



# Housing Act 1985

## 1985 CHAPTER 68

### PART XI

#### HOUSES IN MULTIPLE OCCUPATION

##### *Overcrowding*

#### **358 Service of overcrowding notice.**

- (1) Where it appears to the local housing authority in the case of a house in multiple occupation—
- (a) that an excessive number of persons is being accommodated on the premises, having regard to the rooms available, or
  - (b) that it is likely that an excessive number of persons will be accommodated on the premises, having regard to the rooms available.

they may serve an overcrowding notice on the occupier of the premises or on the person managing the premises, or on both.

- (2) At least seven days before serving an overcrowding notice, the local housing authority shall—
- (a) inform the occupier of the premises and any person appearing to them to be managing the premises, in writing, of their intention to do so, and
  - (b) ensure that, so far as is reasonably possible, every person living in the premises is informed of that intention;

and they shall afford those persons an opportunity of making representations regarding their proposal to serve the notice.

- (3) If no appeal is brought under section 362, the overcrowding notice becomes operative at the end of the period of 21 days from the date of service, and is final and conclusive as to matters which could have been raised on such an appeal.

- (4) A person who contravenes an overcrowding notice commits a summary offence and is liable on conviction to a fine not exceeding level 4 on the standard scale.

*Status: Point in time view as at 01/04/2001.*

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### **359 Contents of overcrowding notice.**

- (1) An overcrowding notice shall state in relation to every room on the premises—
- (a) what in the opinion of the local housing authority is the maximum number of persons by whom the room is suitable to be occupied as sleeping accommodation at any one time, or
  - (b) that the room is in their opinion unsuitable to be occupied as sleeping accommodation;
- and the notice may specify special maxima applicable where some or all of the persons occupying the room are under such age as may be specified in the notice.
- (2) An overcrowding notice shall contain either—
- (a) the requirement set out in section 360 (not to permit excessive number of persons to sleep on premises), or
  - (b) the requirement set out in section 361 (not to admit new residents if number of persons is excessive);
- and where the local housing authority have served on a person an overcrowding notice containing the latter requirement, they may at any time withdraw the notice and serve on him in its place an overcrowding notice containing the former requirement.

### **360 Requirement as to overcrowding generally.**

- (1) The first requirement referred to in section 359(2) is that the person on whom the notice is served must refrain from knowingly—
- (a) permitting a room to be occupied as sleeping accommodation otherwise than in accordance with the notice, or
  - (b) permitting persons to occupy the premises as sleeping accommodation in such numbers that it is not possible to avoid persons of opposite sexes who are not living together as husband and wife sleeping in the same room.
- (2) For the purposes of subsection (1)(b)—
- (a) children under the age of 12 shall be left out of account, and
  - (b) it shall be assumed that the persons occupying the premises as sleeping accommodation sleep only in rooms for which a maximum is set by the notice and that the maximum set for each room is not exceeded.

### **361 Requirement as to new residents.**

- (1) The second requirement referred to in section 359(2) is that the person on whom the notice is served must refrain from knowingly—
- (a) permitting a room to be occupied by a new resident as sleeping accommodation otherwise than in accordance with the notice, or
  - (b) permitting a new resident to occupy any part of the premises as sleeping accommodation if that is not possible without persons of opposite sexes who are not living together as husband and wife sleeping in the same room;
- and for this purpose “new resident” means a person who was not living in the premises immediately before the notice was served.
- (2) For the purposes of subsection (1)(b)—
- (a) children under the age of 12 shall be left out of account, and

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- (b) it shall be assumed that the persons occupying any part of the premises as sleeping accommodation sleep only in rooms for which a maximum is set by the notice and that the maximum set for each room is not exceeded.

### **362 Appeal against overcrowding notice.**

- (1) A person aggrieved by an overcrowding notice may, within 21 days after the date of service of the notice, appeal to the county court, which may make such order either confirming, quashing or varying the notice as it thinks fit.
- (2) If an appeal is brought the notice does not become operative until—
  - (a) a decision on the appeal confirming the order (with or without variation) is given and the period within which an appeal to the Court of Appeal may be brought expires without any such appeal having been brought, or
  - (b) if a further appeal to the Court of Appeal is brought, a decision on that appeal is given confirming the order (with or without variation);and for this purpose the withdrawal of an appeal has the same effect as a decision confirming the notice or decision appealed against.

