

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

5th March, 2025

Proposition No. P.2025/22

Committee for the Environment & Infrastructure

Introduction of Housing Standards Legislation – Legislation and Supplementary Policy
Letter

AMENDMENT

Proposed by: H M Procureur

Seconded by: Deputy L. de Sausmarez

1. In each of Propositions 1 to 4, for "the Housing (Standards, Landlord Registration and HMO Licensing) (Guernsey) Ordinance, 2024" substitute "the Housing (Standards, Landlord Registration and HMO Licensing) (Guernsey) Ordinance, 2025".
2. For Proposition 5 substitute –
 - “5. Only if propositions 2 to 4 have been approved, to approve the draft Ordinance entitled “The Housing (Standards, Landlord Registration and HMO Licensing) (Guernsey) Ordinance, 2025”, as set out in Appendix 1 (as substituted) to the policy letter and to direct that the same shall have effect as an Ordinance of the States.”
3. For Appendix 1 to the policy letter substitute the Appendix to this Amendment.

Rule 4(1) Information

- a) The propositions contribute to the States’ objectives and policy plans by ensuring the Ordinance has proper effect.
- b) In preparing the propositions, no consultation has been necessary.
- c) The propositions have been submitted to His Majesty’s Procureur for advice on any legal or constitutional implications.

- d) There are no financial implications to the States of carrying the propositions into effect.
- e) Advice has also been sought from the States' Greffier and the Officers of the Committee responsible for submission of the proposition to which the amendment relates.

Explanatory note

The version of the Ordinance appended to the policy letter contains some numbering errors, and this Amendment substitutes a corrected version of the Ordinance. It also amends references in the propositions to the title of the Ordinance, correcting the date (from 2024 to 2025).

APPENDIX

"Appendix 1: The Housing (Standards, Landlord Registration and HMO Licensing) (Guernsey) Ordinance, 2025

[corrected Ordinance text]"

The Housing (Standards, Landlord Registration and HMO Licensing) (Guernsey) Ordinance, 2025

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The Housing (Standards, Landlord Registration and HMO Licensing) (Guernsey) Ordinance, 2025

THE STATES, in pursuance of their Resolutions of the 3rd July, 2020^a and the ** March, 2025^b, and in exercise of the powers conferred on them by section 1 of the Housing (Standards and Regulation) (Enabling Provisions) (Guernsey) Law, 2021^c, and all other powers enabling them in that behalf, hereby order:-

PART I

THE DIRECTOR OF HOUSING STANDARDS AND AUTHORISED OFFICERS

The Director of Housing Standards.

1. (1) The Committee must appoint a person as Director of Housing Standards ("**the Director**").

(2) The Director must, on the Committee's behalf, carry out functions, exercise the powers and perform the duties of the Director, as created or arising under the housing standards enactments, and such actions are to be treated as though carried out by the Committee.

(3) The Committee must ensure that adequate resources are provided to the Director for the Director to fulfil the duties mentioned in subsection (2).

^a Article VI of Billet d'État No. XIII of 2020.

^b Article ** of Billet d'État No. ** of 2025.

^c Order in Council No. IV of 2022.

(4) Where the Director receives money under the provisions of the housing standards enactments, such money –

- (a) is held by the Director on behalf of the Committee, and
- (b) may be used by the Director to cover expenditure incurred under the provisions of the housing standards enactments.

(5) Without prejudice to the further particulars regarding the Director's functions specified elsewhere in the housing standards enactments, the functions of the Director include –

- (a) giving publicity to measures that may be taken, and practices that may be adopted, by persons to ensure their compliance with the housing standards enactments,
- (b) conducting inquiries and investigations into suspected non-compliance with any provision of the housing standards enactments,
- (c) in the event of a non-compliance with the housing standards enactments, using the enforcement powers specified within them with a view to ensuring that the non-compliance is remedied,
- (d) establishing and maintaining the Register (within the meaning of section 87(1)) in accordance with Part IV,

- (e) granting, refusing, varying and revoking HMO licences (within the meaning of section 109(3)) in accordance with Part VI,
- (f) determining the conditions to be included in an HMO licence,
- (g) monitoring compliance by the holder of an HMO licence with the conditions of that licence,
- (h) making, varying and revoking interim management and final management orders under Part VII, and fulfilling the duties in respect of such orders specified in that Part,
- (i) advising the States generally in relation to housing standards in the Island of Guernsey,
- (j) when requested in writing by the Committee, furnishing the Committee, to the best of the Director's ability, with such information as the Committee may require concerning decisions made and actions taken by the Director under the housing standards enactments,
- (k) carrying out such other functions as may be created, assigned or transferred for or to the Director by or under this Ordinance or any other enactment, and
- (l) on behalf of the Committee, being a party to any appeal (other than in criminal proceedings) brought under the housing standard enactments.

(6) The Director may do anything that appears to the Director to be -

- (a) necessary, conducive or expedient to or for the carrying out of the Director's functions, or
- (b) incidental to their proper discharge.

(7) Without prejudice to the generality of subsection (6), the Director may -

- (a) publish information, reports and other documents,
- (b) appoint or consult any person or body -
 - (i) to advise the Director in relation to the carrying out of the Director's functions, or
 - (ii) in connection with the provision of such advice, and
- (c) exercise such other powers as may be created, assigned or transferred for or to the Director by or under this Ordinance or any other enactment.

