority for the tribunal to

<sup>187</sup> Section 74(8)(a).

<sup>188</sup> Sections 73 (5) and 74(5).

<sup>189</sup> Section 74 (5).

<sup>190</sup> Section 74(8)(a).

<sup>191</sup> Sections 74(6)(a) and (7)(a).

<sup>192</sup> It would seem taking these two requirements together that in the accompanying document to the application the LHA would have to identify the total rent payable and identify within that (a) the amount payable through housing benefit and (b) any amount payable (other than through housing benefit) by the occupier. The RPT would thereby be able to ensure the LHA does not recover any amount that an occupier would be entitled to recover in any application he/she makes in respect of the same property. There is, however no corresponding requirement in connection with an application made under section 74(2) (where the appropriate person has been convicted), although the same issue can arise.

<sup>193</sup> Section 74(6)(b).

<sup>194</sup> Section 74(6)(c). In deciding the amount that it is reasonable to order to be repaid the tribunal must have regard to any convictions against the appropriate person relating to the same property as the current application relates.

<sup>195</sup> Section 74(6)(d).

# DRAFT

order repayment by way of instalments, although the LHA may agree to accept instalments.

### **The effect and implementation of a rent repayment order**

180. Any monies recovered under an RRO are not to be treated as housing benefit, and until recovered, they are a local land charge.<sup>196</sup> In practice an LHA will usually be slow to force a sale etc because doing so may conflict with its overriding duty to ensure the property is licensed (or subject to a management order).
181. If the LHA grants a licence to the appropriate person or any person acting on his/her behalf (e.g. a managing agent) a condition in the licence can include the repayment of the sum in the RRO, so far as not already recovered, in such instalments as are specified in the licence.<sup>197</sup> Even if a licence is not granted to the appropriate person or his agent, e.g. because it is granted to some other person or a management order is made instead, the LHA may still agree to accept repayment of the RRO by instalments.
182. If the LHA makes a management order, that order may include provision for the recovery of any sum still due to it under the RRO<sup>198</sup> (including repayment by instalments).
183. Monies recovered under an RRO by an LHA may only be applied to the LHA's licensing functions in respect of the property against which the order relates.<sup>199</sup> A local authority cannot apply the sums for any other purposes, including its general functions under Parts 2 and 4 of the 2004 Act.
184. In particular the amounts recovered may be applied to offset or recover the LHA's costs and expenses including administrative and legal expenses<sup>200</sup> in:
- the making and processing of an application for a licence<sup>201</sup>
  - the registration and enforcement of the local land charge
  - the prosecution for the offence of having control of or managing the unlicensed property, whether or not the prosecution is initiated before or after the RRO is made
  - the making of an interim or final management order, whether or not the order is made before or after the RRO
  - the management of the property under an interim or final management order

<sup>196</sup> Section 74(9).

<sup>197</sup> Section 74(12).

<sup>198</sup> Section 74(13).

<sup>199</sup> SI 2007/572, regulation 3.

<sup>200</sup> Legal expenses are not recoverable if they are incurred as costs or expenses as a result of an order made against the LHA by a court or RPT. SI 2007/572, regulation 3(3).

<sup>201</sup> This does not include any costs or expenses incurred by an applicant for a licence, including the fee.

DRAFT

- the execution of works to the property under an interim management order
- and the preparation of, or execution of works under, a management scheme<sup>202</sup> made whilst a final management order is in force

185. If, following the application of the monies under an RRO to any one or more relevant purposes listed above, there is a surplus (whether the amount constituting the surplus has been recovered, or remains to be recovered, from the appropriate person) the surplus must be paid into the consolidated fund (and not used for any other purpose).<sup>203</sup>

### Occupier's application

186. An application for an RRO by the occupier will often involve consideration of material held by an LHA (e.g. details of prosecution, housing benefit payments, previous RROs). Indeed an occupier's application could relate to the same property for the same period as an LHA's one. An LHA may be joined as an interested party to an occupier's application.<sup>204</sup>

187. An occupier, or former occupier,<sup>205</sup> may only apply to an RPT to recover by way of an RRO any rent, licence fee or other form of occupation charge that has been paid by him to the appropriate person (whether or not through a person acting on his behalf) and has not been paid through housing benefit<sup>206</sup> during the period to which the application relates. The application must be made within 12 months beginning with either:

- the date the appropriate person has been convicted of the offence of having control of or managing the property unlicensed
- the date the LHA obtained an RRO against the appropriate person in respect of the property or
- if the conviction was followed by an RRO (or vice versa), the date of the later of them<sup>207</sup>

188. An occupier's application can be in respect of part of a property, for example, a room he rents in the HMO, where an RRO has already been obtained over the HMO. This pre-existing RRO may cover the whole property, in which case it is likely to have been obtained by the LHA, or may only cover a part of it, in which case it is likely to have been obtained by a tenant renting another room.<sup>208</sup> When submitting an application<sup>209</sup> to an RPT the occupier must include the following documents:

- either evidence that the appropriate person has been convicted of an offence of having control of or managing the property unlicensed or

<sup>202</sup> Section 119.

<sup>203</sup> SI 2007/572, regulation 4 SI 2007/572.

<sup>204</sup> Regulation 2 (Interpretation) The Residential Property Tribunal Procedure (England) Regulations 2006 SI 2006/831.

<sup>205</sup> For definition of "occupier" see Section 73(10).

<sup>206</sup> Section 73(8)(b).

<sup>207</sup> Section 73(8).

<sup>208</sup> Section 73(8)(a).

<sup>209</sup> Application forms can be downloaded on [www.rpts.gov.uk](http://www.rpts.gov.uk) or can be obtained from the regional residential property tribunal service office serving the local authority area.

DRAFT

evidence that the LHA has secured an RRO against the appropriate person in respect of the property has had an RRO made against him/her in respect of the property and

- evidence that rent etc (other than through housing benefit) was paid during the period that the offence was committed or allegedly committed<sup>210</sup>

189. If an RPT decides to make an RRO in favour of the occupier in deciding the amount of rent etc to be repaid it must consider what amount is reasonable in the circumstances<sup>211</sup> and the order must not relate to any period exceeding 12 months.<sup>212</sup> In particular the tribunal must have regard to:

- the total amount of payment paid in connection with the property to which the application relates during the period the offence was committed (less any payment due to housing benefit)<sup>213</sup>
- whether the appropriate person has been convicted of the offence of having control of or managing the property unlicensed<sup>214</sup>
- the conduct and financial circumstances of the appropriate person<sup>215</sup>
- and the conduct of the occupier

190. Any sum due to the occupier under the RRO is a debt due from the appropriate person and can be sued for through the courts.<sup>216</sup>

## Temporary exemption notices

### Introduction

191. The circumstances in which the service of temporary exemption notices under Part 2 and Part 3 will be appropriate are to some extent different. However, the statutory framework is identical between the Parts, sections 62 and 86. Both types of variations are considered together in this part because the rules and procedures relating to variation of both types of licences are essentially the same. Any reference to the legislation is to section 62 in Part 2, but the corresponding provision in Part 3, section 86, is identical.

192. A temporary exemption notice (TEN) may be issued by the LHA if the applicant *“notifies the Local housing authority of his intention to take particular steps”* to secure the property ceases to be licensable.<sup>217</sup> The

<sup>210</sup> Paragraph 18(2)(b) of the schedule to SI 2006/831.

<sup>211</sup> Section 74(5).

<sup>212</sup> Section 74(8)(b).

<sup>213</sup> Sections 74(6)(a) and(7)(b).

<sup>214</sup> Section 74(6)(c). This is an important provision since it requires the RPT in deciding the amount that it is reasonable to order to be repaid have regard to any conviction (where the applicant has actually been found guilty by a court) relating to the same property as the current application relates. It also must have regard to any successful prosecution made in respect of a period to which the current application relates and which it is informed of before the tribunal makes its decision.

<sup>215</sup> Section 74(6)(d).

<sup>216</sup> Section 74(14).

<sup>217</sup> Section 86(1).

DRAFT

2004 Act does not indicate what those steps might be, except they must be “particular” and made with the intention that the property will no longer be licensable. Thus, in the Department’s view the intention must be firm and there must be evidence as to how the steps are intended to be achieved. Examples might include:

- putting the property on the market for sale with vacant possession (for example instruction from estate agent)
- evidence that the applicant intends to occupy the property as his/her own home in single occupation
- proposed change of use of the property from residential to some other use
- planning permission to convert an HMO into a single dwelling house

193. The important point is that in each case there has to be evidence when the notification is given as to how the steps are to be achieved to secure the property is no longer licensable. So, for example, there must be evidence that planning permission has been obtained and not the vague intention that the applicant intends to seek planning permission or that an application for planning permission has been submitted, but yet to be determined. The steps themselves do not have to be achieved during the period the TEN is in force. The period of the TEN is to permit the applicant to put the affairs of the property in order to secure that the steps can be implemented, for example, by obtaining vacant possession.

194. In the Department’s opinion the LHA should not normally grant a TEN unless:

- at the time the notification is given there is firm intention to secure that the property ceases to be licensable
- that intention is evidenced with steps taken to achieve that intention and
- the LHA is satisfied that during the period of the TEN the applicant will put the affairs of the property in order to enable the steps to be implemented

195. The purpose of the legislation is to ensure that properties that are required to be licensed are licensed, so in the Department’s opinion the threshold for obtaining a TEN must be high. There must be a genuine intention that the property ceases to be one that is capable of being licensed. TENs are not intended to be a device to enable landlords simply to avoid licensing because they do not want their properties licensed, but have no firm plans to do anything with their properties that would take them outside the licensable rental market. It would be very odd indeed if that was the intention of TENs, since that would run contrary to all the other provisions in the 2004 Act that are intended to ensure that licensing is not avoided (for example, criminal sanctions, restrictions on service of section 21 notices, rent repayment and management orders). For this reason

DRAFT

the Department does not consider it to be appropriate for LHAs to issue TENs to applicants who simply seek to reduce the number of occupants residing in an HMO so that the property no longer falls within the relevant threshold for licensing.

### **Applications, procedures and appeals**

196. An application for a TEN, which in the 2004 Act is called a “notification”, may be made to the LHA by a person having control of or managing the property. The application should normally be required to be made in writing. There is no prescribed information that the applicant needs to provide, but the application should be reasonably clear as to who is making the application (and his/her standing in doing so), the particular steps the applicant intends to take to secure the property will cease to be licensable and supporting evidence to give effect to that intention.<sup>218</sup>
197. If an LHA thinks fit it may serve a TEN on the applicant in respect of the property.<sup>219</sup> During the period the TEN is in force the property is not required to be licensed.<sup>220</sup> Once granted the property is not required to be licensed for a period of three months from the date it is served.<sup>221</sup> In exceptional circumstances, and following a further application from the applicant, a second TEN may be granted for a further three months. A second TEN comes into force on the immediate expiry of the first.<sup>222</sup> The second TEN is an extension of the first (and, therefore, cannot be granted for another reason) and must only be granted if there is an exceptional reason for doing so, for example, because of unforeseen circumstances the objective of the TEN could not be achieved within the initial 3 months period. No further TENs, after the second has been issued, may be granted.<sup>223</sup>
198. If an LHA decides not to grant a TEN (or as the case may be a second TEN) it must serve a notice on the applicant giving:
- its decision
  - the reasons for the decision and the date it was made
  - the right of appeal against the decision and the date by which an appeal must be brought<sup>224</sup>
199. The period in which an appeal may be made is 28 days from the date of the decision specified in the notice.<sup>225</sup> Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know where to appeal to. If the address is provided in the notice then such an excuse will not be available.

<sup>218</sup> Section 62(1).

<sup>219</sup> Section 62(2).

<sup>220</sup> Section 62(3).

<sup>221</sup> Section 62(4)(a).

<sup>222</sup> Section 62(4)(b).

<sup>223</sup> Section 62(5).

<sup>224</sup> Section 62(6).

<sup>225</sup> Section 62(7).



DRAFT

**Termination of licence on the death of the licence holder**

200. If a licence holder dies, the licence ceases to have effect and the property is to be treated automatically as though a temporary exemption notice is in force; the exemption from licensing is for a period of three months beginning with the death.<sup>226</sup> At the end of three month period, if the property is still licensable, it will be required to be licensed. However, at any time before the end of the automatic exemption period the personal representatives of the deceased can apply to the LHA for a further period of exemption for three months.<sup>227</sup> No further TEN may be granted after the second exemption.
201. A TEN is only automatically granted where a licence is in force in respect of the property. Where the property is licensable and the liable person dies before licence is in force or after one has been revoked the personal representatives must either apply for a licence or a TEN.
202. If the licence holder was a manager, as opposed to the owner of the property, an automatic TEN will be granted but in those circumstances the LHA should work with the owner to find a suitable person to be the licence holder.

**Register of Licences**

203. A local authority has a duty to establish and maintain a register of licences granted under Parts 2 and 3 of the Act which are in force.<sup>228</sup>
204. The register should include the following details for licences issued under Parts 2 and 3<sup>229</sup>:
- the name and address of the licence holder
  - the name and address of the person managing the licensed HMO or house
  - the address of the licensed HMO or house
  - a short description of the licensed HMO or house
  - a summary of the conditions of the licence
  - commencement date and duration of the licence
  - summary information of any matter concerning the licensing of the HMO or house that has been referred to RPT or to the Lands Tribunal, and

<sup>226</sup> Section 68(7) and (8).<sup>227</sup> Section 68(9).<sup>228</sup> Section 232 (1) NB local authorities are also required to keep a register of Temporary Exemption Notices and Management Orders.<sup>229</sup> See Regulation 11(1) of SI 2006/373 "The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006"



DRAFT

- summary information of any decision of the tribunals that relate to the licensed HMO or house, together with the reference number allocated to the case by the tribunal

205. The register should also include the following additional details for licences issued under Part 2<sup>230</sup>:

- number of storeys comprising the licensed HMO
- number of rooms in the licensed HMO providing sleeping and living accommodation
- in the case of a licensed HMO consisting of flats, the number of flats that are self contained and that are not self contained
- Description of shared amenities including the numbers of each amenity, and
- the maximum number of persons or households permitted to occupy the licensed HMO under the conditions of the licence

206. The register can be presented in any such form the local authority considers appropriate, and must be made available for public inspection at the local authorities head office at all reasonable times. A local authority must supply a copy of the register or an extract of the register on request and may charge a reasonable fee for doing so.<sup>231</sup>

<sup>230</sup> See paragraph 11 (2) of SI373 "The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulation 11(2) of SI 2006/373"

<sup>231</sup> Section 232 (2) to (5)

DRAFT

## Chapter 3 Licensing: houses in multiple occupation

### Introduction

207. This chapter discusses certain topics that are specific to HMO licensing and should be read in conjunction with chapters 1 and 2. It covers the following:

- duty to promote licensing
- processing applications
- mandatory licensing
- additional licensing
- approved schemes
- suitability for multiple occupation
- offence in relation to the maximum number of occupiers
- licence conditions
- anti-social behaviour
- resident landlords
- section 257 HMO licensing
- licensing and HHSRS

### Duty to promote licensing

208. An LHA is under a statutory duty to ensure the effective implementation of licensing (mandatory or additional) in its district.<sup>232</sup> An LHA should, therefore, actively be seeking applications from persons whose HMOs are required to be licensed and taking enforcement action against those who refuse to apply. Indeed an LHA is under a duty to take all reasonable steps to secure that applications are made to it.<sup>233</sup>

<sup>232</sup> Section 55(5)(a).

<sup>233</sup> Section 61(4).

DRAFT

## Processing applications

209. An LHA is under a statutory duty to process and determine all licensing applications (and other matters to be determined by it) within a reasonable time.<sup>234</sup>

210. There is no statutory requirement to carry out an inspection of an HMO before granting a licence. In most instances an LHA should be able to determine straightforward applications on the basis of:

- its own knowledge of, and information<sup>235</sup> about the HMO (if any);
- the application form submitted
- and any further information supplied by the applicant in connection with that application<sup>236</sup>

Straightforward applications that do not require an immediate internal inspection of the HMO should be dealt with relatively quickly and usually within four to six weeks of receipt.

211. Where it is proposed that the same person is nominated as the licence holder (or, as the case may be, the manager) in connection with two or more applications, and the management arrangements are satisfactory in respect of at least one of those applications, the LHA should normally assume the management arrangements to be satisfactory in respect of the other HMOs for which there are applications, unless there is an indication to the contrary. Unless there is a change of circumstance relating to the HMO (including its management arrangements) on renewal of a licence, the LHA should normally assume the management arrangements in the renewed application are satisfactory, unless there is an indication to the contrary such as the conduct of the previous licence.

## Mandatory licensing

212. Mandatory licensing applies to all HMOs that are of three storeys or more and occupied by five or more persons who together do not all form a single household.<sup>237</sup>

213. Those parts of a building that constitutes 'living accommodation' and the means of access to it and such other parts that form an integral part of the HMO, such as shared amenities, storage space, common rooms and laundry facilities will be part of the HMO and subject to any licence conditions. Thus, although counted in the calculation of the number of storeys, if any storey or part of it is used other than for residential

<sup>234</sup> Section 55 (5)(b).

<sup>235</sup> Including statutory information held on housing benefit and council tax – section 237.

<sup>236</sup> For example, powers to require information under section 235.

<sup>237</sup> The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (SI 2006/371).

DRAFT

purposes or a use ancillary or necessary to such a purpose, that storey (or part of it) cannot be subject to the licence.

214. The following storeys do **not** count for the calculation of the number of storeys:
- a basement unless it:
    - is used wholly or partly as living accommodation
    - it has been constructed, converted or adapted for use wholly or partly as living accommodation (even though it is not currently in use)
    - is being used in connection with, and is an integral part of, the HMO (such as laundry room, kitchen or storage facilities etc) or
    - is the only or principal access to the HMO from the street (if the other use of the basement is not connected with the HMO)
  - An attic (including a loft) unless it:
    - is used wholly or partly as residential accommodation
    - it has been constructed, converted or adapted for use wholly or partly as residential accommodation (even though it is not currently in use)
    - or is being used in connection with, and is an integral part of, the HMO (such as a communal room or storage facilities etc)
215. Where the accommodation is situated in a part of a building that is above or below business premises, the storeys of the business premises are to be counted. Mezzanine floors are also to be counted if used for anything more than gaining access from one floor to another (for example actually being used as living accommodation or used in connection with and as an integral part of the HMO). Storeys in the HMO that are not currently in use should also be counted unless they fall within the exceptions above that apply to attics and basements.

## Additional licensing

216. LHAs may want mandatory licensing to apply to other HMOs within their district, and if this is the case they may designate either an area within their district or the whole district as being subject to additional licensing.<sup>238</sup> A designation may apply to certain descriptions of HMOs or to all HMOs (other than those subject to mandatory licensing) in the designated area.
217. An LHA may not make an additional licensing scheme unless it has identified that a significant proportion of the HMOs of the description to which the scheme is intended to apply are being managed sufficiently

<sup>238</sup> Section 56(1).

DRAFT

ineffectively so that they are causing, or have potential to cause, particular problems either for the occupiers of the HMOs or members of the public<sup>239</sup> (including anti-social behaviour). A 'significant proportion' does not mean the majority, but means more than a small minority. LHAs should use management orders (see chapter 5) to address significant problems caused by individual or small numbers of HMOs in a specific area. The 'particular' problems have to be quantifiable, but not all HMOs must suffer or cause the same problems in a particular designated area.

218. It is not the intention of the legislation that additional licensing should apply to all types of HMO across entire LHA areas. It should be used to tackle specific problems in specific areas.
219. An LHA must ensure that the decision to make a designation is consistent with its overall housing strategy.<sup>240</sup> In particular, it must, ensure that the making of the designation is co-ordinated with its approach to combating homelessness, anti-social behaviour and empty homes in the private rented sector and the measures available to it to deal with those problems, as well as the work of other agencies (such as the police, the voluntary sector and ASB practitioners, social services etc) in tackling those matters.<sup>241</sup>
220. Before making a designation an LHA must consult with persons likely to be affected by it and must consider those persons' representations.<sup>242</sup>
221. An LHA must not make a designation unless it has considered whether there are other courses of action available to it that might prove effective in dealing with the problems, such as a voluntary accreditation scheme, and that the scheme, if made, will significantly help the authority in dealing with the problems, whether or not it takes the other courses of action too.<sup>243</sup> An LHA is not required to have taken any other course of action before making a designation; its duty is to consider whether such action would be effective in tackling the problems. However, if it decides that another course of action would be ineffective it must be able to justify that decision in its consultation on the proposal for the designation.
222. Designations need to be confirmed by the Secretary of State, unless they are made under a general approval.<sup>244</sup> At present no general approvals have been granted, so all designations need to be submitted to Communities and Local Government for confirmation. The role of the Secretary of State in considering whether to confirm a designation is to ensure the proper procedures have been applied, and that there has been proper consultation which demonstrates that the LHA:
- has identified the problems the additional licensing is intended to address and the scale and impact of those problems

<sup>239</sup> Section 56(2).

<sup>240</sup> Section 57(1) & (2).

<sup>241</sup> Section 57(3).

<sup>242</sup> Section 56(3).

<sup>243</sup> Section 57(4).

<sup>244</sup> Section 58.

DRAFT

- has considered any alternative courses of action available to them to deal with the problems
- has identified how the designation is consistent with its overall strategy and in particular how it is co-ordinated with the authority's policies for combating anti-social behaviour, homelessness and empty homes in the private rented sector
- has identified the outcome of the designation and the measures to be put in place to evaluate the effectiveness in delivering its objectives

The Secretary of State will also wish to ensure that in making the designation that the LHA has taken into consideration those relevant representations it has received from persons who are to be affected by it.

223. A designation does not come into force until at least three months after it is confirmed by the Secretary of State, or it is made under a general approval. During the period between approval and coming into force an LHA may seek applications and process and issue any it receives. However, no offence is committed if a potential licence holder fails to co-operate within that period and if a licence is granted or refused the date the decision takes effect cannot be before the designation comes into force (although any appeal can be made before that date).
224. An additional licensing designation can be made for such period as is specified in the designation which cannot exceed 5 years. The LHA must from time to time review its operation to determine its effectiveness. An LHA may revoke a designation at any time.<sup>245</sup>
225. An LHA is required to serve notice of a designation that it has made or revoked in a prescribed manner.<sup>246</sup> It should also ensure that a copy of the designation is made available for public inspection during normal hours at its main office.
226. More detailed information on additional licensing designations is available in the Communities and Local Government's publication *Approval Steps for Additional and Selective Licensing Designations in England*.
227. It should be noted that a licence for a period of five years can be granted at any time during the five year period of an additional licensing designation. If the designation is revoked or is not renewed on expiry the individual licence continues in force. This is because a licence continues in force unless it is revoked or is terminated.<sup>247</sup> However, if the licence expires or is revoked the LHA may not issue a replacement licence, unless the LHA has made a new designation.

<sup>245</sup> Section 60.

<sup>246</sup> Sections 59(2) and 60(6) and SI 2006/373, regulation 10.

<sup>247</sup> Section 68(5).

DRAFT

## Suitability for multiple occupation

228. In deciding whether a licensable property ought to be licensed an LHA must be satisfied that the HMO is reasonably suitable for the number of households or persons permitted to occupy it under the licence or that it can reasonably be made so suitable by the imposition of conditions in the licence.<sup>248</sup>
229. The maximum number of households or persons permitted to occupy the HMO can be either the number specified in the application or such other number that the LHA may decide which might be more or less than the number in the application or occupying the HMO at the time the application is made.<sup>249</sup>
230. The suitability of the HMO for occupation by a maximum number of households or persons will normally be determined by the standards of the amenities available. However, there may be circumstances where the HMO is not suitable for occupation by the number of persons or households actually occupying it for reasons such as the unsuitability of rooms as living accommodation (due to size, lack of natural light, layout or condition etc), rooms within the HMO being overcrowded or the structure of the HMO overall being unsuitable for that number of persons. (An LHA may restrict or prohibit the use or occupation of part of the HMO as a condition of a licence.<sup>250</sup>) However, the LHA may not determine an HMO is unsuitable for the number of households or persons actually occupying it for a reason other than the physical characteristics (including amenity standards) of the house. Thus, the LHA may not, for example, limit the maximum number of occupiers because of the character of the neighbourhood.
231. An LHA cannot consider that an HMO is suitable for a maximum number of households or persons permitted to occupy it unless it meets the national prescribed amenity standards,<sup>251</sup> or that those standards can be met by the imposition of a condition in the licence.<sup>252</sup> However, if an HMO cannot be rendered suitable to meet the standards the LHA may reduce the maximum number of households or persons permitted to occupy the HMO so that the existing amenities are suitable for that maximum number of persons.
232. The national amenity standards relate to:
- the number and suitability of bathrooms, toilets and wash hand basins for persons sharing those facilities and the provision of wash hand basins in individual rooms

<sup>248</sup> Section 64(3)(a).

<sup>249</sup> Section 64(4)(a) & (b).

<sup>250</sup> Section 67(2).

<sup>251</sup> The amenity standards are set out in The Licensing and Management of Houses in Multiple Occupation and Other Houses (miscellaneous Provisions) England Regulations (SI 2006/373), regulation 8 and schedule 3, as amended by The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (SI 2007/1903.), regulation 12.

<sup>252</sup> Section 65(1).

DRAFT

- the suitability of kitchens for the number of persons sharing them and
  - appropriate fire precautionary facilities and equipment in the HMO
233. Where there are no adequate shared bathrooms or toilets, each unit of accommodation must have a bathroom and toilet. Where there are no adequate shared kitchens, each unit of accommodation must have suitable cooking etc facilities.
234. An LHA may decide that an HMO is not suitable for a particular number of households or persons even if it meets these amenity standards.<sup>253</sup> Thus, an LHA may apply higher standards than those prescribed. However, every case must be considered on its merits and an LHA cannot simply apply a blanket set of standards for all HMOs in its district, taking no account of the individual circumstances of the HMO in question. An LHA must be able to justify to the applicant (and ultimately to a residential property tribunal) why it has applied a higher set of standards in any particular case. A decision to comply with a blanket policy will not normally be sufficient reason.
235. It should be noted that the prescribed standards do not apply to non licensable HMOs and, therefore, LHA's must assess the suitability of "shared" facilities etc in accordance with the housing health and safety rating system under Part 1.

## Offence in relation to the maximum number of occupiers

236. It is an offence for a person having control of, or managing, a licensed HMO to knowingly permit it to be occupied by more households or persons than are permitted under the licence.<sup>254</sup>
237. If the maximum permitted number of households or persons under the licence is less than those actually occupying the HMO, it is a defence in proceedings that the person charged is taking reasonable steps to try to reduce the number permitted to the maximum specified in the licence.<sup>255</sup>
238. The defence is only available if the contract permitting the occupation was entered into before the original licence was granted.<sup>256</sup>
239. There is, therefore, an absolute defence in any prosecution that the persons (causing the overcrowding) continue to occupy the HMO under a contract. However, there would be no defence if a further contract was given to such a person after the licence has been granted, or if the person left and was then replaced by another.

<sup>253</sup> Section 65(2).

<sup>254</sup> Section 72(2).

<sup>255</sup> Section 76(4).

<sup>256</sup> Section 76(3)(b) and (5).



DRAFT

240. The defence is based on the licence holder or manager “... *at the material time... taking steps to reduce the number ...to the number permitted in the licence*”. Thus it can be argued that the licence holder should be taking action to evict assured shorthold tenants at the end of their contracts. However, in the Department’s view such a course of action should not be required routinely as it is not the intention of the provision to create homelessness. Rather landlords should be required not to re-let as occupiers vacate until the number is reduced to below that specified in the licence. The LHA can impose a condition in the licence to that effect.

## Licence conditions

241. An LHA must impose certain conditions in a licence and may require other conditions which it considers appropriate for:

*“regulating all or any of the following –*

- (a) *the management, use and occupation of the house concerned and*  
 (b) *its condition and content*<sup>257</sup>

242. By imposing conditions the LHA can, for example:

- prevent overcrowding
- ensure living accommodation is not substandard and that it is properly maintained
- ensure the common parts of the house and external areas are kept clean, free from obstruction and properly maintained
- ensure that there are adequate fire precautionary facilities and equipment in the house
- ensure there are adequate amenities, properly maintained and kept in a clean condition, for the number of occupiers
- prohibit the use of certain parts of the house
- ensure there are proper management arrangements in place
- require licence holders to attend relevant training courses as required
- require licence holders to manage their tenants, including dealing with anti-social behaviour<sup>258</sup>

The above list is not exhaustive and what conditions are appropriate to impose will depend on the individual case. The LHA should not adopt a blanket policy of licensing conditions to be applied, no matter how inappropriately, to every licensable HMO in its district. Each case must depend on its own merits.

<sup>257</sup> Section 67(1).

<sup>258</sup> Section 67(2).

DRAFT

243. There are, however, certain conditions (mandatory conditions) that an LHA must impose in any HMO licence it grants.<sup>259</sup> These are conditions:
- requiring electrical appliances and furniture supplied by the landlord to be kept in a safe condition and to supply a declaration to that effect to the LHA on demand
  - ensuring that smoke alarms are provided in the HMO in properly positioned places and kept in working order and to supply a declaration on demand to those effects to the LHA
  - requiring (if gas is supplied) the gas safety certificate to be produced annually to the LHA and
  - requiring the licence holder to provide each occupier with a written statement of the terms of his occupation<sup>260</sup>

## Anti-social behaviour

### Introduction

244. Section 57(5) of the 2004 Act defines anti-social behaviour (ASB), not only for the purpose of HMO licensing, but also Part 3 licensing and management orders under Part 4. ASB is defined as:

*"... conduct on the part of occupiers of, or visitors to, residential premise –*

- (a) which causes or is likely to cause a nuisance or annoyance to persons residing, visiting or otherwise engaged in lawful activities in the vicinity of such premises, or*
- (b) which involves or is likely to involve the use of such premises for illegal purposes"*

### Extent of a landlord's responsibility

245. The ASB provisions in the 2004 Act either require licence holders to combat it (for example through licensing conditions) or are related to landlords not effectively dealing with it (for example through licensing schemes or management orders).
246. The issue is, therefore, less perhaps what constitutes ASB, than what is the extent of the landlord/licence holder's responsibility for dealing with it. To some degree that will depend on the nature of the ASB itself.
247. In the Department's view there has to be causation between the letting and the ASB. In its most straightforward manifestation that would be evident if the ASB was occurring within the property or its curtilage. There can be no doubt that a landlord has responsibility to ensure persons he

<sup>259</sup> Section 67 and Schedule 4.

<sup>260</sup> Schedule 4, paragraph 1.

DRAFT

has permitted to reside in his property do not cause an annoyance or nuisance to other persons residing in it or other persons living, working or visiting the immediate neighbourhood.

248. There is also no doubt that if ASB is being carried out within the immediate vicinity of the property and is being caused by the occupiers of the property then any reasonable person would associate the behaviour of the occupiers with the property. It would, therefore, be entirely reasonable to expect a landlord to take responsibility to ensure those persons living in his property are not conducting themselves in a way that is adversely impacting on the local community.
249. As to the conduct of visitors to the property, in the Department's view the above equally applies to them, since the landlord should not allow his property through the conduct of persons' visiting his occupiers to be a source of nuisance or annoyance to the local community.
250. A landlord will not normally have responsibility for the conduct of occupiers of his property (and certainly never visitors to it) if the misconduct is not being carried within its vicinity, since it will generally be difficult to establish the link between the conduct and the letting, unless
- there is reasonable suspicion the landlord is promoting or encouraging the conduct (for whatever reason) and
  - the misconduct is frequent and not trivial and the landlord is aware of it and the impact of the conduct on the community

### **Nature of reasonable steps to combat ASB**

251. In the case of ASB which the landlord is suspected of promoting or encouraging him, the issue of him taking reasonable steps to combat the behaviour does not arise. In such cases the LHA would normally wish to take direct action to deal with the problem in association with the police, including by making a management order.
252. In other cases, for example where the landlord is not suspected of being involved, it is reasonable to expect or require a landlord to take appropriate action to help reduce or combat the problem.
253. If an occupation agreement includes reasonable conditions designed to prevent annoyance or nuisance to others it would be reasonable to expect, so far as is practical, the landlord/licence holder to enforce them. Whether or not the contract includes such terms it would be reasonable for a landlord/licence holder to reduce the likelihood of ASB, and to devise, explain and give a copy of the 'house rules' to any new occupier, so they are aware at the start of the occupancy what type of activities/conduct will not be accepted.
254. Landlords/licence holders should be willing and able to deal with complaints about an occupier's behaviour promptly and effectively and report back to the person making the complaint what action has been

DRAFT

taken, or intend to take. If after investigating the complaint the landlord/licence holder decides the complaint to be unfounded he should inform the complainant accordingly.

255. It should be remembered that the property is the home of the occupier and his ordinary use of it as such, whether such use is, or may be a nuisance in the eyes (or ears) of some other persons, will not constitute ASB. To that extent landlords will sometimes need to be willing to adjudicate on neighbour disputes.
256. Where ASB has been established a reasonable first step in less serious cases would be to ask the occupier to refrain from the conduct and warning him of the potential consequence of not doing so. If, following that approach, the problems persist the landlord/licence holder should give the occupier a written warning and, if necessary, call on other agencies, such as environmental health or the police, for advice and assistance in arresting the problems. Following that course of action, if there are no improvements, or the problem is so serious that there would be little point in invoking the previous stages, the landlord should take enforcement action against the occupier, including possession proceedings.

## Resident landlords

257. The licensing provisions in the 2004 Act are intended to regulate privately rented properties for the benefit of, amongst others, persons to whom such properties are let. The legislation is not concerned with regulating owner occupied properties. A property in which a resident landlord lives is both owner occupied and a property which is let in the private rented sector, so if certain circumstances are met such a property will be an HMO. However, the regulation of the HMO is not intended to apply to the resident landlord and his family. Thus licence conditions cannot extend to that part of the building which is **exclusively** occupied by the resident landlord and his family, but they should apply where the landlord is sharing any amenities with his/her tenants.
258. In determining the maximum number of permitted occupiers under a licence the LHA should disregard the occupants or the accommodation used exclusively by the landlord and his family.
259. If the resident landlord and his household share amenities with persons not forming part of his household, in determining the number and suitability of those amenities each member of the landlord and his family that are using those shared amenities are to be counted.
260. A building, or flat, that is occupied by a resident landlord and any member of his household (if any) and no more than two other persons not forming part of his/her household is not an HMO<sup>261</sup>, except if the HMO is a section

<sup>261</sup> Schedule 14, paragraph 6(1) and regulation 6(2) of SI 2006/373 for the number of occupants.

DRAFT

257 HMO (converted block of flats), in which case regardless of the number of persons occupying separate flats from that occupied by the resident landlord, the building will be an HMO.<sup>262</sup>

261. If there are three occupiers in addition to the resident landlord (and his household) it will be an HMO (provided it meets the other criteria for falling within the definition) and may be subject to additional licensing.
262. If there are four or more occupiers in addition to the resident landlord it will be an HMO (provided it meets the other criteria for falling within the definition) and will be subject to mandatory licensing, provided the property is of three or more storeys.

## Section 257 HMO licensing

### Introduction

263. An LHA may make an additional licensing designation which applies to section 257 HMOs.
264. A designation may apply to any type of HMO falling within the definition of section 257, but it can only apply to such types of HMOs where a significant proportion of them in the area to which the designation is proposed to apply are being managed sufficiently ineffectively to give rise to particular problems to those occupying them or the local community.<sup>263</sup>
265. Although a designation could apply to section 257 HMOs where there is a significant proportion of owner occupied flats (provided there are less than two-thirds in total), it will usually be exceptional for this to be the case. Primarily the legislation is concerned about regulating private rented accommodation, protecting occupiers of such accommodation and the impact that such lettings can have on others.
266. Where there are problems with leasehold blocks in terms of the management standards (or otherwise) these should normally be addressed through the leases and the provisions in leasehold legislation.
267. Normally, therefore, a designation will only apply to blocks that are wholly or mainly tenanted (including those with resident landlords) or where a significant proportion of what would otherwise be owner occupied flats that have been let by the owners and where it has been identified those blocks in a particular area are causing particular problems.
268. In any case in considering making a designation for section 257 HMOs an LHA must comply with the requirements in sections 56 and 57 and the rules covering additional licensing designations.

<sup>262</sup> See paragraphs 312 to 317.

<sup>263</sup> Section 56(2).

DRAFT

### Licensing of Section 257 HMOs

269. The general principles of licensing discussed in chapter 2 and the remainder of this chapter apply to section 257 HMOs. However, additional provision is made in regulations to reflect the mix of occupants of such blocks of flats, being tenants with both long and short tenancies possibly freeholders.<sup>264</sup>
270. In deciding who is to be granted the licence in the case of a section 257 HMO where none of the flats are held on long leases, that person must be the person having control defined as the person who receives the market rent for the HMO, whether on his own account or as agent for that person.<sup>265</sup>
271. Where at least one of the flats in the section 257 HMO is held on a long lease, the licence holder is the person in control and found in the following list. In deciding which of the listed persons, for the purposes of licensing, is the most appropriate person to hold the licence, it is necessary to consider the persons in the sequence in which they appear, that is a person who:
- has acquired a right to manage the HMO under Part 2 of the Commonhold and Leasehold Reform Act 2002
  - has been appointed as a manager by a leasehold valuation tribunal under section 24 of the Landlord and Tenant Act 1987
  - is the lessee (whether or not held on an under lease) of the whole HMO or the freeholder (if there is no lessee of the whole)
  - or is a manager appointed by such a lessee or the freeholder or the person who has acquired a right to manage<sup>266</sup>
272. In deciding whether a person having control is 'fit and proper' to hold the licence the LHA must take into consideration whether the person has and to what extent he has control of the HMO.<sup>267</sup> A section 257 HMO licence cannot impose any limit on the number of persons or households permitted to occupy it, accordingly the regulations amend Part 2 to that effect.
273. In determining whether a section 257 HMO is suitable for multiple occupation,<sup>268</sup> the LHA cannot be satisfied it is unless it meets prescribed standards relating to:
- the common parts of the HMO and
  - any flat within the HMO, other than one held on a long lease<sup>269</sup>

<sup>264</sup> The Houses in Multiple Occupation (Certain Converted Blocks of Flats) (Modifications to the Housing Act 2004 and Transitional Provisions for Section 257 HMOs) (England) Regulations 2007 (SI 2007/1904).

<sup>265</sup> Section 61(7)(a) as inserted by regulation 3 of SI 2007/1904.

<sup>266</sup> Section 61(7)(b) and (8), as inserted by Regulation 3 of SI 2007/1904.

<sup>267</sup> Section 64(1), as modified by regulation 4 of SI 2007/1904 in respect of section 257 HMOs.

<sup>268</sup> Section 64.

<sup>269</sup> Regulation 5(a) of SI 2007/1904, inserting a substituted section 65(4) in respect of section 257 HMOs. Flats let on any type of tenancy other than a long lease (as defined in section 61(9) as modified by regulation 3(9) of SI 2007/1904) will need to meet the prescribed standards.

DRAFT

274. The prescribed standards<sup>270</sup> cover the provision and standards of:
- toilets, bathrooms and wash hand basins and kitchens or cooking facilities in the flats and
  - fire precaution equipment in the common parts
275. Where a section 257 HMO is created after 1 October 2007 and it is purported that any flat within it is held on a long lease, such a flat will not be treated as owner occupied for the purpose of licensing unless the LHA is satisfied:
- the flat meets the appropriate building regulation standards or
  - the lease has been granted by a person other than the freeholder or head lessor<sup>271</sup>
276. A licence cannot contain a condition that regulates the use, occupation or contents of any part of a section 257 HMO unless the condition relates to a matter over which it is reasonable to expect a part 2 licence holder only to exercise control,<sup>272</sup> including any mandatory condition under schedule 4.<sup>273</sup>

### **Other modifications to Part 2 in respect of section 257 HMOs**

277. A rent repayment order against ‘an appropriate person’ may only be made if that person has control of the HMO and the application can only relate to those parts of the HMO over which he/she is entitled to receive on his own account the rents. ‘Rent’ does not include ground rent, service charge or insurance payment.<sup>274</sup> Thus, a rent repayment order can only be made in respect of those flats which are rented out by the person having control of the section 257 HMO.
278. A section 21 notice is only prohibited from being served on an occupier of a flat in an unlicensed section 257 HMO, if the person purporting to serve it is both the person having control of the HMO and the flat it relates to is also under his control.<sup>275</sup>

## Licensing and HHSRS

279. An LHA must satisfy itself, as soon as reasonably practicable, that a licensable HMO is free of category 1 hazards or whether it should exercise its powers to take action to eliminate or mitigate a category 2 hazard under Part 1 of the 2004 Act (the housing health and safety

<sup>270</sup> Regulation 8(2) of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) 2006 Regulations (SI 2006/373) as inserted by Regulation 12(4) of The Licensing and Management of Houses in Multiple Occupation (England) Regulations 2007 (SI 2007/1903).

<sup>271</sup> Section 65(1A) as inserted by Regulation 5(b) of SI 2007/1904.

<sup>272</sup> Section 67(1A) as inserted by Regulation 6 of SI 2007/1904.

<sup>273</sup> Regulation 10 of SI 2007/1904.

<sup>274</sup> Regulation 7 of SI 2007/1904, inserting a substituted section 73(10) in respect of section 257 HMOs.

<sup>275</sup> Regulation 8 of SI 2007/1904 amending section 75 in respect of unlicensed HMOs



DRAFT

rating system). It must so satisfy itself within five years of the receipt of an application for a licence. There is no requirement specifically to inspect the HMO for these purposes.<sup>276</sup> What constitutes a 'reasonably practicable' time for carrying out this duty is for the LHA to decide in all the circumstances of the HMO in question. An LHA should not normally hold a licence in abeyance on account of a proposed inspection, unless it also considers it necessary to inspect the HMO for determining the suitability of the house for licensing purposes. An LHA must satisfy itself as to these matters on each renewal of a licence after the initial one. There must, therefore, be some form of regular check of all licensed HMOs in an LHA's district every five years. Where a category 1 or 2 hazard has been identified in an HMO, any enforcement action under HHSRS should be carried out under Part 1 of the 2004 Act. However, this does not apply to the provision of amenities in the HMO and for keeping such amenities maintained and in good repair.

280. In assessing the condition of a licensable HMO for the purpose of multiple occupation, where the LHA wishes to impose a prohibition on the use of part of it or the maximum number of persons permitted to occupy the house, the LHA should use its powers in Part 2, rather than HHSRS.
281. It will be relevant in determining whether to revoke a licence or to grant one whether, and how, a person served with enforcement action under HHSRS has complied with it, as that will be an important indication of the fitness of the person to hold a licence and whether the management arrangements are satisfactory more generally.
282. An LHA may also revoke a licence if by reason of its structure it would not grant a new licence at the time of revocation. In some cases the problems with the structure will be on account of non-compliance with enforcement action under Part 1.

## Powers of Entry

283. Section 239 specifies the powers of entry available for enforcing Parts 1 to 4 of the Act, and the following paragraphs provide a summary of these powers<sup>277</sup>. In principle, if a local authority wishes to formally inspect a property a minimum of 24 hours notice must be given to the owner (if known) and the occupiers (if any) prior to entry.<sup>278</sup>
284. However, a local authority may enter any premises without giving 24 hours notice for the purpose of ascertaining whether an offence has been committed in relation to licensing, or in respect of any of the duties imposed on managers or occupiers of HMOs by management

<sup>276</sup> Section 55(5)(c) and (6). Notwithstanding its statutory duty under section 55 an LHA may also inspect any licensed HMO within its district at anytime under its general powers in section 4.

<sup>277</sup> Additional information on powers of entry under a management order can be found in paragraphs 507 and 508 of the guidance.

<sup>278</sup> Section 239 (5).



DRAFT

regulations.<sup>279</sup> A local authority also has the right of entry at any time, under section 40 of the Act, if it is satisfied that a category 1 hazard exists in any residential premises if the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises.<sup>280</sup>

285. In the Department's opinion, a local authority may carry out an inspection of a property without giving 24 hours notice to the owner if they have been invited in by an occupier, as they are not using the formal powers of entry under Section 239. If on such a visit it is deemed urgent emergency action is required (a category 1 hazard exists) then a local authority may take enforcement action on the basis of this visit. However, if on such a visit it is deemed that non-emergency works are required, a local authority should give a minimum of 24 hours notice to the owner, and any other occupiers of the property (that had not contacted the local authority), of its intention to carry out a formal inspection of the property. A local authority should then require any non-emergency works to be carried out on the basis of the formal inspection, not the initial visit, and serve the appropriate notice.<sup>281</sup>
286. When exercising its powers of entry under Section 239 of the Act a local authority should ensure it has the relevant authorisation for enforcement purposes.<sup>282</sup> Such authorisation should be granted by the appropriate officer<sup>283</sup>, and for the purposes of Section 239 this is the deputy chief officer of the authority.<sup>284</sup> It must be served in writing, and state the particular purpose or purposes for which the power of entry is being authorised.<sup>285</sup> In the Department's opinion the deputy chief officer of a local authority may grant a general written authorisation to an individual officer to enter any relevant premises for a specific purpose when authorising such a power of entry. The authorisation of the power of entry does not have to relate to a specific property for a specific purpose.

<sup>279</sup> Section 239 (6) and (7).

<sup>280</sup> Section 40 (5) and (6), and Schedule 3, Part 2.

<sup>281</sup> For further information see Housing Health and Safety Rating System: Enforcement Guidance: Housing Act 2004 Part 1: Housing Conditions.

<sup>282</sup> Section 243.

<sup>283</sup> Section 243 (2)

<sup>284</sup> Section 243 (3)

<sup>285</sup> Section 239 (9)

DRAFT

# Chapter 4 Licensing: Part 3 houses

## Introduction

287. This chapter discusses certain topics that are specific to licensing under Part 3 and should be read in conjunction with chapter 2. It covers the following;

- circumstances in which a selective licensing designation can be made
- requirements for making a designation
- approved designations
- properties to which a designation applies
- duty to promote licensing
- processing applications
- licence conditions
- selective licensing and HMOs

## Circumstances in which a selective licensing designation can be made

288. An LHA may designate all or a part of their district as an area to which selective licensing under Part 3 of the 2004 Act relates. This enables the LHA to require the licensing of houses that are not HMOs.<sup>286</sup>

289. The circumstances in which a designation can be made are:

- the area is, or is likely to become, an area of low demand for housing<sup>287</sup> and/or
- the area is experiencing a significant and persistent problem caused by anti-social behaviour (ASB) that is attributable to occupiers of privately rented properties and that some or all of the private sector landlords are failing to take action that it would be appropriate for them to take to combat the problem<sup>288</sup>

290. In deciding whether an area is in, or likely to become, an area of low demand the LHA must have regard to:

<sup>286</sup> Section 80(1).

<sup>287</sup> Section 80(3)(a).

<sup>288</sup> Section 80(6)(a) and (b).

DRAFT

- the value of residential properties in comparison with similar premises in comparable areas (in terms of the type of housing, local amenities such as shops, school, social facilities, transport links etc)
- the turnover of occupiers in the area
- the number of residential properties to buy or rent
- the length of time such properties remain unoccupied<sup>289</sup>

291. Low demand can manifest itself through such problems:

- as a significant number of long term empty properties
- closure (or a lack of) local amenities and services
- vandalism, graffiti and other street crime
- lack of repair, maintenance and management to residential properties and the absence of mixed tenure housing often with a disproportionately high proportion of residential properties in private renting etc

292. An LHA may not make a designation (on the basis of low demand) unless it considers the designation, when combined with other measures taken by the authority (or other persons working together with authority), will lead to improvements in the economic and social conditions of the area.<sup>290</sup>

293. The second circumstance in which a selective licensing designation can be made is that the area is suffering from a significant and persistent problem of ASB that is attributable to occupiers of privately rented properties and the landlords are not taking appropriate steps to deal with the problem.<sup>291</sup>

294. The ASB must:

- emanate from the residential properties or be directly associated with the lettings and
- the landlords of such properties are not taking reasonable (that is 'appropriate') steps to deal with it

295. ASB may manifest itself in a different number of ways (that is, it does not have to be a single type of conduct or action). A designation cannot be made unless the ASB is 'significant' and 'persistent'. For the ASB to be regarded as 'significant' it must be serious in nature (that is not trivial) and have a considerable adverse impact on the area. It must also be 'persistent' in the sense that it is not a one off event or isolated incident, but occurs with regular frequency.

296. An LHA may only make a designation to deal with ASB if it considers that by doing so it, when combined with other measures taken by the

<sup>289</sup> Section 80(4).

<sup>290</sup> Section 80(3)(b).

<sup>291</sup> ASB is defined in section 57(5).

DRAFT

authority (or other persons working together with authority), will lead to a reduction (which should be measurable) or elimination of the problem.<sup>292</sup>

297. A designation should only be made if at least 'some' of the landlords are not taking the appropriate action to tackle the problems. It would not be appropriate, in the Department's opinion, to make a selective licensing designation if the problems were emanating from a small minority of properties, as in those circumstances, it would be appropriate to make management orders on the offending houses.
298. An LHA must ensure that any selective licensing designation is consistent with its overall housing strategy.<sup>293</sup> In particular, it must, ensure that the designation is co-ordinated with its approach to combating homelessness, anti-social behaviour and empty homes in the private rented sector and the measures available to it to deal with those problems, as well as the work of other agencies (such as the police, the voluntary sector and ASB practitioners, social services etc) in tackling those matters.<sup>294</sup>
299. An LHA must not make a selective licensing designation unless it has considered whether there are other courses of action available to it that might prove effective to dealing with the problems, such as a voluntary accreditation scheme, and that the designation, if made, will significantly help the authority in dealing with the problems, whether or not it takes the other courses of action too.<sup>295</sup> An LHA does not need to have taken any other course of action before making a designation; its duty is to consider whether such action would be effective in tackling the problems and clearly. However, if it decides that another course of action would be ineffective it must be able to justify that decision in its consultation on the proposal for the designation.
300. Before making a designation an LHA must consult with persons likely to be affected by it and must consider those persons' representations.<sup>296</sup>
301. Designations need to be confirmed by the Secretary of State, unless they are made under a general approval.<sup>297</sup> At present no general approvals have been granted, so all designations need to be submitted to Communities and Local Government for confirmation. The role of the Secretary of State in considering whether to confirm a designation is to ensure that the circumstances for making the designation apply, the proper procedures in making it have been applied and that there has been proper consultation which demonstrates that the LHA:
- has identified the problems the designation is intended to address and the scale and impact of those problems

<sup>292</sup> Section 80(5)(c).

<sup>293</sup> Section 81(2).

<sup>294</sup> Section 81(3).

<sup>295</sup> Section 81(4).

<sup>296</sup> Section 80(9).

<sup>297</sup> Section 82.