### **363 Revocation and variation of notice.**

- (1) The local housing authority may at any time, on the application of a person having an estate or interest in the premises—
  - (a) revoke an overcrowding notice, or
  - (b) vary it so as to allow more people to be accommodated on the premises.
- (2) If the authority refuse such an application, or do not within 35 days from the making of the application (or such further period as the applicant may in writing allow) notify the applicant of their decision, the applicant may appeal to the county court.
- (3) On an appeal the court may revoke the notice or vary it in any manner in which it might have been varied by the local housing authority.

### **364 Power to require information where notice in force.**

- (1) The local housing authority may from time to time serve on the occupier of premises in respect of which an overcrowding notice is in force a notice requiring him to furnish them within seven days with a statement in writing giving any of the following particulars—
  - (a) the number of individuals who are, on a date specified in the notice, occupying any part of the premises as sleeping accommodation;
  - (b) the number of families or households to which those individuals belong;
  - (c) the names of those individuals and of the heads of each of those families or households;
  - (d) the rooms used by those individuals and families or households respectively.
- (2) A person who—
  - (a) knowingly fails to comply with the requirements of such a notice, or
  - (b) furnishes a statement which he knows to be false in a material particular,

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commits a summary offence and is liable on conviction to a fine not exceeding [<sup>F1</sup>, in the case of such failure, level 3 on the standard scale and, in the case of furnishing such a statement, level 5 on the standard scale]

#### Textual Amendments

**F1** Words in s. 364(2) substituted (3.3.1997) by 1996 c. 52, s. 78(4); S.I. 1997/350, art. 2

### 365 Means of escape from fire; general provisions as to exercise powers.

[<sup>F2</sup>(1) In any case where—

- (a) the local housing authority have the power to serve a notice under subsection (1) of section 352 in respect of a house in multiple occupation, and
- (b) the reason, or one of the reasons, by virtue of which that power arises is a failure to meet the requirement in paragraph (d) [<sup>F3</sup>or (e)] of subsection (1A) of that section,

the authority shall in addition have the power for that reason to accept an undertaking or make a closing order under section 368 in respect of the house.

- (2) Where by virtue of subsection (1) the local housing authority have powers in respect of a house in multiple occupation to serve a notice under section 352(1) for the reason mentioned in subsection (1)(b) and to accept an undertaking or make a closing order under section 368, they may exercise such of those powers as appear to them appropriate; and where the house is of such description or is occupied in such manner as the Secretary of State may specify by order for the purposes of this subsection, the authority shall be under a duty to so exercise those powers.

- (2A) The local housing authority shall not serve a notice under section 352(1) for the reason mentioned in subsection (1)(b) or accept an undertaking or make a closing order under section 368 if the house is of such description or is occupied in such manner as the Secretary of State may specify by order for the purposes of this subsection.]

[<sup>F4</sup>(3) The local housing authority shall consult with the fire authority concerned before exercising any of the powers mentioned in subsection (2)—

- (a) where they are under a duty to exercise those powers, or
- (b) where they are not under such a duty but may exercise those powers and the house is of such description or is occupied in such manner as the Secretary of State may specify by order for the purposes of this subsection.]

(4) An order under subsection (2) [<sup>F5</sup>[<sup>F6</sup>, (2A) or (3)]]—

- (a) may make different provision with respect to different cases or descriptions of case, including different provision for different areas, and
- (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F7</sup>(5) Nothing in this section affects the power of the local housing authority to serve a notice under subsection (1) of section 352 if the house also fails to meet one or more of the requirements in paragraphs (a) to (c) [<sup>F8</sup>. . . of subsection (1A) of that section.]

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#### Textual Amendments

- F2** S. 365(1)–(2A) substituted for S. 365(1)(2) by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 165(1)(c), [Sch. 9 Pt. III para. 53\(1\)](#)
- F3** Words in s. 365(1)(b) inserted (1.10.1996 for specified purposes otherwise 3.3.1997) by [1996 c. 52, s. 75\(2\)](#); [S.I. 1996/2402, art. 4](#); [S.I. 1997/350, art. 2](#)
- F4** S. 365(3) substituted (1.10.1996 for specified purposes otherwise 3.3.1997) by [1996 c. 52, s. 75\(3\)](#); [S.I. 1996/2402, art. 4](#); [S.I. 1997/350, art. 2](#)
- F5** Words substituted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 165(1)(c), [Sch. 9 Pt. III para. 53\(3\)](#)
- F6** Words in s. 365(4) substituted (1.10.1996 for specified purposes otherwise 3.3.1997) by [1996 c. 52, s. 75\(4\)](#); [S.I. 1996/2402, art. 4](#); [S.I. 1997/350, art. 2](#)
- F7** S.365(5) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 165(1)(c), [Sch. 9 Pt. III para. 53\(3\)](#)
- F8** Words in s. 365(5) omitted (1.10.1996 for specified purposes otherwise 3.3.1997) by virtue of [1996 c. 52, s. 75\(5\)](#); [S.I. 1996/2402, art. 4](#); [S.I. 1997/350, art. 2](#); and repealed (3.3.1997) by [1996 c. 52, s. 227, Sch. 19 Pt. II](#); [S.I. 1997/596, art. 2](#)

**366,** <sup>F9</sup> .....

**367.**

#### Textual Amendments

- F9** Ss. 366, 367 repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), ss. 165(1)(c), 194(4), [Sch. 9 Pt. III para. 54, Sch. 12 Pt. II](#)

### **368 Means of escape from fire: power to secure that part of house not used for human habitation.**

- (1) [<sup>F10</sup>Subject to section 365] if it appears to the local housing authority that the means of escape from fire would be adequate if part of the house were not used for human habitation, they may secure that that part is not so used.
- (2) For that purpose, the authority may, if after consultation with any owner or mortgagee they think fit to do so, accept an undertaking from him that that part will not be used for human habitation without the permission of the authority.
- (3) A person who, knowing that such an undertaking has been accepted—
- (a) uses the part of the house to which the undertaking relates in contravention of the undertaking, or
  - (b) permits that part of the house to be so used,
- commits a summary offence and is liable on conviction to a fine not exceeding level 5 on the standard scale; <sup>F11</sup> . . .
- (4) If the local housing authority do not accept an undertaking under subsection (2) with respect to a part of a house, or where they have accepted such an undertaking and that part of the house is at any time used in contravention of the undertaking, the authority may make a closing order with respect to that part of the house.

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- (5) The provisions of Part IX apply to a closing order under subsection (4) as they apply to a closing order made under [F12section 264], but with [F13with the following modifications—
- (a) the reference in section 278(1) (premises rendered fit) to the house in multiple occupation shall be construed as a reference to the part of the house in respect of which the closing order under subsection (4) is made;]
  - [F14(b)] the ground on which the authority are required to determine the order under section 278(1) (premises rendered fit) shall be that the authority are satisfied that the means of escape from fire with which the house is provided is adequate (owing to a change of circumstances) and will remain adequate if the part of the house with respect to which the order was made is again used for human habitation [F15and
  - (c) section 279 (substitution of demolition orders) shall be omitted].
- (6) Nothing in the Rent Acts [F16or Part I of the Housing Act 1988] prevents possession being obtained of a part of a house which in accordance with an undertaking in pursuance of this section cannot for the time being be used for human habitation.

#### Textual Amendments

- F10** Words inserted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 165(1)(c), **Sch. 9 Pt. III para. 55(1)**
- F11** Words in s. 368(3) repealed (3.3.1997) by 1996 c. 52, ss. 78(5), 227, **Sch. 19 Pt. II**; S.I. 1997/350, **art. 2**; S.I. 1997/596, **art. 2**
- F12** Words substituted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 165(1)(c), **Sch. 9 Pt. III para. 55(3)(a)**
- F13** Words beginning “with the” and s. 368(5)(a) substituted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 165(1)(c), **Sch. 9 Pt. III para. 55(3)(b)**
- F14** “(b)” substituted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 165(1)(c), **Sch. 9 Pt. III para. 55(3)(b)**
- F15** Word “and” and s. 368(5)(c) added by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 165(1)(c), **Sch. 9 Pt. III para. 53(3)(c)**
- F16** Words inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 Pt. I para. 50**

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

- C1** S. 368(5) modified by S.I. 1990/431, art. 4, **Sch. 1 para. 23**

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