



Housing Act 2004

2004 CHAPTER 34

PART 2

LICENSING OF HOUSES IN MULTIPLE OCCUPATION

Enforcement

74 Further provisions about rent repayment orders

- (1) This section applies in relation to rent repayment orders made by residential property tribunals under section 73(5).
 - (2) Where, on an application by the local housing authority, the tribunal is satisfied—
 - (a) that a person has been convicted of an offence under section 72(1) in relation to the HMO, and
 - (b) that housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO,the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority an amount equal to the total amount of housing benefit paid as mentioned in paragraph (b).
- This is subject to subsections (3), (4) and (8).
- (3) If the total of the amounts received by the appropriate person in respect of periodical payments payable as mentioned in paragraph (b) of subsection (2) (“the rent total”) is less than the total amount of housing benefit paid as mentioned in that paragraph, the amount required to be paid by virtue of a rent repayment order made in accordance with that subsection is limited to the rent total.
 - (4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by reason of any

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exceptional circumstances, it would be unreasonable for that person to be required to pay.

- (5) In a case where subsection (2) does not apply, the amount required to be paid by virtue of a rent repayment order under section 73(5) is to be such amount as the tribunal considers reasonable in the circumstances.

This is subject to subsections (6) to (8).

- (6) In such a case the tribunal must, in particular, take into account the following matters—
- (a) the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);
 - (b) the extent to which that total amount—
 - (i) consisted of, or derived from, payments of housing benefit, and
 - (ii) was actually received by the appropriate person;
 - (c) whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;
 - (d) the conduct and financial circumstances of the appropriate person; and
 - (e) where the application is made by an occupier, the conduct of the occupier.

- (7) In subsection (6) “relevant payments” means—
- (a) in relation to an application by a local housing authority, payments of housing benefit or periodical payments payable by occupiers;
 - (b) in relation to an application by an occupier, periodical payments payable by the occupier, less any amount of housing benefit payable in respect of occupation of the part of the HMO occupied by him during the period in question.

- (8) A rent repayment order may not require the payment of any amount which—
- (a) (where the application is made by a local housing authority) is in respect of any time falling outside the period of 12 months mentioned in section 73(6)(a); or
 - (b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier’s application under section 73(5);

and the period to be taken into account under subsection (6)(a) above is restricted accordingly.

- (9) Any amount payable to a local housing authority under a rent repayment order—
- (a) does not, when recovered by the authority, constitute an amount of housing benefit recovered by them, and
 - (b) until recovered by them, is a legal charge on the HMO which is a local land charge.

- (10) For the purpose of enforcing that charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, and of accepting surrenders of leases and of appointing a receiver.

- (11) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

- (12) If the authority subsequently grant a licence under this Part or Part 3 in respect of the HMO to the appropriate person or any person acting on his behalf, the conditions contained in the licence may include a condition requiring the licence holder—
- (a) to pay to the authority any amount payable to them under the rent repayment order and not so far recovered by them; and
 - (b) to do so in such instalments as are specified in the licence.
- (13) If the authority subsequently make a management order under Chapter 1 of Part 4 in respect of the HMO, the order may contain such provisions as the authority consider appropriate for the recovery of any amount payable to them under the rent repayment order and not so far recovered by them.
- (14) Any amount payable to an occupier by virtue of a rent repayment order is recoverable by the occupier as a debt due to him from the appropriate person.
- (15) The appropriate national authority may by regulations make such provision as it considers appropriate for supplementing the provisions of this section and section 73, and in particular—
- (a) for securing that persons are not unfairly prejudiced by rent repayment orders (whether in cases where there have been over-payments of housing benefit or otherwise);
 - (b) for requiring or authorising amounts received by local housing authorities by virtue of rent repayment orders to be dealt with in such manner as is specified in the regulations.
- (16) Section 73(10) and (11) apply for the purposes of this section as they apply for the purposes of section 73.