DRAFT

- has considered any alternative courses of action available to them to deal with the problems
- has identified how the designation is consistent with its overall strategy and in particular how it is co-ordinated with the authority's policies for combating anti-social behaviour, homelessness and empty homes in the private rented sector
- has identified the outcome of the designation and the measures to be put in place to evaluate its effectiveness in achieving its objectives
- and has identified the outcome of the designation

The Secretary of State will also wish to ensure that in evaluating its designation the LHA has taken into consideration those relevant representations it has received from persons who are to be affected by it.

302. More detailed information on the requirements for making selective licensing designations is available in the Communities and Local Government's publication *Approval Steps for Additional and Selective Licensing Designations in England*.
303. A designation does not come into force until at least three months after it is confirmed, or it is made under a general approval. During the period between approval and coming into force an LHA may seek applications and process and issue any it receives. However, no offence is committed if a potential licence holder fails to co-operate within that period and if a licence is granted or refused the date the decision takes effect cannot be before the designation comes into force (although any appeal can be made before that date).
304. A selective licensing designation can be made for such period as is specified in the designation, which cannot exceed five years. The LHA must from time to time review its operation to determine its effectiveness. An LHA may revoke a designation at any time.<sup>298</sup>
305. An LHA is required to serve notice of a designation that it has made or revoked in a prescribed manner.<sup>299</sup> It should also ensure that a copy of the designation is made available for public inspection during normal hours at its main office.
306. It should be noted that a licence for a period of five years can be granted at any time during the five year period of a selective licensing designation. If the designation is revoked or is not renewed on expiry the individual licence continues in force. This is because a licence continues in force unless it is revoked or is terminated.<sup>300</sup> However, if the licence expires or is revoked the LHA may not issue a replacement licence, unless the LHA has made a new designation.

<sup>298</sup> Section 84.

<sup>299</sup> Sections 83 and 84 (6) and Regulation 10, SI 2006/373.

<sup>300</sup> Section 91(5).

DRAFT

## Properties to which a selective licensing designation applies

307. Selective licensing applies to 'houses' in a designated licensing area which are wholly occupied under a tenancy or licence. The whole of the house may be occupied under a single tenancy or licence or two or more tenancies or licences of different dwellings within it.<sup>301</sup>

308. A 'house' is defined as a "...a building or part of a building consisting of one or more dwellings".<sup>302</sup>

Thus, a house includes an HMO (as each unit of accommodation is a dwelling) and includes a building converted into self contained flats. A block of flats above non residential premises will also be a house because it is 'part of a building' as will be an individual flat (such as **a dwelling**).

309. Houses occupied under certain tenancies and licences are exempt from selective licensing.<sup>303</sup> These are where:

- the tenancy or licence is granted by a registered social landlord,<sup>304</sup>
- the tenancy or licence is of a house or dwelling that is controlled or managed by:
  - a local housing authority
  - a police authority or the Metropolitan Police Authority
  - a fire and rescue authority or
  - a health service body<sup>305</sup>
- the tenancy cannot be an assured tenancy under the Housing Act 1988 and is a tenancy of:
  - business premises
  - licensed premises
  - agricultural land or
  - an agricultural holding<sup>306</sup>
- the tenancy is of a house or dwelling that is subject to a prohibition order which has not been suspended<sup>307</sup>
- the tenancy is of a house or dwelling is held under a long lease and occupied by the owner under the lease or members of his family<sup>308</sup>

<sup>301</sup> Section 79(2).

<sup>302</sup> Section 99.

<sup>303</sup> Section 79(2).

<sup>304</sup> Section 79(3).

<sup>305</sup> The Selective Licensing of Houses (Specified Exemptions) (England) Order 2006 (SI 2006/370) Article 2 (1)(c).

<sup>306</sup> Regulation 2(1)(b) SI 2006/370.

<sup>307</sup> Article 2(1)(a) SI 2006/370.

<sup>308</sup> Article 2(1)(e). For definition of family see Article 2(2), SI 2006/370.

DRAFT

- the tenancy or licence is of a house or dwelling granted to a person who is a member of the family of the person who is the freeholder or long leaseholder of the property<sup>309</sup>
- the tenancy or licence is of a house or dwelling which is not an HMO by virtue of paragraph 3 of schedule 14 (buildings regulated otherwise than by the 2004 Act) or paragraph 4(1) of that schedule (buildings occupied by students)<sup>310</sup>
- the tenancy or licence is of a house or dwelling granted for the purpose of a holiday<sup>311</sup>
- the tenancy or licence is granted to a person who shares any accommodation with the landlord or licensor and members of their respective families<sup>312</sup>

## Duty to promote licensing

310. An LHA is under a statutory duty to ensure the effective implementation of any selective licensing designation it makes in its district.<sup>313</sup> An LHA should, therefore, actively be seeking applications from persons' whose houses are required to be licensed and taking enforcement action against those who refuse to apply. Indeed an LHA is under a duty to take all reasonable steps to ensure applications are made to it.<sup>314</sup>

## Processing applications

311. An LHA is under a statutory duty to process and determine all licensing applications (and other matters to be determined by it) within a reasonable time.<sup>315</sup>
312. There will rarely be a need to carry out an internal inspection of a Part 3 house for licensing purposes before granting a licence because selective licensing is primarily concerned with management standards rather than property conditions. In most instances an LHA should be able to determine straightforward applications on the basis of:
- its own knowledge of, and information<sup>316</sup> about the house (if any);
  - the application form submitted
  - and any further information supplied by the applicant in connection with that application<sup>317</sup>

<sup>309</sup> Article 2(1)(f) SI 2006/370. For definition of family see Article 2(2), SI 2006/370.

<sup>310</sup> Article 2(1)(d) SI 2006/370.

<sup>311</sup> Article 2(1)(g) SI 2006/370.

<sup>312</sup> Article 2(1)(h), see Article 2(2), for details of the accommodation and definition of family. SI 2006/370.

<sup>313</sup> Section 79(5)(a).

<sup>314</sup> Section 85(4).

<sup>315</sup> Section 55(5) (b).

<sup>316</sup> Including statutory information held on housing benefit and council tax – section 237.

<sup>317</sup> For example, powers to require information under section 235.

DRAFT

Straightforward applications that do not require an immediate internal inspection of the house should be dealt with relatively quickly and usually within four to six weeks of receipt.

313. Where it is proposed that the same person is nominated as the licence holder (or as the case may be the manager) in connection with two or more applications, and the management arrangements are satisfactory in respect of at least one of those applications, the LHA should normally assume the management arrangements to be satisfactory in respect of the other houses for which there are applications, unless there is an indication to the contrary.
314. Also, unless there is a change of circumstance relating to the house (including its management arrangements) on renewal of a licence, the LHA should normally assume the management arrangements in the renewed application are satisfactory, unless there is an indication to the contrary such as the conduct of the previous licence.

## Licence conditions

315. Section 90 of the 2004 Act requires an LHA to impose certain conditions in a licence and permits it to require other conditions which it considers appropriate for:

*“regulating the management, use and occupation of the house concerned”.*<sup>318</sup>

This is less wide than the scope of HMO licensing conditions under section 67(1), specifically because it does not allow a licence under Part 3 to impose conditions relating to the condition or contents of the house.<sup>319</sup> This is, of course, because selective licensing is primarily concerned with regulating the management of the private rented sector in areas where it applies and not the condition of the stock. However, it is clearly a management function that landlords keep their properties in repair and clean and tidy, so generic conditions can be imposed for those purposes e.g. conditions can be imposed to require landlords (licence holders) to do what is expected of them such as routine repairs, replacement of worn or dangerous furniture or fittings etc, but not to carry out improvements, alterations or adaptations<sup>320</sup> to the house.

316. There are, however, certain conditions (mandatory conditions) that an LHA must impose in any Part 3 licence it grants. These are conditions:

<sup>318</sup> Section 90(1).

<sup>319</sup> Section 90(3) permits a licence to include conditions requiring facilities and equipment to be made available in the house and for works associated with the same. However, this section does not apply to licensing in England because such equipment and facilities have to be prescribed in regulations. No such regulations have been made.

<sup>320</sup> Category 1 or 2 hazards identified in the house should be dealt with under Part 1.



DRAFT

- requiring electrical appliances and furniture supplied by the landlord to be in a safe condition and to supply a declaration to that effect to the LHA on demand
- ensuring that smoke alarms are provided in the house in properly positioned places and kept in working order and to supply a declaration on demand to that effect to the LHA
- requiring (if gas is supplied) the gas safety certificate to be produced annually to the LHA
- requiring the licence holder to provide each occupier with a written statement of the terms of his occupation
- and requiring the licence holder to demand references from all prospective tenants or licensors of the house<sup>321</sup>

317. In addition to the above the LHA can, for example, impose conditions that;

- prohibit the use of certain parts of the house
- ensure there are proper and effective management arrangements in place
- require licence holders to attend relevant training courses as required
- and require licence holders to manage their tenants, including dealing with anti-social behaviour

The above list is not exhaustive and what conditions are appropriate to impose will depend on the individual case, but they must relate to the management of the house. The LHA should not adopt a blanket policy of licensing conditions to be applied to every house in its district. Each case must depend on its own merits.

## Selective licensing and HMOs

318. A selective licensing designation applies to HMOs other than those which are subject to mandatory licensing or an additional licensing designation.<sup>322</sup>

319. Where a house is licensed under Part 3, but becomes an HMO which is required to be licensed under Part 2 the LHA must revoke the Part 3 licence and grant a Part 2 licence.

320. In the Department's view, where the problems of ASB an area is suffering from is primarily being caused by the ineffective management of the HMOs in that area, an LHA should normally make an additional licensing designation under Part 2 rather than a selective licensing designation.

<sup>321</sup> Schedule 4, paragraphs 1 and 2.

<sup>322</sup> Section 85 (1) (a).

DRAFT

# Chapter 5 Management orders: general

## Introduction

321. Under the Housing Act 2004 LHAs can make management orders in respect of HMOs and other privately rented property. This chapter discusses the circumstances in which management orders can be made, the process for doing so, their effect, the powers and duties of LHAs while they are in force, the circumstances in which they can be revoked and the effect of their revocation. In particular it covers:

- general purpose of interim management orders (IMO) and final management orders (FMO)
- making of an IMO for licensable properties (including the circumstances in which they can be made, the health and safety condition, duration of an order, procedures for making and appeals)
- duties of an LHA whilst an IMO order is in force
- effect of an IMO order
- financial arrangements under an IMO order
- variation of an IMO order
- revocation of an IMO order
- making of a FMO (including duration of an order, procedures for making and appeals)
- duties of an LHA whilst an FMO order is in force
- effect of an FMO order
- management schemes and accounts (including enforcement of a scheme)
- variation of an FMO order
- revocation of an FMO order

## General purpose of interim and final management orders

322. An IMO is an order, lasting up to 12 months, made by an LHA in respect of a residential property for the purpose of:

- taking steps to ensure the health, safety and welfare of persons occupying the property, or persons living in or owning properties in its immediate vicinity, are protected

DRAFT

- and taking such other steps to secure the proper management of the property pending the grant of a licence under Parts 2 or 3 or the making of a FMO or
- in the case of a property which is not required to be licensed under Parts 2 or 3 pending the revocation of the IMO or the making of a FMO<sup>323</sup>

323. A FMO is an order, lasting up to a maximum of five years (but a further order can be made to follow the previous one), made by the LHA in respect of a residential property subject to an IMO for the purpose of securing the long term management of the property on the basis of the management scheme contained in the order.<sup>324</sup>

## Making of an interim management order

### **Where a licence cannot be granted**

324. An LHA must make an IMO if the property is required to be licensed under Parts 2 or 3 and is not so licensed and:

- there is no reasonable prospect of it being licensed in the near future or
- that the health and safety condition is satisfied<sup>325</sup>

325. The circumstances in which an LHA may not be able to grant a licence include, for example:

- that a suitable licence holder cannot be agreed
- the person having control or person managing the property cannot be identified
- the person having control or person managing the property has failed to apply for a licence
- the application for a licence has been refused (for whatever reason)

326. There has to be no reasonable prospect of granting the licence 'in the near future'. This will depend on the circumstances of the case, but is likely to be weeks or at most a month or two since first suspecting that the prospect of granting a licence may be problematic.

327. The second circumstance is where the health and safety condition needs to be met, notwithstanding that a valid application for a licence to the LHA may have been submitted.

<sup>323</sup> Section 101(3).

<sup>324</sup> Section 101(4).

<sup>325</sup> Section 102(2). See para 334 for detail on the health and safety condition.

DRAFT

**On revocation of a licence**

328. An LHA is also under a duty to make an IMO if the property is licensed, but the LHA intends to revoke the licence, and upon the revocation:
- there will be no reasonable prospect of the property being licensed in the near future or
  - that the health and safety condition is satisfied<sup>326</sup>
329. An IMO must be made if there is no reasonable prospect of granting a replacement licence or a new licence to a different licence holder within a reasonable time. Even if a licence has been revoked for a different reason, if the LHA considers the Health and Safety condition will be satisfied when the licence is revoked it must make an IMO.

## Making of an IMO for non licensable properties

**Introduction**

330. An LHA may make an IMO in respect of:
- an HMO which is not required to be licensed under Part 2 and
  - a house which, if a selective licensing designation was in force in the area, would be subject to licensing under Part 3

**Non licensable HMOs**

331. An LHA may only make an IMO in respect of a non licensable HMO if the order is authorised by a residential property tribunal (RPT). An RPT may authorise the order in the draft form submitted by the LHA or as varied by the tribunal. An RPT may not approve an IMO unless it is satisfied the health and safety condition is satisfied.<sup>327</sup>
332. An IMO takes effect from the date it is approved, notwithstanding any right of appeal against that decision.<sup>328</sup>

**Houses that would otherwise be licensable under Part 3**

333. An LHA may only make an IMO in respect of a house that would otherwise be required to be licensed under Part 3. This is known as a special interim management order (SIMO) under the 2004 Act.<sup>329</sup> An RPT may authorise the order in the draft form submitted by the LHA or as varied by the tribunal.<sup>330</sup>

<sup>326</sup> Section 102(3).<sup>327</sup> Section 102(4) and (5).<sup>328</sup> Section 105(2).<sup>329</sup> Section 103(1).<sup>330</sup> Section 102 (7).

DRAFT

334. A SIMO may not be approved by an RPT unless it is satisfied firstly that the health and safety condition is satisfied.<sup>331</sup>
335. The second test to be satisfied is that:
- the area in which the house is located is suffering from a significant and persistent problem caused by ASB (in this context 'area' means vicinity)
  - the problem is attributable, in whole or part, to the behaviour of an occupier of the house
  - the landlord of the house is failing to take action to combat that problem which would be appropriate for him/her to take and
  - the making of the order, when combined with other measures taken by the LHA, or by other persons working with it, will lead to a reduction (which should be measurable) in, or elimination of that problem<sup>332</sup>
336. The conditions in paragraph 389 are the same as apply for a selective licensing designation in the circumstances of ASB discussed in paragraphs 343 to 348<sup>333</sup>, as applied to a single house.
337. An SIMO takes effect from the date it is approved, notwithstanding any right of appeal against that decision.<sup>334</sup>

## Applications for authorisation to an RPT

338. When submitting an application<sup>335</sup> to an RPT for authorisation to make an IMO in respect of a non licensable HMO the LHA must include the following documents:
- a copy of the draft order
  - a statement as to why and how in the LHA's opinion the health and safety condition is satisfied and
  - if the LHA requests that the application is dealt with under the urgent authorisation procedure (see below), a statement giving sufficient details to enable the tribunal to form an opinion that the exceptional circumstances (for making an urgent IMO) exist<sup>336</sup>
339. When submitting an application<sup>337</sup> to an RPT for authorisation to make a SIMO the LHA must include the following documents:
- a copy of the of the draft order

<sup>331</sup> Section 103(4).

<sup>332</sup> The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006 (SI 2006/369), Article 2.

<sup>333</sup> For a discussion on what constitutes anti-social behaviour and the extent of a landlord's responsibilities to take action see later.

<sup>334</sup> Section 102(7) & section 105.

<sup>335</sup> Application forms can be downloaded on [www.rpts.gov.uk](http://www.rpts.gov.uk) or can be obtained from the regional residential property tribunal service office serving the local authority area.

<sup>336</sup> Paragraph 27 (2) of the schedule to the Residential Property Tribunal Procedure (England) Regulations 2006 (SI 2006/831).

<sup>337</sup> Application forms can be downloaded on [www.rpts.gov.uk](http://www.rpts.gov.uk) or can be obtained from the regional residential property tribunal service office serving the local authority area.

DRAFT

- a statement as to why and how in the LHA's opinion the health and safety condition is satisfied
- a statement as to how and why the anti-social behaviour test is satisfied and
- if the LHA requests that the application is dealt with under the urgent authorisation procedure (see below), a statement giving sufficient details to enable the tribunal to form an opinion that the exceptional circumstances (for making an urgent SIMO) exist<sup>338</sup>

340. An LHA may apply to an RPT for an urgent IMO or SIMO and the tribunal must hold an urgent oral hearing to determine if the exceptional circumstances apply, if it appears they may do so on the basis of the submitted application. The exceptional circumstances under which an urgent application can be made and may be determined are:

- there is an immediate threat to the health and safety of the occupiers of the property or to persons living or owning any premises within its vicinity and
- by making the IMO or SIMO as soon as possible (together with other applicable measures the LHA intends to take) the LHA will be able to take immediate appropriate steps to significantly reduce or arrest that threat<sup>339</sup>

### **Resident landlords**

341. The LHA may make an IMO, FMO or SIMO that does not apply to a part of the property which is occupied by a person who has an interest or estate in the whole house (i.e. a resident landlord).<sup>340</sup> But an LHA does not have to exclude from the operation of the order any part of the property so occupied. Normally, for practical purposes, the LHA will only exclude, if at all, that part of the property which is exclusively occupied by the resident landlord, such as a flat or a room, but not accommodation or amenities he may share with the occupiers, such as the common parts, kitchen, toilet or living room.

### **Health and safety condition**

342. The health and safety condition in section 104 is that the making of the IMO is necessary in order to protect the health, safety or welfare of the occupiers of the property or persons occupying or owning premises in its vicinity.

343. The health and safety condition is not satisfied if the property has a category 1 hazard requiring the LHA to take a course of action under section 5 to remedy it, and the LHA is satisfied that by taking that course

<sup>338</sup> Paragraph 28 (2) of the schedule to SI 2006/831.

<sup>339</sup> Regulation 9 of SI 2006/831.

<sup>340</sup> Section 102(8) and 113(7).

DRAFT

of action the health, safety and welfare of the occupiers will be protected. In this circumstance the LHA may not make an IMO based on condition.<sup>341</sup>

344. The condition is, therefore, concerned primarily with management standards, including illegal or unlawful conduct on the part of the landlord/licence holder (or his agents) that put the health, safety or welfare of occupiers at risk, such as unlawful eviction or harassment. In particular a threat to evict (whether the eviction would be lawful or not) to avoid HMO licensing satisfies the condition.<sup>342</sup>
345. The condition will also be satisfied if the conduct of the occupiers or the landlord/licence holder is such that it is interfering with the quiet enjoyment of occupiers or owners of their premises within the vicinity of the property or the quiet enjoyment of their accommodation by other occupiers of the property itself.
346. Although the condition cannot normally be satisfied if enforcement action under Part 1 is required, this does not mean that the general condition of the property is irrelevant in determining whether it is satisfied. In particular, if a landlord/licence holder fails to comply diligently, if at all, with any enforcement action taken under Part 1, the health and safety condition could be satisfied as such a failure would reflect on his or her ability or willingness to manage the property properly.

### **Duration of an order**

347. An IMO comes into force when it is made, unless it is made because of the revocation of a licence in which case it comes into force when the licence is revoked.<sup>343</sup>
348. An IMO may last up to 12 months, or such shorter time as might be specified in the order. If the IMO is made because of the revocation of a licence it must include a provision for determining when the order ends. This must not be longer than 12 months from the date the licence ceases and the order comes into force.<sup>344</sup>
349. If, in respect of a property which is required to be licensed under Parts 2 or 3, the LHA intends to replace the IMO with an FMO and there is an appeal against the making of such an order (or its terms) the IMO continues in force until the date on which the FMO or a licence etc comes into force following the disposal of the appeal.<sup>345</sup>
350. If the property is not required to be licensed under Parts 2 or 3 and the LHA intends to replace the IMO with an FMO and there is an appeal against the making that order (or its terms) the LHA may apply to an RPT for the IMO to continue in force until the disposal of the appeal.<sup>346</sup>

<sup>341</sup> Section 104(5) and (6).

<sup>342</sup> Section 104(3).

<sup>343</sup> Section 105(2) and (3).

<sup>344</sup> Section 105(4), (5), (6) and (7).

<sup>345</sup> Section 105(9).

<sup>346</sup> Section 109(10).

DRAFT

An application to the tribunal is not required if the appeal is disposed of before the IMO would have ceased to be in force.

351. An LHA may not make a new IMO to replace an existing one. A further IMO can only be made if, following the previous one, the LHA had, in the meantime, granted a licence, issued a temporary exemption notice or made a FMO.<sup>347</sup>

***Procedure on making an order***

352. After an IMO has been made the LHA must serve a notice and a copy of it:

- on each relevant person<sup>348</sup> and
- the occupiers of the property<sup>349</sup>

353. Fixing the documents to some conspicuous part of the property is sufficient service of the documents on the occupiers.<sup>350</sup>

354. The notice (served with a copy of the IMO) must contain:

- the reasons for making the order
- the date it was made
- the general effect of the order and
- the date on which the order is to cease to have effect, or if the order has been made on the revocation of a licence how that date is determined<sup>351</sup>

355. The notice served on each relevant person (with a copy of the IMO) must, in addition to the above information contain:

- details of the right to appeal against the decision to make the IMO or the terms of the order and
- the period in which an appeal can be made<sup>352</sup>

This information is not required where the IMO has been made with the authorisation of an RPT in respect of a non licensable property.

356. The notice and copy of the IMO must be served on each relevant person within 7 days of the date the order is made and as soon as practicable on the occupiers.<sup>353</sup>

<sup>347</sup> Section 102 (9) and (10).

<sup>348</sup> Schedule 6, paragraph 7(5).

<sup>349</sup> Schedule 6, paragraph 7(2).

<sup>350</sup> Schedule 6, paragraph 7(3).

<sup>351</sup> Schedule 6, paragraph 7(4).

<sup>352</sup> Schedule 6, paragraph 7(6).

<sup>353</sup> Schedule 6, paragraphs 7(2) & (7).



# DRAFT

357. A 'relevant person' is:

- the landlord
- any other owner of the premises
- any person who is a leaseholder of any part of the premises other than a tenant under a lease with an unexpired term of three years or less<sup>354</sup>
- any mortgagee
- and any other person who (but for the order) would be the person having control or the person managing the property e.g. a managing agent

IMOs must be served on all relevant persons, so the LHA must take all appropriate steps to ascertain who such persons are (if not known to them). There is no proviso under a management order that the LHA only needs to serve them on relevant persons who are 'known to the LHA', unlike under the licensing provisions (see chapter two). However, it is unlikely that a court or tribunal would deem an order invalid if appropriate enquiries did not reveal the existence of a relevant person who subsequently became aware of the order.

### Appeals

358. Where an IMO is made in respect of a property which is licensable under Parts 2 or 3, a relevant person may appeal against the making of the order or its terms.<sup>355</sup>

359. The period within which an appeal may be made is 28 days from the date the order was made<sup>356</sup>. An RPT may allow an appeal outside of that time if it is satisfied there is good reason for the delay.<sup>357</sup> Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know where to appeal to. If the address is provided in the notice then such an excuse will not be available.

360. The 28 day time limit does not apply if the appeal is made because the order does not make any provision for the rate of interest applying to surpluses or the interval in which such surpluses are to be paid under the financial arrangements applying under an IMO (section 110). Such an appeal may be made at any time the IMO is in force, but an RPT's power on such an appeal is limited to determining whether the order should be varied to include such a term or terms, and if so what provision should be made in respect of the term.<sup>358</sup>

<sup>354</sup> Schedule 6, paragraph 8(4). "Unexpired term of three years or less" includes assured short hold tenancies granted for three years or less or granted as a periodic tenancy. It also excludes statutory tenancies under the Housing Act 1988 or Rent Act 1977. A licence to occupy is already excluded as that does not create an interest. Most resident landlord lettings will also be excluded (except in connection with separate flats in section 257 HMOs, in some circumstances).

<sup>355</sup> Schedule 6, paragraph 24(1).

<sup>356</sup> Schedule 6, paragraph 25(2).

<sup>357</sup> Schedule 6, paragraph 25(3).

<sup>358</sup> Schedule 6, paragraphs 24(4) and (5).

DRAFT

361. There is no right of appeal against an IMO which has been authorised to be made by an RPT (i.e. in respect of a non licensable property), or if an RPT directs an IMO be made on the revocation of a FMO<sup>359</sup>, except in connection with the making of provision for the rate of interest in which such surpluses are to be paid under the financial arrangements applying under an IMO mentioned above.

## Duties of an LHA whilst an order is in force

362. An LHA has the following general duties in respect of a property upon which it has made an IMO:
- to immediately take such steps as necessary to protect the health, safety and welfare of the occupiers of the property or persons occupying or owning premises within its vicinity<sup>360</sup> and
  - to secure that the property is properly managed pending the grant of a licence, the making of an FMO or the revocation of the IMO (in respect of a non licensable property)<sup>361</sup>

363. An LHA is under a specific duty to ensure that, whilst an IMO is in force, the property is insured against destruction by fire or other causes.<sup>362</sup> During the operation of the IMO the LHA must decide, having regard to all the circumstances of the case, if the property is subject to licensing under Parts 2 or 3, either to;

- grant a licence or
- make an FMO to replace the IMO<sup>363</sup>

For this purpose a grant of a licence includes the serving of a temporary exemption notice, whether or not an application (notification) for one has been received.<sup>364</sup>

364. If the property is not required to be licensed under Parts 2 or 3 the LHA must decide during the operation of the IMO, having regard to all the circumstances of the case, either to:
- make an FMO or
  - revoke the order, return the property to the management of the person who at the time of revocation was managing it, and take no further action in respect of the property.<sup>365</sup>

<sup>359</sup> Schedule 6, paragraph 24(2).

<sup>360</sup> Section 106(2).

<sup>361</sup> Section 106(3).

<sup>362</sup> Section 106(7).

<sup>363</sup> Section 106(4).

<sup>364</sup> Section 106(6).

<sup>365</sup> Section 106(5).

DRAFT

## Effect of an order

365. Nothing in Part 4 of the 2004 Act prevents an LHA from appointing another body, such as a registered social landlord or a managing agent, to carry out on its behalf the management functions under an IMO. While such body would be acting as the agent of the LHA, all duties, powers, obligations and liabilities under an order remain the responsibility of the LHA.

366. Under an IMO the LHA:

- has a right to possession of the property, (subject to the rights of existing occupiers of the house who were in occupation at the commencement of the order<sup>366</sup>)
- has a right to do (or authorise a manager or other person to do) anything which the landlord would have had a right to do if the order had not been made (e.g. manage the property and the tenancies, collect rent arrears, increase rents, carry out repairs and serve notices, including notice seeking possession etc)
- and may grant to persons tenancies or licences in respect of the occupation of the property or part of it<sup>367</sup>

However, a tenancy or licence may not be granted by the LHA unless the former landlord (referred to in the 2004 Act as the immediate landlord<sup>368</sup>), or such other person who would, but for the order, be entitled to grant a tenancy or licence consents in writing to the LHA doing so.<sup>369</sup>

367. An LHA does not acquire an interest or estate in the property and, therefore, cannot sell it or grant a long lease on the whole, or any part, of it. However, if the immediate landlord is a long leaseholder of the property the LHA is to be treated as the lessee instead, but the LHA cannot dispose of that interest.<sup>370</sup>

368. Any usual rule of law or enactment relating to landlords and tenants or leases applies where the LHA is to be treated as the lessor, for example, governing the relationship between it and the superior landlord. Regulations have been made supplementing the provisions in the 2004

<sup>366</sup> Section 124(3). Section 124 defines existing occupiers as a person who at the time the order comes in to force is for an HMO or part 3 house, either occupying part of the house and does not have an estate or interest in the whole house or for a part 3 house, is occupying the whole of the house.

<sup>367</sup> Section 107(3) and 116(3). Under section 116(4), in respect of FMOs, the leasehold interest or licence must not without the consent of the owner be for a fixed term expiring after the date when the order expires, must not be terminable by more than 4 weeks notice to quit, and the LHA may grant an assured shorthold tenancy without consent provided it is created more than 6 months before the expiry of the order. If the LHA wants to grant any other form of legal interest it needs to obtain the consent of the "immediate landlord".

<sup>368</sup> The term "immediate landlord" is used in this chapter and chapter 6 in reference to the person who would be entitled to receive the rent if the order was not in force. This includes the former landlord or any person who has acquired his interest or estate in the property. It also means any person (where the context applies) who will be the landlord when the order ceases to have effect.

<sup>369</sup> Section 107(4).

<sup>370</sup> Section 107(5).

DRAFT

Act where the LHA is to be treated as the lessee of the property under an IMO or FMO. These regulations<sup>371</sup> include provisions:

- requiring the LHA to serve, as soon as an order has been made, a notice on the superior landlord:
  - specifying the type of order which is in force
  - the date the order comes (or came) into force
  - a summary of the effect the order has on the lease
  - and the name and address of the LHA, or any person authorised by it, for the purpose of serving demands for ground rent, service or other charges payable under the lease
- making the LHA liable for any payment of ground rent, service or other charge payable under the lease from the date the order comes into force. However, provided the LHA has served the notice mentioned above, the LHA is not liable for any charges payable if the superior landlord fails to serve a demand
- authorising the LHA (if it elects to do so) to pay any arrears of ground rent or service or other charges payable under the lease, which were accrued before the order was made
- permitting the LHA to challenge the reasonableness or otherwise of any demand for ground rent, service or other charges payable or purported to be payable under the lease on its own account or on behalf of the person who is the legal long leaseholder of the property and
- requiring the LHA to serve a copy of any demand received for ground rent, service or other charges on the person who is the legal long leaseholder of the property (if the person's whereabouts are known) within 10 days of the demand being received by the lessor. If the legal long leaseholder wishes to dispute any matter sent to him, the LHA must furnish him with such advice and information as he may reasonably require. However, that person cannot require the LHA not to pay any demand which the LHA considers is reasonably due or outstanding

369. The LHA (or any person authorised by it to manage the property) is not liable to any person with an estate or interest in the property for any act or omission in the performance (or intended performance) of its duties under an IMO, unless that act or omission is due to negligence.<sup>372</sup> For example, an immediate landlord cannot sue the LHA for not complying with a term of the order.

370. Any legislation which refers to an LHA's housing accommodation does not include a property on which an IMO is in force.<sup>373</sup> Consequently,

<sup>371</sup> The Housing (Management Orders and Empty Dwelling Management Orders) (Supplemental Provisions) (England) Regulations 2006 (SI 2006/368).

<sup>372</sup> Section 107(7).

<sup>373</sup> Section 107(8).

DRAFT

such a property is not part of the LHA's housing stock and any income or expenditure does not fall within its housing revenue account.

371. An IMO is a local land charge. An LHA can apply to have an appropriate restriction entered on the land registry register of the property in respect of the order.<sup>374</sup>
372. As an LHA is not the owner of the property, the 2004 Act makes provisions for ensuring that any tenancy granted by an LHA is to be treated as if it were a legal lease and any licence granted by it is to be treated as if it were granted by the legal owner of the property.<sup>375</sup>
373. Whilst the IMO is in force the immediate landlord of the property may not:
- receive any rent or other charges from the occupier(s) (payable in connection with the occupation of the property)
  - exercise any right or powers to manage the property or
  - create any licences or leases in respect of the property or other rights to occupy it

However, any person (including the immediate landlord) with an estate or interest in the property, or a part of it, may dispose of that estate or interest (e.g. sell it)<sup>376</sup>, notwithstanding and subject to the order.

374. An IMO does not affect the validity of:
- any mortgage relating to the property or any rights or remedies of the mortgagee under the mortgage or
  - the validity of any lease under which the LHA is (treated as) the lessee or the rights or remedies of the lessor under that lease

Except to the extent that the rights or remedies would prevent an LHA from exercising its right to create licences or tenancies of the property, or any part of it.<sup>377</sup>

375. In any proceedings to enforce any of the rights or remedies of the mortgagee or the superior landlord the court may make such an order as it sees fit with respect to the IMO, including an order quashing it.<sup>378</sup>

376. An immediate landlord is defined as:
- the person who owns the property or holds a lease of it and
  - would be entitled to receive the rent or other charges from the occupier(s) of the property if the order had not been made<sup>379</sup>

<sup>374</sup> Section 107(9) and (10).

<sup>375</sup> Section 108.

<sup>376</sup> Section 109(2) and (3).

<sup>377</sup> Section 109(4).

<sup>378</sup> Section 109(5).

<sup>379</sup> Section 109(6).

DRAFT

377. An LHA may spend such monies as is reasonable in carrying out its duties to manage a property subject to an IMO.<sup>380</sup> Such expenditure might include, for example:

- the costs incurred in carrying out works, or taking other action to secure the health, safety and welfare of the occupiers are protected
- the costs of providing services or carrying out routine maintenance
- the cost of insurance and
- the cost of providing management services, including administrative costs

But is not limited to such expenditure.

378. Any rent or other payments (in the nature of rent) collected by the LHA from the occupier (s) of the property may be used by it to meet:

- the relevant expenditure and
- any amounts of compensation paid to a third party under section 128<sup>381</sup>

379. Having deducted from the rents or payment it receives its relevant expenditure and any amounts of compensation payable, the LHA must pay to the immediate landlord:

- the surplus (if any) and
- if the LHA considers it appropriate, any interest on that amount at a rate fixed by the LHA

The IMO may specify the intervals as to when payments of surpluses are to be made and if interest is payable the rate of interest. If the order does not contain terms relating to either or both of these provisions the immediate landlord may appeal to an RPT.<sup>382</sup> If there is more than one immediate landlord, the LHA may pay to each any sums due to them in such proportion as it decides is appropriate.<sup>383</sup>

380. The LHA must keep full accounts of its income or expenditure and must allow any person with an estate or interest in the property all reasonable facilities for inspecting the accounts, to take copies of them and for the purpose of verifying them (for example the production of actual invoices, quotes and so on).<sup>384</sup>

381. An immediate landlord can apply at any time to an RPT for an order:

- declaring the amount shown in the accounts do not constitute reasonable expenditure and

<sup>380</sup> Section 110(2).

<sup>381</sup> Section 110(3).

<sup>382</sup> See paragraph 417.

<sup>383</sup> Section 110(4) and (5).

<sup>384</sup> Section 110(6).

DRAFT

- requiring the LHA to make financial adjustments in the accounts and otherwise to reflect the declaration<sup>385</sup>

An RPT may dismiss the application (if it is satisfied the expenditure was properly incurred) or make such an order as it considers appropriate.

382. If the LHA has secured a rent repayment order in respect of the property, any monies received under that order and applied against the IMO<sup>386</sup> is not income or relevant expenditure for any purpose in section 110.

## Variation of an order

383. An LHA may vary an IMO:

- on its own initiative or
- on the application of a relevant person<sup>387</sup>

384. An application to vary should normally be required to be made in writing. There is no prescribed information that the applicant needs to provide, but the application should be reasonably clear as to who is making the application (and his standing in doing so), the purpose of the proposed variation and what variation is sought. An LHA may not charge a fee for considering an application.

385. A 'relevant person' is:

- the landlord
- any other owner of the premises
- any person who is a leaseholder of any part of the premises other than a tenant under a lease with an unexpired term of three years or less<sup>388</sup>
- any mortgagee and
- any other person who (but for the order) would be the person having control or the person managing the property, for example, a managing agent

386. Where:

- an application is made by a relevant person or
- the LHA is minded to vary the IMO on its own initiative

<sup>385</sup> Section 110(7).

<sup>386</sup> See paragraph 232.

<sup>387</sup> Section 111(3).

<sup>388</sup> "Unexpired term of three years or less" includes assured short hold tenancies granted for three years or less or granted as a periodic tenancy. It also excludes statutory tenancies under the Housing Act 1988 or Rent Act 1977. A licence to occupy is already excluded as that does not create an interest. Most resident landlord lettings will also be excluded (except in connection with separate flats in section 257 HMOs, in some circumstances).

DRAFT

It must consult with each of the relevant persons that are 'known to it'<sup>389</sup> before making a final decision. The minimum consultation period is 14 days.<sup>390</sup>

387. If the LHA is minded to vary the IMO it must serve a notice of consultation containing:

- the effect of the variation
- the reasons for the variation and
- must specify the end of the consultation period<sup>391</sup>

An LHA does not need to follow this procedure if it had already served such a notice if, following the consultation, the variation now proposed is not significantly different from that which was originally proposed, or it considers the variation is not material.<sup>392</sup>

388. If the LHA decides to vary the IMO it must serve on all the relevant persons known to it a copy of the decision to vary the licence and a notice specifying:

- the reasons for the decision (and the date on which it was made)
- the right of appeal against that decision and
- the time limit for appealing against that decision

The documents must be served within seven days. This period begins on the day the decision was made.<sup>393</sup>

389. If the LHA is minded to refuse to vary the IMO it must consult for 14 days on its proposal with the relevant persons known to it. The notice of consultation must:

- specify the reasons why it proposes to refuse to vary the IMO and
- the consultation period<sup>394</sup>

390. If the LHA decides to refuse to vary the IMO it must serve a notice on all the relevant persons known to it specifying:

- the decision not to vary the IMO
- the reasons for the decision and the date on which it was made and
- the right of appeal against the decision
- the time limit for lodging an appeal

<sup>389</sup> Schedule 6, paragraph 23(4). A relevant person ought to be known to the LHA because of the requirements on serving notices when making an IMO- see paragraph 414. The Act does not require the LHA to make exhaustive enquiries to ascertain who these persons might be.

<sup>390</sup> Schedule 6, paragraph 23(3).

<sup>391</sup> Schedule 6, paragraphs 9 and 10.

<sup>392</sup> Schedule 6, paragraphs 12 and 13.

<sup>393</sup> Schedule 6, paragraph 11.

<sup>394</sup> Schedule 6, paragraphs 14 and 15.



DRAFT

Such a notice must be served on the relevant persons within seven days. This period begins on the day the decision to refuse to vary the IMO was made.<sup>395</sup>

391. All relevant persons have a right of appeal against the decision to vary or refuse to vary an IMO. The period in which an appeal may be made is 28 days from the date of the decision specified in the notice.<sup>396</sup> An RPT may allow an appeal outside of that time if it satisfied there is good reason for the delay<sup>397</sup>, but the notice should not specify this. Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know where to appeal to. If the address is provided in the notice then such an excuse will not be available.
392. A variation takes effect when the period for appealing against it expires and no such appeal is made, or, if an appeal is lodged, the date on which the appeal is finally disposed of, unless it is withdrawn (in which case it takes effect from the date of withdrawal).<sup>398</sup>
393. An IMO may be varied to:
- amend any term of the IMO
  - add any relevant term to the IMO or
  - to remove any term of the IMO

## Revocation of an order

394. An IMO comes to end on the date specified or determinable in the order and cannot be made for any period exceeding 12 months. An IMO which ends (or is revoked) cannot be immediately replaced by another one.
395. An LHA may, at any time during the IMO, revoke it, if:
- the property was licensable under Parts 2 or 3, and has ceased to be a property to which licensing applies
  - the property is licensable under Parts 2 and 3 and the LHA has granted a licence which will come into force on the revocation of the IMO
  - an FMO has been made which will replace the IMO and
  - in any other circumstances where the LHA considers it appropriate to revoke the IMO, such as if the property is non licensable and a decision has been taken to revoke the order and return the property to the management of the landlord<sup>399</sup>

<sup>395</sup> Schedule 6, paragraph 16.

<sup>396</sup> Schedule 6, paragraph 29 (2).

<sup>397</sup> Schedule 6, paragraph 29 (3).

<sup>398</sup> Schedule 6, paragraph 31.

<sup>399</sup> Section 112(1).

DRAFT

396. An LHA may revoke an IMO:
- on its own initiative
  - or on the application of a relevant person<sup>400</sup>
397. An application to revoke should normally be required to be made in writing. There is no prescribed information that the applicant needs to provide, but the application should be reasonably clear as to who is making the application (and his standing in doing so), the purpose of the proposed variation and what variation is sought. An LHA may not charge a fee for considering an application.
398. A 'relevant person' is:
- the landlord
  - any other owner of the premises
  - any person who is a leaseholder of any part of the premises other than a tenant under a lease with an unexpired term of three years or less<sup>401</sup>
  - any mortgagee and
  - any other person who (but for the order) would be the person having control or the person managing the property, for example, a managing agent
399. Where:
- an application is made by a relevant person or
  - the LHA is minded to revoke the IMO on its own initiative
- It must consult with each of the relevant persons that are 'known to it'<sup>402</sup> before making a final decision. The minimum consultation period is 14 days.<sup>403</sup>
400. If the LHA is minded to revoke the IMO it must serve a notice of consultation containing:
- the reasons for the revocation and
  - the end of the consultation period<sup>404</sup>
401. If the LHA decides to revoke the IMO it must serve on all the relevant persons known to it a copy of the decision to revoke it and a notice specifying:

<sup>400</sup> Section 112(3).

<sup>401</sup> "Unexpired term of three years or less" includes assured short hold tenancies granted for three years or less or granted as a periodic tenancy. It also excludes statutory tenancies under the Housing Act 1988 or Rent Act 1977. A licence to occupy is already excluded as that does not create an interest. Most resident landlord lettings will also be excluded (except in connection with separate flats in section 257 HMOs, in some circumstances).

<sup>402</sup> Schedule 6, paragraphs 23 & 24. A relevant person ought to be known to the LHA because of the requirements on serving notices when making an IMO – see paragraph 414. The Act does not require the LHA to make exhaustive enquiries to ascertain who these persons might be.

<sup>403</sup> Schedule 6, paragraph 29 (1)

<sup>404</sup> Schedule 6, paragraphs 22 and 23.

DRAFT

- the reasons for the decision (and the date on which it was made)
- the right of appeal against that decision and
- the time limit for appealing against that decision

The documents must be served within seven days of the decision being made.<sup>405</sup>

402. If the LHA is minded to refuse to revoke the IMO it must consult for 14 days on its proposal with the relevant persons known to it. The notice of consultation must:

- specify the reasons why it proposes to refuse to vary the IMO and
- the consultation period<sup>406</sup>

403. If the LHA decides to refuse to revoke the IMO it must serve a notice on all the relevant persons known to it specifying:

- the decision not to vary the IMO
- the reasons for the decision and the date on which it was made
- the right of appeal against the decision and
- the time limit for lodging an appeal

Such a notice must be served on the relevant persons within seven days of the decision to refuse to revoke the IMO being made.<sup>407</sup>

404. All relevant persons have a right of appeal against the decision to revoke or refuse to revoke an IMO. The period in which an appeal may be made is 28 days from the date of the decision specified in the notice.<sup>408</sup> An RPT may allow an appeal outside of that time if it is satisfied there is good reason for the delay<sup>409</sup>, but the notice should not specify this. Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know where to appeal to. If the address is provided in the notice then such an excuse will not be available.

405. A revocation takes effect when the period for appealing against it expires and no such appeal is made or, if an appeal is lodged, the date on which the appeal is finally disposed of, unless it is withdrawn (in which case it takes effect from the date of withdrawal).<sup>410</sup>

<sup>405</sup> Schedule 6, paragraph 24.

<sup>406</sup> Schedule 6, paragraph 26.

<sup>407</sup> Schedule 6, paragraph 28.

<sup>408</sup> Schedule 6, paragraph 33(1).

<sup>409</sup> Schedule 6, paragraph 33(3).

<sup>410</sup> Schedule 6, paragraph 35.

DRAFT

## Making of a final management order

### General

406. An LHA:
- **must** make an FMO in respect of a property which is required to be licensed under Parts 2 or 3, if on the expiry or revocation of an IMO it is unable to grant a licence for the property and
  - **may** make an FMO, in respect of a property which is not required to be licensed under Parts 2 or 3, if on the expiry or revocation of the IMO the LHA is satisfied that it is necessary to make the FMO to protect on a long term basis the health, safety and welfare of persons occupying the property or persons occupying or owning premises within its vicinity<sup>411</sup>

The FMO takes effect on the date the IMO ceases to have effect.<sup>412</sup>

407. An LHA must make a new FMO to replace the existing FMO (the existing order), if the property is required to be licensed under Parts 2 or 3, and on the expiry or revocation of the existing order it is unable to grant a licence for the property. The FMO takes effect on the date the existing order ceases to have effect.<sup>413</sup>
408. An LHA may make a new FMO to replace the existing order, if the property is not required to be licensed under Parts 2 or 3, and on the expiry or revocation of the existing order, the LHA is satisfied that it is necessary to make the FMO to protect on a long term basis the health, safety and welfare of persons occupying the property or persons occupying or owning premises within its vicinity. The FMO takes effect on the date the existing order ceases to have effect.<sup>414</sup>
409. An FMO does not have to apply to any part of the property occupied by a resident landlord.<sup>415</sup>

### Duration of an FMO

410. An FMO comes into force if there is no appeal made against it 28 days after the FMO was made<sup>416</sup> which must also be the date on which the IMO or existing order expires.
411. If there is an appeal against the making of the FMO, the IMO or, as the case may be, the existing order, remains in force until the appeal has finally been disposed of or is withdrawn<sup>417</sup>:

<sup>411</sup> See paragraphs 398 to 402.

<sup>412</sup> Section 113(1) to (3).

<sup>413</sup> Section 113(5).

<sup>414</sup> Section 113(6).

<sup>415</sup> Section 113(7).

<sup>416</sup> Schedule 6, paragraph 27(2).

<sup>417</sup> Schedule 6, paragraph 27(3).

DRAFT

- if the property is required to be licensed under Parts 2 or 3 and there is an existing order, that order automatically continues in force until the disposal of an appeal<sup>418</sup> or
- if the property is not required to be under Parts 2 or 3 and there is an existing order the LHA may apply to an RPT for the existing order to continue in force until the appeal is disposed of.<sup>419</sup> An application to the tribunal is not required if the appeal is disposed of before the IMO would have ceased to be in force

412. An FMO lasts for a maximum of five years from the date it comes into force unless the order provides that it is to cease at an earlier date.<sup>420</sup>

### **Procedure on making an order**

413. Before making an FMO the LHA must serve a notice and a copy of the proposed order on each relevant person (and consider any representations received). The notice must set out:

- the reasons why it is proposed to make the order
- the main terms of the order (and in particular those of the management scheme proposed to be made under the order) and
- the end of the consultation period<sup>421</sup>

414. If following the initial consultation (or any further consultation) the LHA decides to make any modifications to its proposal it must serve a notice on each relevant person setting out:

- the proposed modifications and the reasons for them; and
- the end of the consultation period<sup>422</sup>

This paragraph does not apply if the proposed modifications are not material or are not materially different from any previous modification.<sup>423</sup>

415. The consultation period is:

- in respect of a notice under paragraph 472, at least 14 days from the date of the service of the notice and
- in respect of a notice under paragraph 473, at least seven days from the date of the service of the notice<sup>424</sup>

<sup>418</sup> Section 114(5) and (6).

<sup>419</sup> Section 114(5) and (7).

<sup>420</sup> Section 114(3) and (4).

<sup>421</sup> Schedule 6, paragraphs 1 and 2.

<sup>422</sup> Schedule 6, paragraphs 3 and 4.

<sup>423</sup> Schedule 6, paragraphs 5 and 6.

<sup>424</sup> Schedule 6, paragraph 8(1).

DRAFT

416. Once an FMO has been made the LHA must serve a notice and a copy of it:
- on the relevant persons<sup>425</sup> and
  - the occupiers of the property<sup>426</sup>
417. Fixing the documents to some conspicuous part of the property is sufficient service of the documents on the occupiers.<sup>427</sup>
418. The notice (served with a copy of the FMO, including the management scheme) must contain:
- the reasons for making the order and the date it was made
  - the date on which the order is to cease to have effect and
  - a general description of how the property is to be managed in accordance with the management scheme<sup>428</sup>
419. The notice served on the relevant persons (with a copy of the FMO, including the management scheme) must, in addition to the above information, contain:
- details of the right to appeal against the decision to make the FMO or the terms of the order and
  - the period in which an appeal can be made<sup>429</sup>
420. The notice and copy of the FMO must be served on each relevant person within seven days of the date the order is made and as soon as practicable on the occupiers.<sup>430</sup>
421. A 'relevant person' is:
- the landlord
  - any other owner of the premises
  - any person who is a leaseholder of any part of the premises other than a tenant under a lease with an unexpired term of three years or less<sup>431</sup>
  - any mortgagee
  - and any other person who (but for the order) would be the person having control or the person managing the property, for example, a managing agent

<sup>425</sup> Schedule 6, paragraph 7(5).

<sup>426</sup> Schedule 6, paragraph 7(2).

<sup>427</sup> Schedule 6, paragraph 7(3).

<sup>428</sup> Schedule 6, paragraph 7(4).

<sup>429</sup> Schedule 6, paragraph 7(6).

<sup>430</sup> Schedule 6, paragraph 7(2).

<sup>431</sup> "Unexpired term of three years or less" includes assured short hold tenancies granted for three years or less or granted as a periodic tenancy. It also excludes statutory tenancies under the Housing Act 1988 or Rent Act 1977. A licence to occupy is already excluded as that does not create an interest. Most resident landlord lettings will also be excluded (except in connection with separate flats in section 257 HMOs, in some circumstances).

**DRAFT**

422. FMOs must be served on all relevant persons, so the LHA must take all appropriate steps to ascertain who such persons are (if not known to them). There is no proviso under a management order that the LHA only needs to serve them on relevant persons who are 'known to the LHA', unlike under the licensing provisions (see chapter two). However, it is unlikely that a court or tribunal would deem an order invalid if appropriate enquiries did not reveal the existence of a relevant person who subsequently became aware of the order.

### Appeals

423. The period in which an appeal may be made is 28 days from the date that the order was made.<sup>432</sup> An RPT may allow an appeal outside of that time if it is satisfied there is good reason for the delay.<sup>433</sup> Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know where to appeal to. If the address is provided in the notice then such an excuse will not be available.

## Duties of an LHA whilst an order is in force

424. An LHA must ensure that a property that is subject to an FMO is properly managed in accordance with the management scheme made under the order.<sup>434</sup>
425. It must keep under review the FMO and in particular the management scheme and consider whether the continuation of the order (whether or not with variations) is the best alternative means available to the authority to secure the proper management of the property.<sup>435</sup>
426. If on review, from time to time, the LHA considers the best alternative available is to:
- continue the FMO with variations (including to the management schemes) it must make those variations
  - grant a licence under parts 2 or 3, it must grant the licence or
  - in the case of non licensable properties, revoke the FMO and take no further action it must do so<sup>436</sup>
427. An LHA is under a particular duty to ensure that whilst an FMO is in force the property is insured against destruction by fire or other causes.<sup>437</sup>

<sup>432</sup> Schedule 6, paragraph 25(2).

