



# Housing Act 2004

## 2004 CHAPTER 34

### PART 3

#### SELECTIVE LICENSING OF OTHER RESIDENTIAL ACCOMMODATION

##### *Enforcement*

#### **96 Other consequences of operating unlicensed houses: rent repayment orders**

- (1) For the purposes of this section a house is an “unlicensed house” if—
  - (a) it is required to be licensed under this Part but is not so licensed, and
  - (b) neither of the conditions in subsection (2) is satisfied.
- (2) The conditions are—
  - (a) that a notification has been duly given in respect of the house under section 62(1) or 86(1) and that notification is still effective (as defined by section 95(7));
  - (b) that an application for a licence has been duly made in respect of the house under section 87 and that application is still effective (as so defined).
- (3) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of—
  - (a) any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of the whole or a part of an unlicensed house, or
  - (b) any other provision of such a tenancy or licence.
- (4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 97.
- (5) If—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) an application in respect of a house is made to a residential property tribunal by the local housing authority or an occupier of the whole or part of the house, and
  - (b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8), the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 97(2) to (8)).
- (6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters—
- (a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 95(1) in relation to the house (whether or not he has been charged or convicted),
  - (b) that housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of the whole or any part or parts of the house during any period during which it appears to the tribunal that such an offence was being committed, and
  - (c) that the requirements of subsection (7) have been complied with in relation to the application.
- (7) Those requirements are as follows—
- (a) the authority must have served on the appropriate person a notice (a “notice of intended proceedings”)—
    - (i) informing him that the authority are proposing to make an application under subsection (5),
    - (ii) setting out the reasons why they propose to do so,
    - (iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and
    - (iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;
  - (b) that period must have expired; and
  - (c) the authority must have considered any representations made to them within that period by the appropriate person.
- (8) If the application is made by an occupier of the whole or part of the house, the tribunal must be satisfied as to the following matters—
- (a) that the appropriate person has been convicted of an offence under section 95(1) in relation to the house, or has been required by a rent repayment order to make a payment in respect of housing benefit paid in connection with occupation of the whole or any part or parts of the house,
  - (b) that the occupier paid, to a person having control of or managing the house, periodical payments in respect of occupation of the whole or part of the house during any period during which it appears to the tribunal that such an offence was being committed in relation to the house, and
  - (c) that the application is made within the period of 12 months beginning with—
    - (i) the date of the conviction or order, or
    - (ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.

(9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—

- (a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and
- (b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.

(10) In this section—

“the appropriate person”, in relation to any payment of housing benefit or periodical payment payable in connection with occupation of the whole or a part of a house, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;

“housing benefit” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);

“occupier”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence (and “occupation” has a corresponding meaning);

“periodical payments” means periodical payments in respect of which housing benefit may be paid by virtue of regulation 10 of the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) or any corresponding provision replacing that regulation.

(11) For the purposes of this section an amount which—

- (a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and
- (b) is not an amount of housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment.