



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/43UF/HMF/2019/0008**

**Property** : **25 Riverside, Horley, Surrey  
RH6 7LN**

**Applicant** : **Mr Christopher Wignall**

**Representative** : **n/a**

**Respondent** : **Ms Natalie Seydova**

**Representative** : **Mr Hart, Freemans Solicitors**

**Type of Application** : **Application for a Rent Repayment  
Order by tenant (ss40 to 46  
Housing and Planning Act 2016)**

**Tribunal Members** : **Judge RE Cooper  
Mr D Banfield FRICS  
Mrs J Herrington**

**Date and venue of  
Hearing** : **9<sup>th</sup> October 2019  
Havant Justice Centre**

**Date of Decision** : **17<sup>th</sup> October 2019**

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**DECISION**

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**The Applicant's application for a Rent Repayment Order is refused.**

**The Applicant's application for reimbursement of the application fee (£100) and hearing fee (£200) is refused.**

## **The Application**

1. On 14<sup>th</sup> June 2019 the Tribunal received an application from the Applicant tenant under s41 Housing and Planning Act 2016 ('the 2016 Act') seeking a Rent Repayment Order ('RRO').
2. In his original application the Applicant sought to recover 12 months' rent from the Respondent, namely £7,200 (12 x £600) in respect of his period of occupation (which it is said ran from 8<sup>th</sup> April 2017 until 31<sup>st</sup> March 2019). However, in his subsequent statement he confined his application to recovery of 6 months' rent from the Respondent, namely £3,600, for the period 1<sup>st</sup> October 2018 to 31<sup>st</sup> March 2019 [A:1].
3. The Applicant also applied for reimbursement of the application fee of £100 and hearing fee of £200.
4. Directions were issued by Regional Judge Tildesley OBE on 18<sup>th</sup> July 2019 which were complied with in part. Those directions confirmed that the issues for the Tribunal to consider were as follows;
  - (i) whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed one or more of seven specified offences, or whether a financial penalty had been imposed for such offence;
  - (ii) the date of any offence/financial penalty
  - (iii) whether the offence was committed in the period of 12 months preceding the day of the application
  - (iv) what the applicable 12 month period is for the purposes of s45(2) of the 2016 Act
  - (v) what the maximum amount the Tribunal could order under s44(3) of that Act and
  - (vi) whether the Tribunal should reduce that maximum amount, in particular, for any of the specified reasons.

## **Background to the application**

5. The Applicant was the tenant of Room 4, 25 Riverside, Horley, RH6 7LN ('the Property') on the first floor of the Property. The Respondent landlady is Natalie Banovsha Hall Seydova, who is the freehold owner of the Property, which she purchased in 2017. She resides at the Property on the first floor.
6. The Applicant has a tenancy of Room 4 of the Property under the terms of an agreement entered into on 29<sup>th</sup> March 2017 between EZ-Y Properties (instructed as agents of the Respondent) and the Applicant. The agreement is said to be an Assured Shorthold Tenancy for 6 months

commencing on the 8<sup>th</sup> April 2017, with a monthly rent of £600 due on the first of every month (save for the first payment due on the 8<sup>th</sup> April).

7. The Applicant says he moved into the property on 8<sup>th</sup> April 2017 and served notice on 31<sup>st</sup> January 2019 terminating his tenancy on 31<sup>st</sup> March 2019 [A:15]. The Respondent says the Applicant physically moved out of the property on 16<sup>th</sup> February 2019 [R:7], and the Applicant did not dispute this.
8. The Respondent accepts that £3,600 of rent was paid by the Applicant covering the period 1<sup>st</sup> October 2018 until 31<sup>st</sup> March 2019 (the material period in this dispute).
9. Both parties provided hearing bundles and references to pages contained therein are indicated as [A:x] for the Applicant and [R:x] for the Respondent

### **The hearing**

10. The Applicant attended the hearing at Havant Justice Centre, and represented himself. Mr Hart represented the Respondent, who was also in attendance. Both the parties gave evidence and Mr Hart made submissions on behalf of the Respondent. The hearing concluded with the Applicant's submissions.
11. Additional documents were produced by the Respondent during the course of the hearing, which we admitted into evidence. These comprised an unaudited financial statement for 'Miss Violeta Limited' for the year ending 31<sup>st</sup> March 2019, a statement of rent received for the period 1<sup>st</sup> October 2018 to 31<sup>st</sup> March 2019, and further documentation from Rebecca Lade of Reigate and Banstead Borough Council ('the Council') including a supplemental witness statement dated 8<sup>th</sup> October 2019 and a letter sent to the Respondent on 6<sup>th</sup> August 2019.
12. During the course of the proceedings, there was some discussion as to whether the Tribunal would admit further documentation after the conclusion of the hearing before reaching its decision (namely the Respondent's bank statements, proof of when she placed the advert at [R:36] and a further statement from Luke Forster). At the conclusion of the hearing the Tribunal reserved its position as to whether further documents and/or representations would be required. In the event, the Tribunal decided that such further documentation was not required, as will be apparent from this decision.

### **Issues in the appeal**

13. The Applicant applies for a RRO under s41 of the 2016 Act. An order can only be made where the Tribunal is satisfied the Respondent landlady has committed one or more of seven specified offences (set out in s40 of that Act) in the 12-month period preceding the date of application. In

this case, the Applicant asserts the Respondent committed an offence under s72(1) Housing Act 2004 ('the 2004 Act') as she was '*a person having control or managing an HMO which is required to be licensed under this part but is not so licensed*'.

14. Before making an RRO the Tribunal must be satisfied to the criminal standard (i.e. beyond reasonable doubt) that the specified offence has been committed.
15. If the Tribunal makes an RRO, the Tribunal must decide whether or not the maximum RRO should be paid or a lesser sum, and in doing so s44 requires the Tribunal to 'consider in particular' the following;
  - (i) the conduct of the landlord and the tenant
  - (ii) the financial circumstances of the landlord, and
  - (iii) whether the landlord has at any time been convicted of an offence under this particular Chapter of the Housing and Planning Act 2018.

#### The Law

16. The applicable law is set out in the Appendix to this decision.

### **Decision and reasons**

#### *Is the Property an HMO, which is required to be licenced?*

17. It is agreed between the parties that the Property is a two storey building which the Respondent controls and manages (for the purposes of s72(1) Housing Act 2004). It is also common ground that the Respondent did not hold an HMO licence during the material time from 1<sup>st</sup> October 2018 until 31<sup>st</sup> March 2019.
18. The principle issue in dispute is whether or not 25 Riverside is an HMO that became subject to the mandatory licensing scheme from 1<sup>st</sup> October 2018 under the Housing and Planning Act 2018.
19. The Applicant says the Property is an HMO, which required a licence from 1<sup>st</sup> October 2018 because there were six occupants in the property during the time he lived there, in more than two households, who shared common facilities.
20. The Respondent denies the Property is an HMO that was required to be licenced from the 1<sup>st</sup> October 2018. She says there were never five unrelated persons living there, so it could not be an HMO (s4 The Licencing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018) [R:2]

## The evidence

21. In summary the Applicant's evidence taken as a whole (including his oral evidence to the Tribunal) is that the Property is a two-storey, house with five rooms that were, during his period of occupation, used as bedrooms [A:1]. There were shared facilities (bathrooms on both floors, an additional toilet and an open kitchen/dining room on the ground floor). As to the occupiers, he says there were six occupiers forming five households throughout his period of occupation. His evidence was;
  - (i) Room A (on the ground floor) was occupied at the time he moved in by a couple whose names he did not know. He didn't know when they moved out but it was before October 2018. The room was then let to a second couple (whose names he also did not know). That couple occupied room A throughout the time he lived there;
  - (ii) Room B on the ground floor (identified on the Respondent's plan as a '*storage/dressing room*' [R:26]) was occupied by a woman (whose name he did not know) until she left on New Year's Eve 2018/19. Luke Forster subsequently moved into this room on 4<sup>th</sup> January 2019. He stayed there for 3 months;
  - (iii) Room C, (a double room on the first floor), was occupied by the Respondent throughout the material time;
  - (iv) Room D, (a double room on the first floor) was the room he occupied;
  - (v) Room E, (a single room on the first floor) was occupied by a man called Patrick until around 14<sup>th</sup> December 2018, and thereafter by an unknown female (who the Applicant now accepts is Liz). She remained there throughout the remainder of the Applicant's occupancy.
22. The Applicant relies on evidence from Luke Forster, who in his statement of 8<sup>th</sup> August 2019 confirmed in summary that he resided there for three months, that he paid £600 per month rent to the Respondent and the room was his only or main home in the UK.
23. The Application was also supported by a witness statement of Rebecca Lade from the Council (dated 6<sup>th</sup> August 2019) who confirmed (at paragraph 9) that although the Respondent had not needed a licence prior to October 2018 because the Property was only two storeys, the Respondent did require a licence from 1<sup>st</sup> October 2018 following that changes introduced by the Licencing of Housing in Multiple Occupation (Prescribed Description)(England) Order 2018. A valid application for a licence had not been received. [A:25-26].
24. The Respondent's evidence regarding the occupants, in summary, is this. The property is a two storey three-bedroom house with two

kitchens/sitting rooms, three/four shower/bathrooms with one sitting room (which she used as a bedroom) [R:4]. As regards occupants of the property she says as follows;

- (i) having checked with the Council that she did not need an HMO licence (as the property only had two storeys), she decided to rent rooms which she did through E-ZY Property (Estate Agent) some time between January and April 2017. However, in April or May 2017 she found there were too many people in the property (5 or 6) so she cancelled the agreement [R:7] with the estate agent and evicted the lodgers. They all left around July/August 2017;
  - (ii) After the other lodgers had all left, only the Applicant remained. He left on 16<sup>th</sup> February 2019;
  - (iii) In the period from 1<sup>st</sup> October 2018 (when the mandatory licensing requirements came in) Room A was used as a sitting room throughout the material time. Although, it was turned into a bedroom after the Applicant left, this is because Room B was affected by damp and could not be used;
  - (iv) Room B was occupied for a short period by a man named Rolt (who lived there for about a month in October 2018, but he lost his job so could not stay). Luke Forster then occupied that room from 4<sup>th</sup> January 2019 until 31<sup>st</sup> January 2019;
  - (v) Room C was occupied by herself;
  - (vi) Room D was occupied by the Applicant; and
  - (vii) Room E was unoccupied until 14<sup>th</sup> December 2018 when Liz moved in. She lived there throughout the remainder of the Applicant's period of occupation;
  - (viii) Since 1<sup>st</sup> October 2018 there had never been more than four people (including herself) occupying the property.
25. It appears that subsequent to the Applicant vacating and issuing this application, Ms Lade from the Council inspected the Property [R:34 to 35] as the Respondent had made an application for an HMO licence on 7<sup>th</sup> August 2019. In her supplemental statement of 8<sup>th</sup> October 2019, Ms Lade confirms she inspected the property on 19<sup>th</sup> August 2019. She found evidence of 5 rooms that could be utilised as bedrooms (although the Respondent had told her Room B on the ground floor was used as a dressing/storage room). However, Ms Lade, somewhat surprisingly, did not ascertain the number of occupants. The statement concludes that on the basis of the Property '*as it was presented to [her]*' by the Respondent on 19<sup>th</sup> August 2019, an HMO licence was not required. As to the period between 1<sup>st</sup> October and 31<sup>st</sup> March 2019, the Council would decide how to proceed after the Tribunal determined whether it was an HMO that required a licence (paragraphs 17 to 19).

## Discussion and conclusions

26. The Tribunal found neither witness gave wholly coherent evidence. The Respondent's written evidence regarding the rent she received was unimpressive, and was only served at the start of the hearing. The evidence which she said showed when tenants came and left, their individual payments and whether they paid by cash or bank transfer was on her laptop which had been left at home. Her rent statement provided details of two other individuals not previously mentioned in her statement, but we accepted that in the case of Rolt the rent received (and reimbursed) did support her claim that he had only lived there about a month. She claimed she was unable to provide her bank statements because she needed to present her bank card in order to do so, yet the text she showed the Tribunal from her bank appeared to indicate that she was the one who had cancelled it. However, we were shown a card that expired in September 2019.
27. There were also some inconsistencies in the Applicant's evidence. He too mentioned other individuals who he had not previously referred to (for example Patrick who he said lived there until December 2018). He said there were always people coming and going, and that he kept himself to himself.
28. On balance, the Tribunal considered it was more likely than not that during the relevant period there had been other individuals who came and went from the property, as the Applicant says. However, when looking at the totality of the evidence, the Tribunal was not satisfied beyond reasonable doubt that there were five or more people residing in the property from 1<sup>st</sup> October 2018 until 31<sup>st</sup> March 2019. We reached this conclusion for the following reasons;
  - (i) It was common ground that the Applicant and Respondent both occupied the property throughout the material period. Although there were some discrepancies between their evidence about the individuals who had occupied Rooms B and E and the periods for which they had occupied, the only significant dispute was whether Room A had been rented out as a bedroom throughout as the Applicant says, or whether it was used as a sitting room.
  - (ii) There was no supporting evidence to corroborate the Applicant's claim that a couple had occupied Room A throughout the material time. When pressed for details, he could not say when they moved in. He then said, for the first time, that another couple had previously occupied Room A and were in occupation when he moved in in April 2017. The only details he could give the Tribunal was that each couple comprised a man and a woman. Given his descriptions of the considerable problems with the water supply at the property (which we were satisfied would have resulted in some interactions between occupiers) and the claimed

significant length of the couples' occupation, the Tribunal found it unlikely that he would not even know their names.