<sup>433</sup> Schedule 6, paragraph 25(3).

<sup>434</sup> Section 115(2).

<sup>435</sup> Section 115(3).

<sup>436</sup> Section 115 (4) and (5).

<sup>437</sup> Section 115(6.)

DRAFT

## Effect of an order

428. Under an FMO the LHA:
- has a right to possession of the property, subject to the rights of the existing occupiers<sup>438</sup>
  - has a right to do (or authorise a manager or other person to do) anything which the landlord would have had a right to do if the order had not been made (for example manage the property and the tenancies, collect rent arrears, increase rents, carry out repairs and, serve notices, including notice seeking possession and so on)
  - and may grant to persons tenancies or licences in respect of the occupation of the property or part of it<sup>439</sup>
429. Under an FMO an LHA may grant tenancies or licences without the consent of the immediate landlord. However, they may not create any tenancies or licences without such consent (in writing) unless:
- the tenancy or licence is for a fixed term expiring on or before the FMO would expire
  - the tenancy or licence is periodic and can be determined by no more than four weeks notice to quit
  - or the tenancy is an assured shorthold tenancy which is granted at least six months before the FMO is due to expire<sup>440</sup>
430. Under an FMO an LHA does not acquire an interest or estate in the property and, therefore, cannot sell it or grant a long lease on the whole, or any part, of it. However, if the immediate landlord is a long leaseholder of the property the LHA is to be treated as the lessee instead, but the LHA cannot dispose of that interest.<sup>441</sup>
431. Any rule of law or enactment relating to landlords and tenants or leases applies where the LHA is to be treated as the lessor, for example, governing the relationship between it and the superior landlord. Regulations have been made, under section 145, supplementing the provisions in the 2004 Act where the LHA is to be treated as the lessee of the property under an IMO or FMO.<sup>442</sup>
432. The LHA (or any person authorised by it to manage the property) is not liable to any person with an estate or interest in the property for any act or omission in the performance (or intended performance) of its duties under an FMO, unless that act or omission is due to negligence.<sup>443</sup> However, an

<sup>438</sup> Section 124(3). Section 124 defines existing occupiers as a person who at the time the order comes into force is, for an HMO or part 3 house, either occupying part of the house and does not have an estate or interest in the whole house or for a part 3 house, is occupying the whole of the house

<sup>439</sup> Section 116(3).

<sup>440</sup> Section 116(4).

<sup>441</sup> Section 116(5).

<sup>442</sup> The Housing (Management Orders and Empty Dwelling Management Orders) (Supplemental Provisions) (England) Regulations 2006 (SI 2006/368).

<sup>443</sup> Section 116(7).



DRAFT

application may be made to an RPT for the enforcement of a management scheme and a tribunal can award damages upon such an application, if appropriate.

433. Any legislation which refers to an LHA's housing accommodation does not include a property on which an FMO is in force.<sup>444</sup> Consequently such a property is not part of the LHA's housing stock and any income or expenditure does not fall within its housing revenue account.
434. An FMO is a local land charge. An LHA can apply to have an appropriate restriction entered on the land registry register of the property in respect of the order.<sup>445</sup>
435. As an LHA is not the owner of the property, the 2004 Act makes provisions for ensuring that any tenancy granted by an LHA is to be treated as if it were a legal lease and any licence granted by it is to be treated as if it were granted by the legal owner of the property.<sup>446</sup>
436. Whilst the FMO is in force the immediate landlord of the property may not:
- receive any rent or other charges from the occupier(s) (payable in connection with the occupation of the property)
  - exercise any right or powers to manage the property
  - or create any licences or leases in respect of the property or other rights to occupy it

However, any person (including the immediate landlord) with an estate or interest in the property, or a part of it, may dispose of that estate or interest (for example sell it)<sup>447</sup>, notwithstanding and subject to the order.

437. An FMO does not affect the validity of:
- any mortgage relating to the property or any rights or remedies of the mortgagee under the mortgage or
  - or the validity of any lease under which the LHA is (treated as) the lessee or the rights or remedies of the lessor under that lease

Except in either the case to the extent that the rights or remedies would prevent an LHA from exercising its right to create licences or tenancies of the property, or any part of it.<sup>448</sup>

438. In any proceedings to enforce any of the rights or remedies of the mortgagee or the superior landlord the court may make such an order as it sees fit with respect to the FMO, including an order quashing it.<sup>449</sup>

<sup>444</sup> Section 116(8).

<sup>445</sup> Section 116(9) and (10.)

<sup>446</sup> Section 117.

<sup>447</sup> Section 118(2) and (3).

<sup>448</sup> Section 118(4).

<sup>449</sup> Section 118(5).

DRAFT

439. An immediate landlord is defined as:
- the person who owns, or holds a lease over the property or part of it and
  - would be entitled to receive the rent or other charges from the occupier(s) of the property if the order had not been made<sup>450</sup>

## Management schemes and accounts

### Introduction

440. Every FMO must contain a management scheme which sets out how the LHA intends to carry out its functions to properly manage the property under the FMO. Such a scheme is in two parts:
- Part 1 must set out such matters as estimated income and expenditure, details of proposed works, payment of compensation and surpluses and so on
  - Part 2 must set out in general terms how they intend to address the matters which caused them to make the FMO
441. A management scheme must be in force before an FMO comes into force. Consequently an LHA may make an IMO whilst preparing a draft scheme.

### Part 1

442. Part 1 of the scheme must include the following<sup>451</sup>:
- details of any works the LHA proposes to carry out to the property whilst the order is in force<sup>452</sup>
  - an estimate of any capital or other expenditure the LHA may incur in relation to the property whilst the order is in force<sup>453</sup>
  - the amount of rent or other charges the LHA will seek to obtain having regard to the condition of the property or expected condition of the property whilst the order is in force<sup>454</sup>
  - the amount of compensation payable to a third party (under section 128) and the provision for payment of that compensation
  - provision for the payment of any surplus of income to the immediate landlord after the deduction of the relevant expenditure and any compensation payable to a third party<sup>455</sup>

<sup>450</sup> Section 118(6).

<sup>451</sup> Section 119(4).

<sup>452</sup> Works would not include routine repairs, but capital works including cyclical maintenance.

<sup>453</sup> This includes an estimate of all expenditure in carrying out the management of the property, including insurance of the building, management services, administrative charges, contract management, repairs etc.

<sup>454</sup> In estimating the rents the LHA should also take account of any projected voids, any increases (or reduction) of rents permitted under the contract, any rents payable under new lettings, any increase in rents attributable to improvements to the condition of the property etc. The LHA must not charge below (subject to any statutory or contractual restrictions on the level of rent) the market rent for any existing occupiers and must seek a fair market rent in respect of any new letting rent.

<sup>455</sup> i.e. as to when and how payment is to be made and any mechanism for calculating such payments.

**DRAFT**

- provision for the payment of any balance due to the immediate landlord at the end of FMO and
- provision for the payment of any balance of compensation due to a third party at the end of the FMO

443. Part 1 may also (but does not have to) include the following<sup>456</sup>:

- the LHA's intention regarding the use of the rents and other charges to meet the relevant expenditure
- the LHA's intention (if any) regarding payment of interest on any surplus due to the immediate landlord<sup>457</sup>
- provision that any outstanding balance due by the LHA to the immediate landlord or compensation payable to a third party due to be paid at the end of the FMO or the previous FMO is not to be paid, but instead carried forward to meet relevant expenditure under the FMO (including the payment of compensation to a third party)
- provision that any outstanding balance due to the LHA by the immediate landlord due to be paid at the end of the FMO or the previous FMO is not to be paid, but instead carried forward to the FMO and paid through the rents and other charges collected under it
- and the LHA's intention regarding the recovery of expenditure, including any payment of interest, from the immediate landlord, which cannot be recovered from the income received during the FMO

## Part 2

444. Part 2 of the scheme must describe in general terms how the LHA intends to manage the property under the FMO to address the matters which caused them to make the order, including (for example):

- steps the LHA intends to take to ensure that occupiers comply with the terms of their agreements or the general law, for example, not to commit acts of anti-social behaviour and/or
- a description of repairs to be carried out and the reasons for doing so<sup>458</sup>

## Accounts

445. The LHA must keep full accounts of their income and expenditure. They must allow any person with an estate or interest in the property all reasonable facilities for inspecting the accounts, to take copies of them and for the purpose of verifying them (for example the production of actual invoices, quotes and so on).<sup>459</sup>

<sup>456</sup> Section 119(5).

<sup>457</sup> Including the rate of interest as determined by the LHA.

<sup>458</sup> Section 119(6).

<sup>459</sup> Section 119(7).

DRAFT

**Immediate landlord**

446. If there is more than one immediate landlord, the LHA may recover from each any sums due to or by them under a management scheme in such proportion as the LHA decides is appropriate.

**Enforcement of a scheme**

447. A person who is:

- the immediate landlord of the property or
- a third party to whom compensation is payable under section 128

May apply at any time to an RPT for an order requiring the LHA to manage the property (or any part of it) in accordance with the management scheme.<sup>460</sup>

448. If the tribunal considers it appropriate it may make an order:

- requiring the LHA to manage the property (or a part of it) in accordance with the management scheme or
- revoke the management scheme<sup>461</sup>

449. In making an order the tribunal may:

- specify the steps the LHA must take to manage the property (or the part of it) in accordance with the scheme
- vary the FMO (including the management scheme) or
- order the LHA to pay compensation to the person by way of damages<sup>462</sup>

**Management scheme and rent repayment order**

450. If the LHA has secured a rent repayment order in respect of the property on which a management scheme under section 119 is in force any monies received under that order and applied against the FMO is not income or relevant expenditure for any purpose in the management scheme.

**Variation of an order**

451. An LHA may vary an FMO. An order and, in particular a management scheme must be kept under review and varied as necessary. Accordingly any reference to the variation of an FMO includes a variation to any term or terms of such a scheme or any addition of a term to or removal from the management scheme.

<sup>460</sup> Section 120(1) and (4).

<sup>461</sup> Section 120(2).

<sup>462</sup> Section 120(3).

DRAFT

452. An LHA may vary an FMO:

- on its own initiative or
- on the application of a relevant person<sup>463</sup>

453. An application to vary should normally be required to be made in writing. There is no prescribed information that the applicant needs to provide, but the application should be reasonably clear as to who is making the application (and his standing in doing so), the purpose of the proposed variation and what variation is sought. An LHA may not charge a fee for considering an application.

454. A 'relevant person' is:

- the landlord
- any other owner of the premises
- any person who is a leaseholder of any part of the premises other than a tenant under a lease with an unexpired term of three years or less<sup>464</sup>
- any mortgagee and
- any other person who (but for the order) would be the person having control or the person managing the property for example a managing agent

455. Where:

- an application is made by a relevant person or
- the LHA is minded to vary the FMO on its own initiative

It must consult with each of the relevant persons that are 'known to it'<sup>465</sup> before making a final decision. The minimum consultation period is 14 days.<sup>466</sup>

456. If the LHA is minded to vary the FMO it must serve a notice of consultation containing all of the following:

- the effect of the variation
- the reasons for the variation
- specify the end of the consultation period<sup>467</sup>

<sup>463</sup> Section 121(4)

<sup>464</sup> "Unexpired term of three years or less" includes assured short hold tenancies granted for three years or less or granted as a periodic tenancy. It also excludes statutory tenancies under the Housing Act 1988 or Rent Act 1977. A licence to occupy is already excluded as that does not create an interest. Most resident landlord lettings will also be excluded (except in connection with separate flats in section 257 HMOs, in some circumstances).

<sup>465</sup> Schedule 6, paragraph 23 (4). A relevant person ought to be known to the LHA because of the requirements on serving notices when making an IMO. The Act does not require the LHA to make exhaustive enquiries to ascertain who these persons might be.

<sup>466</sup> Schedule 6, paragraph 23(2).

<sup>467</sup> Schedule 6, paragraphs 9 and 10.

DRAFT

457. An LHA does not need to follow the procedure in paragraph 445 if it has already served a notice under that paragraph and, following the consultation, the variation now proposed is not significantly different from that which was originally proposed or it considers the variation is not material.<sup>468</sup>

458. If the LHA decides to vary the FMO it must serve on all the relevant persons known to it a copy of the decision to vary the licence and a notice specifying:

- the reasons for the decision (and the date on which it was made)
- the right of appeal against that decision and
- the time limit for appealing against that decision

The documents must be served within seven days of the decision being made.<sup>469</sup>

459. If the LHA is minded to refuse to vary the FMO, it must serve a notice of consultation on the relevant persons known to it and consult for 14 days on its proposal<sup>470</sup>. The notice must contain:

- the reasons why it proposes to refuse to vary the FMO and
- the consultation period<sup>471</sup>

460. If the LHA decides to refuse to vary the FMO it must serve a notice on all the relevant persons known to it specifying:

- the decision not to vary the FMO
- the reasons for the decision and the date on which it was made
- the right of appeal against the decision and
- the time limit for lodging an appeal

Such a notice must be served on the relevant persons within seven days of the decision to refuse to vary the FMO being made.<sup>472</sup>

461. All relevant persons have a right of appeal against the decision to vary or refuse to vary an FMO. The period in which an appeal may be made is 28 days from the date of the decision specified in the notice.<sup>473</sup> An RPT may allow an appeal outside of that time if it is satisfied there is good reason for the delay<sup>474</sup>, but the notice should not specify this. Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know

<sup>468</sup> Schedule 6, paragraphs 12 and 13.

<sup>469</sup> Schedule 6, paragraph 11.

<sup>470</sup> Schedule 6, paragraph 23

<sup>471</sup> Schedule 6, paragraphs 14 and 15

<sup>472</sup> Schedule 6, paragraph 16

<sup>473</sup> Schedule 6, paragraph 29 (2)

<sup>474</sup> Schedule 6, paragraph 29 (3)

DRAFT

where to appeal to. If the address is provided in the notice then such an excuse will not be available.

462. A variation takes effect when the period for appealing against it expires and no such appeal is made or, if an appeal is lodged, the date on which the appeal is finally disposed of, unless it is withdrawn (in which case it takes effect from the date of withdrawal).<sup>475</sup>

## Revocation of an order

463. An FMO comes to end on the date specified in the order and cannot be made for any period exceeding five years. An FMO which ends may be replaced by a further order.
464. An LHA may at any time during the FMO revoke it, if:
- the property was licensable under Parts 2 or 3, and has ceased to be a property to which licensing applies
  - the property is licensable under Parts 2 and 3 and the LHA has granted a licence which will come into force on the revocation of the FMO
  - a further FMO has been made which will replace the existing order or
  - in any other circumstances where the LHA considers it appropriate to revoke the FMO, such as if the property is non licensable and a decision has been taken to revoke the order and return the property to the management of the landlord<sup>476</sup>
465. An LHA may revoke an FMO:
- on its own initiative or
  - on the application of a relevant person<sup>477</sup>
466. An application to revoke should normally be required to be made in writing. There is no prescribed information that the applicant needs to provide, but the application should be reasonably clear as to who is making the application (and his standing in doing so), the purpose of the proposed variation and what variation is sought. An LHA may not charge a fee for considering an application.
467. A 'relevant person' is:
- the landlord
  - any other owner of the premises

<sup>475</sup> Schedule 6, paragraph 31.

<sup>476</sup> Section 122(1).

<sup>477</sup> Section 122(3).

DRAFT

- any person who is a leaseholder of any part of the premises other than a tenant under a lease with an unexpired term of three years or less<sup>478</sup>
- any mortgagee and
- any other person who (but for the order) would be the person having control or the person managing the property, for example, a managing agent

468. Where:

- an application is made by a relevant person
- or the LHA is minded to revoke the FMO on its own initiative

It must consult with each of the relevant persons that are known to it<sup>479</sup> before making a final decision. The minimum consultation period is 14 days.<sup>480</sup>

469. If the LHA is minded to revoke the FMO it must serve a notice of consultation containing:

- the effect of the revocation
- the reasons for the revocation and
- must specify the end of the consultation period<sup>481</sup>

470. If the LHA decides to revoke the FMO it must serve on all the relevant persons known to it a copy of the decision to revoke it and a notice specifying:

- the reasons for the decision (and the date on which it was made)
- the right of appeal against that decision and
- the time limit for appealing against that decision

The documents must be served within seven days of the decision being made.<sup>482</sup>

471. If the LHA is minded to refuse to revoke the FMO it must consult for 14 days on its proposal with the relevant persons known to it. The notice of consultation must:

- specify the reasons why it proposes to refuse to revoke the FMO and
- the consultation period<sup>483</sup>

<sup>478</sup> “Unexpired term of three years or less” includes assured short hold tenancies granted for three years or less or granted as a periodic tenancy. It also excludes statutory tenancies under the Housing Act 1988 or Rent Act 1977. A licence to occupy is already excluded as that does not create an interest. Most resident landlord lettings will also be excluded (except in connection with separate flats in section 257 HMOs, in some circumstances).

<sup>479</sup> Schedule 6, paragraph 23(4). A relevant person ought to be known to the LHA because of the requirements on serving notices when making an IMO – see paragraph 414. The Act does not require the LHA to make exhaustive enquiries to ascertain who these persons might be.

<sup>480</sup> Schedule 6, paragraph 23(3)

<sup>481</sup> Schedule 6, paragraphs 17 and 18.

<sup>482</sup> Schedule 6, paragraph 19.

<sup>483</sup> Schedule 6, paragraphs 20 and 21.



DRAFT

472. If the LHA decides to refuse to revoke the FMO it must serve a notice on all the relevant persons known to it specifying:

- the decision not to revoke the FMO
- the reasons for the decision and the date on which it was made
- the right of appeal against the decision and
- the time limit for lodging an appeal

Such a notice must be served on the relevant persons within seven days of the decision to refuse to revoke the FMO being made.<sup>484</sup>

473. All relevant persons have a right of appeal against the decision to revoke or refuse to revoke an FMO. The period in which an appeal may be made is 28 days from the date of the decision specified in the notice.<sup>485</sup> An RPT may allow an appeal outside of that time if it is satisfied there is good reason for the delay<sup>486</sup>, but the notice should not specify this. Although not required by the 2004 Act it is good practice to specify the address of the RPT to which an appeal can be made in the notice. In some cases late appeals have been allowed because the appellant argued he did not know where to appeal to. If the address is provided in the notice then such an excuse will not be available.

474. A revocation takes effect when the period for appealing against it expires and no such appeal is made or, if an appeal is lodged, the date on which the appeal is finally disposed of, unless it is withdrawn (in which case it takes effect from the date of withdrawal).<sup>487</sup>

<sup>484</sup> Schedule 6, paragraph 22.

<sup>485</sup> Schedule 6, paragraph 29(2).

<sup>486</sup> Schedule 6, paragraph 29(3).

<sup>487</sup> Schedule 6, paragraph 31

DRAFT

# Chapter 6 Management orders: other provisions

## Introduction

475. This chapter discusses certain provisions in Part 4 that apply to both IMOs and FMOs. Where the term 'order' is used in this chapter it means an IMO and an FMO. The chapter covers the following topics:

- the effect of an order on occupiers
- the effect of an order on agreements and legal proceedings
- furniture under an order
- compensation to third parties
- financial arrangements on the termination of an order
- leases, agreements and proceedings on termination
- powers of entry under an order

## The effect of an order on occupiers

476. Section 124 sets out the effect of an order on tenants and licensees when it comes into force.

477. An 'existing occupier' is a person who at the time the order comes into force is:

- occupying part of an HMO or Part 3 house or
- occupying the whole of a Part 3 house

A 'new occupier' is defined as a person whose tenancy or licence was granted by the LHA after an order was made in respect of the property.<sup>488</sup>

478. Nothing in sections 107 or 116 (General effect of IMOs and FMOs) affects the rights or liabilities of existing occupiers.<sup>489</sup>

479. An LHA is to be regarded as the landlord or licensor of an existing occupier, except if the landlord or licensor resides in the property.<sup>490</sup> Even such a person is excluded from any management functions under an order.

<sup>488</sup> Section 124(2).

<sup>489</sup> Section 124(3).

<sup>490</sup> Section 124(4).

DRAFT

480. A person who is granted a tenancy or licence under an interim management order is not to be regarded as a new occupier for the purpose of a final management order.<sup>491</sup>
481. The provisions in the Rent Act 1977, Rent (Agriculture) Act 1976 or Housing Act 1988 that exclude LHA lettings from those Acts do not apply to existing or new occupiers. In other words the provisions of those acts apply to tenancies under an order. No new occupiers (or existing occupiers) are to be secure or introductory tenants.<sup>492</sup>
482. If immediately before the order comes into force an existing occupier was occupying under:
- a protected or statutory tenancy under the Rent Act 1977 or the Rent (Agriculture) Act 1977 or
  - an assured tenancy or assured agricultural occupancy under the Housing Act 1988
- Nothing in Part 4 affects the continued operation of those Acts in relation to that tenancy.<sup>493</sup>
483. If two or more orders have been made in respect of the property any reference to an order is to the first order made. Thus, it is that order which determines whether the occupier is 'new' or 'existing', except in the case mentioned above.

## The effect of an order on agreements and legal proceedings

484. An LHA may take over the rights and liabilities of an immediate landlord that arise from any agreement or instrument (including a service contract) that the immediate landlord may have entered into for the provision of:
- management activities (such as a contract for maintenance, the provision of insurance, the collection of rent and so on)
  - the provision of services (such as a cleaning contract, supply of utilities, refuse removal, gardening services and so on) or otherwise
- in respect of property on which an order is in force, provided:
- the agreement or instrument is in force when the first order is made
  - the services or management activities are listed, or are of a category provided for, in the order
  - the immediate landlord was a party to that agreement or instrument

<sup>491</sup> Section 124(6).

<sup>492</sup> Section 124(7) to (9).

<sup>493</sup> Section 124(10).

DRAFT

- and the LHA serves notice on the supplier and the immediate landlord (and any other relevant persons) stating it is taking over responsibility for the agreement or instrument<sup>494</sup>

485. An agreement does not include:

- any legal lease to which the immediate landlord is a party or
- any disposition or assignment which the immediate landlord is lawfully entitled to make (under such a lease)<sup>495</sup>

486. Where any proceedings are instigated by or against the immediate landlord before the order comes into force, the LHA may take over those proceedings from the immediate landlord provided:

- it relates to the house
- it is specified in the order or is of a description of causes so specified and
- the LHA serves notice on the immediate landlord and the other parties that it is taking over the proceedings<sup>496</sup>

Such proceedings might include possession proceedings or suing a contractor for damages or conversely it may defend a case for non payment of services, breach of repairing obligations and so on.

487. If an LHA becomes liable to pay any damages for anything done (or not done) by the immediate landlord before the order came into force by virtue of the section, the immediate landlord is to reimburse the money to the LHA.<sup>497</sup>

## Furniture under an order

488. If a property is furnished and the occupier paid rent or other charges for its use (whether or not payable separately) to the immediate landlord before the order came into force, when it comes into force the right to possession of the furniture against anyone else, other than the occupier, vests in the LHA.<sup>498</sup>

489. An LHA may renounce its right to possession of the furniture on the application of a person owning it and if it renounces that right it must give that person two weeks notice before the decision comes into force.<sup>499</sup> No right of appeal lies against a decision to refuse to renounce its right to possession. In fact, there is no statutory requirement for the LHA to notify the applicant of that decision, but of course an LHA will always do so.

<sup>494</sup> Section 125 (1) and (2)

<sup>495</sup> Section 125 (3)

<sup>496</sup> Section 125 (4) and (5)

<sup>497</sup> Section 125 (6)

<sup>498</sup> Section 126 (1) and (2)

<sup>499</sup> Section 126 (3).

DRAFT

490. If two or more persons own (or claim to own) the furniture in the possession of the LHA, one or more of those persons may apply to an RPT for an adjustment of rights and liabilities between the owners.<sup>500</sup>
491. An LHA may provide such furniture under an order to a property as it consider reasonable. Any expenditure incurred in providing the furniture is to be treated as reasonable expenditure incurred in connection with its management functions under an order.<sup>501</sup> Furniture includes fittings and other articles.<sup>502</sup>

## Compensation to third parties

492. If a third party's rights are interfered with because of the operation of an order, for example the non enforcement of a restrictive covenant or the extinguishing of an easement, that person may at any time apply to an LHA for the payment of compensation for the reduction or loss of rights. The LHA must notify the person who made the application of its decision as soon as possible. If the LHA decides to pay compensation when an FMO is in force the amount payable must be included in the management scheme.<sup>503</sup>
493. A third party may appeal to an RPT against any decision of the LHA:
- to refuse to pay compensation
  - and/or as to the amount of compensation that should be paid<sup>504</sup>

## Financial arrangements on the termination of an order

494. On termination of an IMO if the amount of rents or other payments exceed the relevant expenditure incurred by the LHA and any amounts of compensation payable by it to a third party, the LHA must as soon as practicable after the termination pay to the immediate landlord (or landlords in such proportion as it considers appropriate) the balance.<sup>505</sup>
495. On termination of an IMO if the amount of rents or other payments recovered is less than the relevant expenditure incurred by the LHA and any amounts of compensation payable by it to a third party, the LHA may recover the difference from the immediate landlord (or landlords in such proportion as it considers appropriate).<sup>506</sup>

<sup>500</sup> Section 126(4) to (6).

<sup>501</sup> Section 127.

<sup>502</sup> Sections 126(7) and 127(3).

<sup>503</sup> Section 128.

<sup>504</sup> Schedule 6, paragraph 32.

<sup>505</sup> Section 129(2).

<sup>506</sup> Section 129(3).

DRAFT

496. If, on termination of an FMO, any amount is payable under a management scheme to a third party (compensation) or to any immediate landlord that amount is to be paid by the LHA to the person concerned in the manner provided for in the scheme.<sup>507</sup>
497. If, on termination of an FMO, any amount is payable to the LHA under a management scheme by any immediate landlord that amount is recoverable by the LHA in the manner provided for in the scheme.<sup>508</sup>
498. The provisions in paragraphs in 494–497 do not apply to the order if:
- the order is followed by a FMO
  - and the management scheme made under that order provides that the subsections to which those paragraphs relate do not apply<sup>509</sup>
499. Any sum due to an LHA under paragraphs 495 and 497 is a local land charge.<sup>510</sup>
500. If the order is to be followed by a grant of licence under Parts 2 or 3 the conditions of the licence may include provision for the recovery of any sums due to the LHA under the order on such instalments as are specified in the licence.<sup>511</sup>

## Leases, agreements and proceedings on termination

501. Section 130 applies where an interim or final management order terminates and is not immediately followed by another order.<sup>512</sup>
502. At the termination of an order:
- where the LHA was substituted for a licensor or lessor under section 124 (4) the original party, or his successor in title, shall be substituted for the LHA
  - and where the LHA has granted a tenancy or licence under an order the immediate landlord or licensor will be substituted for the LHA under the agreement<sup>513</sup>
503. Any agreement entered into by an LHA in connection with its management functions under an order may continue to have effect with the immediate landlord substituted for the LHA provided the LHA serves a notice of the substitution on the other party or parties to the agreement.<sup>514</sup>

<sup>507</sup> Section 129(4).

<sup>508</sup> Section 129(5).

<sup>509</sup> Section 129(6).

<sup>510</sup> Section 129(7) to (10).

<sup>511</sup> Section 129(11).

<sup>512</sup> Section 130(1).

<sup>513</sup> Section 130 (2)

<sup>514</sup> Section 130 (4) and (5)

DRAFT

504. Where:
- any rights or liabilities were rights and liabilities of the LHA before the termination of the order (whether by virtue of a provision in Part 4 or any agreement entered into in relation to its management functions) these shall become rights and liabilities of the immediate landlord
  - and any proceedings to which the LHA is a party by virtue of any such provision or agreement may be continued by the immediate landlord provided that the LHA serve a notice on all interested parties transferring to the immediate landlord liability or rights or the proceedings
505. If, the immediate landlord becomes liable to pay any damages for anything done (or not done) by the LHA before the order came was terminated by virtue of the section, the LHA must reimburse the immediate landlord with the amount of damages he has had to pay.<sup>515</sup>
506. If there are two or more immediate landlords of different parts of the property they may agree their responsibility between themselves or if they are unable to do they may seek a determination from an RPT.<sup>516</sup>

## Powers of entry under an order

507. An LHA (and any person authorised in writing by it) has a right of entry at all reasonable times to any part of a house for the purpose of carrying out any works, whilst the order is in force. This is to prevent any person (owning or renting part of a property, or the whole of it, for example, a resident landlord) from frustrating the LHA if it needs to carry out repairs or maintenance to it.
508. The right is exercisable against any person with an estate or interest in the property. The right extends to any part of the property excluded from the order (for example, that occupied by a resident landlord) if entry is necessary in order to carry out works to other parts of the property. If, on reasonable notice, an occupier of the whole or any part of the property refuses entry to an authorised person, a magistrate's court may issue an order permitting the authorised person to do on the property what the LHA considers is necessary. A person who fails to comply with the order commits an offence and is liable to a fine not exceeding £5,000.<sup>517</sup>

<sup>515</sup> Section 130 (8)

<sup>516</sup> Section 130 (9)

<sup>517</sup> Section 131

DRAFT

# Annex A: Links to the legislation

## Primary legislation

*The Housing Act 2004*

[http://www.opsi.gov.uk/acts/acts2004/ukpga\\_20040034\\_en\\_1](http://www.opsi.gov.uk/acts/acts2004/ukpga_20040034_en_1)

*The Housing Act 2004: Explanatory Notes*

[http://www.opsi.gov.uk/acts/acts2004/en/ukpgaen\\_20040034\\_en\\_1](http://www.opsi.gov.uk/acts/acts2004/en/ukpgaen_20040034_en_1)

## Secondary legislation: statutory instruments

*No. 368 The Housing (Management Orders and Empty Dwelling Management Orders) (Supplemental Provisions) (England) Regulations 2006*

<http://www.opsi.gov.uk/si/si2006/20060368.htm>

[http://www.opsi.gov.uk/si/em2006/uksiem\\_20060368\\_en.pdf](http://www.opsi.gov.uk/si/em2006/uksiem_20060368_en.pdf)

*No. 369 The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006*

<http://www.opsi.gov.uk/si/si2006/20060369.htm>

[http://www.opsi.gov.uk/si/em2006/uksiem\\_20060369\\_en.pdf](http://www.opsi.gov.uk/si/em2006/uksiem_20060369_en.pdf)

*No. 370 The Selective Licensing of Houses (Specified Exemptions) (England) Order 2006*

<http://www.opsi.gov.uk/si/si2006/20060370.htm>

[http://www.opsi.gov.uk/si/em2006/uksiem\\_20060370\\_en.pdf](http://www.opsi.gov.uk/si/em2006/uksiem_20060370_en.pdf)

*No. 371 The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006*

<http://www.opsi.gov.uk/si/si2006/20060371.htm>

[http://www.opsi.gov.uk/si/em2006/uksiem\\_20060371\\_en.pdf](http://www.opsi.gov.uk/si/em2006/uksiem_20060371_en.pdf)

*No. 372 The Management of Houses in Multiple Occupation (England) Regulations 2006*

<http://www.opsi.gov.uk/si/si2006/20060372.htm>

[http://www.opsi.gov.uk/si/em2006/uksiem\\_20060372\\_en.pdf](http://www.opsi.gov.uk/si/em2006/uksiem_20060372_en.pdf)

*No. 373 The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006*

<http://www.opsi.gov.uk/si/si2006/20060373.htm>

[http://www.opsi.gov.uk/si/em2006/uksiem\\_20060373\\_en.pdf](http://www.opsi.gov.uk/si/em2006/uksiem_20060373_en.pdf)



DRAFT

*No. 830 The Residential Property Tribunal (Fees) (England) Regulations 2006*

<http://www.opsi.gov.uk/si/si2006/20060830.htm>

[http://www.opsi.gov.uk/si/em2006/uksiem\\_20060830\\_en.pdf](http://www.opsi.gov.uk/si/em2006/uksiem_20060830_en.pdf)

*No. 831 The Residential Property Tribunal Procedure (England) Regulations 2006*

<http://www.opsi.gov.uk/si/si2006/20060831.htm>

[http://www.opsi.gov.uk/si/em2006/uksiem\\_20060831\\_en.pdf](http://www.opsi.gov.uk/si/em2006/uksiem_20060831_en.pdf)

*No. 1060 \* (C. 34) The Housing Act 2004 (Commencement No. 5 and Transitional Provisions and Savings)(England) Order 2006*

<http://www.opsi.gov.uk/si/si2006/20061060.htm>

*No. 572 The Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007*

[http://www.opsi.gov.uk/si/si2007/uksi\\_20070572\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20070572_en_1)

[http://www.opsi.gov.uk/si/si2007/em/uksiem\\_20070572\\_en.pdf](http://www.opsi.gov.uk/si/si2007/em/uksiem_20070572_en.pdf)

*No. 1903 The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007*

[http://www.opsi.gov.uk/si/si2007/uksi\\_20071903\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20071903_en_1)

[http://www.opsi.gov.uk/si/si2007/em/uksiem\\_20071903\\_en.pdf](http://www.opsi.gov.uk/si/si2007/em/uksiem_20071903_en.pdf)

*No. 1904 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*

[http://www.opsi.gov.uk/si/si2007/uksi\\_20071904\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20071904_en_1)

[http://www.opsi.gov.uk/si/si2007/em/uksiem\\_20071904\\_en.pdf](http://www.opsi.gov.uk/si/si2007/em/uksiem_20071904_en.pdf)

*No. 724 The Houses in Multiple Occupation (Management) (England) Regulations 2009*

[http://www.opsi.gov.uk/si/si2009/uksi\\_20090724\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20090724_en_1)

[http://www.opsi.gov.uk/si/si2009/em/uksiem\\_20090724\\_en.pdf](http://www.opsi.gov.uk/si/si2009/em/uksiem_20090724_en.pdf)

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