- (iii) Although Luke Forster provided a statement confirming he had lived there for three months, Luke made no mention of a couple living in the room next-door. Nor indeed did he refer to any other occupier. The Applicant had no other statements from others he said had been occupying during that period.
  - (iv) Rebecca Lade did not inspect the property at any time during the material period. Even when she did inspect on 19<sup>th</sup> August 2019, she failed to ascertain the exact number of occupants. This significantly reduced the weight the Tribunal gave to her original statement that an HMO licence was required.
  - (v) Although the Tribunal had some difficulty understanding the Respondent's explanation of why her text at [R:37] said each person had to clean every 5 weeks if there were only ever four people living at the property, it accepted this may have been on account of her difficulties expressing herself in English (Russian being her first language). However, the text was also inconsistent with the Applicant's claim that there were in fact six people living in the property at that time.
  - (vi) We gave little weight to the advertisement on '*Rent a Room*' that both the Applicant and Respondent relied on. The Respondent gave a confused explanation as to why she would have said there were 4 current occupiers if, as she said, she placed the advert to find someone to replace the Applicant who had served his notice on 31<sup>st</sup> January 2019. However, given the Respondent's difficulties in clearly expressing herself in English we did not attach much weight to this description. The description of 4 current occupiers (2 men and 2 women) also did not accord with the Applicant's account of the people he says would have been living there on the 1<sup>st</sup> April 2019 after he and Luke had left.
29. In any event, the Tribunal accepted Mr Hart's submission that the presence of five or more occupiers comprising more than two households is not the only consideration when determining whether a HMO licence was required.
30. For the purposes of Part 2 of the Housing Act 2004 (dealing with the licensing of HMOs under which s72(1) falls), the definition of an HMO is set out in ss254 to 259 of the Housing Act 2004. In summary, s254 provides that a building or part of a building is an HMO if it meets one of various conditions (set out in s254(2)(a) to (f))
31. By virtue of 254(2)(b) and (c) the 'standard test' is only met if (amongst other things) the living accommodation is occupied by people who do not form a single household and it is '*their only or main residence or they*



*are treated so occupying it (see section 259)'. Section 259 is of no relevance to this case.*

32. When looking at the evidence in the round, the Tribunal was not satisfied the Applicant had established that the people he said were living there during the material time occupied the Property as their '*only or main residence*' for the following reasons;
- (i) Although Luke Forster had provided a witness statement saying it was his only or main home [A:16], he had only lived there for three months.
  - (ii) There were no statements from the other occupiers.
  - (iii) The Applicant's evidence was that people were always coming and going.
  - (iv) The Respondent referred to Mr Rolt only living there for a period of about a month, and
  - (v) The advertisement clearly identified that the property was in close proximity to Gatwick airport, that although the minimum term was two months, short lets were considered, and that the property was great for cabin crew or airport staff. We inferred from this that the property might well be occupied for very short temporary periods for people who needed a base near the airport for a short while, who in fact had a home elsewhere.

#### Conclusion and Order

33. In conclusion, therefore, the Tribunal did not find beyond reasonable doubt that the Property was an HMO that required a licence between 1<sup>st</sup> October 2018 and 31<sup>st</sup> March 2019.
34. As such, although the Respondent accepts she was a person who had control and managed the property, the Tribunal did not find beyond reasonable doubt that she had committed an offence under s72(1) Housing Act 2004. As such, the Tribunal has no power to make a Rent Repayment Order pursuant to s43 Housing and Planning Act 2016.
35. That being the case, there was no need to go on to make findings on the other matters set out in paragraph 4 above.
36. The Tribunal refuses the Applicant's application for a Rent Repayment Order under s41 of the 2016. As the substantive application for an RRO was not successful, the Tribunal also refuses the Applicant's application for re-imbursement of the application and hearing fees.

**Signed: Judge RE Cooper (chair of the panel)**

**Date: 17.10.2019**

#### **Note: Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application

to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

## APPENDIX

The following are excerpts of the relevant legislation referred to in this decision

### **Housing and Planning Act 2016**

#### **40 Introduction and key definitions**

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

- (a) repay an amount of rent paid by a tenant, or
- (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	<u>Criminal Law Act 1977</u>	section 6(1)	violence for securing entry
2	<u>Protection from Eviction Act 1977</u>	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	<u>Housing Act 2004</u>	section 30(1)	failure to comply with improvement notice
4		section 32(1)	prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

**41 Application for rent repayment order**

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if—  
 (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and  
 (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—  
 (a) the offence relates to housing in the authority's area, and  
 (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

**43 Making of rent repayment order**

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—  
 (a) section 44 (where the application is made by a tenant);  
 (b) section 45 (where the application is made by a local housing authority);  
 (c) section 46 (in certain cases where the landlord has been convicted etc).

**44 Amount of order: tenants**

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence
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- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
- (a) the rent paid in respect of that period, less
  - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount the tribunal must, in particular, take into account—
- (a) the conduct of the landlord and the tenant,
  - (b) the financial circumstances of the landlord, and
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

### **The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018**

#### **4 Description of HMOs prescribed by the Secretary of State**

An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

- (a) is occupied by five or more persons;
- (b) is occupied by persons living in two or more separate households; and
- (c) meets—
  - (i) the standard test under section 254(2) of the Act;
  - (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
  - (iii) the converted building test under section 254(4) of the Act.

### **Housing Act 2004**

#### **55 Licensing of HMOs to which this Part applies**

- (1) This Part provides for HMOs to be licensed by local housing authorities where—
- (a) they are HMOs to which this Part applies (see subsection (2)), and
  - (b) they are required to be licensed under this Part (see section 61(1)).
- (2) This Part applies to the following HMOs in the case of each local housing authority—
- (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
  - (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.
- (3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).
- (4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.
- (5) Every local housing authority have the following general duties—

- (a) to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part;
  - (b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time; and
  - (c) to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions that ought to be exercised by them in relation to the premises in respect of which such applications are made.
- (6) For the purposes of subsection (5)(c)—
- (a) “Part 1 function” means any duty under section 5 to take any course of action to which that section applies or any power to take any course of action to which section 7 applies; and
  - (b) the authority may take such steps as they consider appropriate (whether or not involving an inspection) to comply with their duty under subsection (5)(c) in relation to each of the premises in question, but they must in any event comply with it within the period of 5 years beginning with the date of the application for a licence.

### **61 Requirement for HMOs to be licensed**

- (1) Every HMO to which this Part applies must be licensed under this Part unless—
- (a) a temporary exemption notice is in force in relation to it under section 62, or
  - (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.
- (2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.
- (3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.
- (4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.
- (5) The appropriate national authority may by regulations provide for—
- (a) any provision of this Part, or
  - (b) section 263 (in its operation for the purposes of any such provision), to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations.

A “section 257 HMO” is an HMO which is a converted block of flats to which section 257 applies.

- (6) In this Part (unless the context otherwise requires)—
- (a) references to a licence are to a licence under this Part,
  - (b) references to a licence holder are to be read accordingly, and
  - (c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

## 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if—  
(a) he is a person having control of or managing an HMO which is licensed under this Part,  
(b) he knowingly permits another person to occupy the house, and  
(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if—  
(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and  
(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—  
(a) a notification had been duly given in respect of the house under section 62(1), or  
(b) an application for a licence had been duly made in respect of the house under section 63,  
and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—  
(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or  
(b) for permitting the person to occupy the house, or  
(c) for failing to comply with the condition,  
as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to [a fine].

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

[(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.]

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—  
(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or  
(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

- (9) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of [the appropriate tribunal]) has not expired, or
  - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

### **254 Meaning of “house in multiple occupation”**

- (1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—
- (a) it meets the conditions in subsection (2) (“the standard test”);
  - (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
  - (c) it meets the conditions in subsection (4) (“the converted building test”);
  - (d) an HMO declaration is in force in respect of it under section 255; or
  - (e) it is a converted block of flats to which section 257 applies.
- (2) A building or a part of a building meets the standard test if—
- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
  - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
  - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
  - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
  - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
  - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
- (3) A part of a building meets the self-contained flat test if—
- (a) it consists of a self-contained flat; and
  - (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).
- (4) A building or a part of a building meets the converted building test if—
- (a) it is a converted building;
  - (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
  - (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
  - (d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
  - (e) their occupation of the living accommodation constitutes the only use of that accommodation; and
  - (f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations—  
(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;  
(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;  
(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section—  
“basic amenities” means—

- (a) a toilet,
- (b) personal washing facilities, or
- (c) cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c 30));

“self-contained flat” means a separate set of premises (whether or not on the same floor)—

- (a) which forms part of a building;
- (b) either the whole or a material 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.