(8) The States may, on the recommendation of the Committee and by Resolution, give to the Director -

- (a) written guidance, or
- (b) written directions.

(9) Such guidance or directions -

- (a) may be of a general or specific character or nature, and

(b) may concern the policies to be followed by the Director in relation to the manner in which any function of the Director is to be carried out.

(10) Before making any recommendation to the States under subsection (8), the Committee must consult the Director.

(11) It is the duty of the Director, in carrying out any of the Director's functions –

(a) to take into account any guidance given under subsection (8)(a),

(b) to act in accordance with any directions given under subsection (8)(b), and

(c) to act in a manner that is –

(i) fair, timely, transparent and objective, and

(ii) consistent with the housing standards enactments.

Authorised Officers.

2. (1) The Director may, by an authorisation in writing, appoint one or more authorised officers.

(2) An authorised officer must, on the Committee's behalf, carry out functions, exercise the powers and perform the duties of such officers, as created or arising under the housing standards enactments, and any such action –

(a) is to be treated as though carried out by the Committee, and

(b) may alternatively be carried out by the Director personally.

(3) An authorisation under subsection (1) may be terminated at any time by the Director, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

(4) The provisions of this section are subject to the limitation mentioned in section 125(1) (certain functions of authorised officers in connection with management orders that require the consent of the Director on a case by case basis).

(5) This section is without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^d.

PART II

STANDARDS FOR DWELLINGS

Duty to make regulations

Prescribed hazards in dwellings.

3. (1) In this Ordinance -

(a) "**category 1 hazard**" means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount, and

^d Ordres en Conseil Vol. XXXIII, p. 478; this enactment has been amended.

(b) "**category 2 hazard**" means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score below the minimum amount prescribed for a category 1 hazard of that description.

(2) In subsection (1) –

(a) "**prescribed**" means prescribed by regulations made by the Committee, and

(b) "**prescribed band**" means a band so prescribed for a category 1 hazard or a category 2 hazard, as the case may be.

(3) Regulations under this section may, in particular, prescribe a method of assessing whether a hazard is a category 1 hazard or a category 2 hazard that takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur.

Minimum standards in rented dwellings.

4. (1) The Committee must by regulations prescribe minimum standards that all rented dwellings must comply with.

(2) Any reference to "**minimum standards**" in this Ordinance is a reference to such standards as so prescribed.

Relationship between section 3 and section 4.

5. Unless a contrary intention is expressed in the regulations, regulations enacted under section 3 are additional to and independent of regulations enacted

under section 4, and for the avoidance of doubt this means that enforcement action under this Ordinance may be taken in relation to –

- (a) a prescribed hazard at a dwelling, even when that dwelling complies with minimum standards, and
- (b) a contravention of minimum standards in respect of a dwelling, even when a prescribed hazard does not exist at that dwelling.

Right of registered controller to inspect

Registered controller's right to enter rented dwelling to monitor housing standards.

6. (1) A registered controller, or any person authorised in writing by a registered controller, may, at any reasonable time, and on giving 24 hours' notice in writing to all adult occupiers of the rented dwelling, enter the rented dwelling for the purpose of –

- (a) investigating its condition, state of repair, and compliance with minimum standards,
- (b) investigating the presence of prescribed hazards,
- (c) carrying out works or repairs necessary to ensure that the rented dwelling complies with minimum standards, or
- (d) carrying out works or repairs necessary to remove or reduce a category 1 hazard or a category 2 hazard.

(2) The right specified in subsection (1) is –

- (a) separate to and in addition to any contractual rights that the registered controller may have to enter the rented dwelling,
- (b) exercisable regardless of whether or not the rented dwelling is subject to enforcement action under this Part, and
- (c) unaffected by any contractual term that purports to contradict or limit that right.

Investigations by authorised officers

Investigations: introduction.

7. If an authorised officer considers it appropriate to do so, that authorised officer may investigate –

- (a) whether premises are being used as a dwelling or rented dwelling,
- (b) whether a rented dwelling complies with minimum standards,
- (c) where a rented dwelling does not comply with minimum standards, the cause of that non-compliance,
- (d) whether a prescribed hazard exists at a dwelling,
- (e) where a prescribed hazard exists at a dwelling, the cause of that hazard,
- (f) whether unregistered premises are required to be registered under Part V,

- (g) whether unlicensed premises are required to be licensed under Part VI,
- (h) where an application for an HMO licence has been received under section 110 or section 115 –
 - (i) whether the application should be granted, and
 - (ii) if so, what conditions should be included in that licence, and
- (i) whether a licensed HMO is being occupied in accordance with that licence, including any condition imposed under section 113.

The right to inspect.

8. (1) An investigation under section 7 may include an inspection of such premises or part of premises as the authorised officer considers appropriate in the circumstances.

(2) Subject to subsections (3) and (4), an authorised officer may enter the premises at any reasonable time to carry out the inspection but the authorised officer must, prior entry, give 24 hours' notice in writing to –

- (a) all adult occupiers,
- (b) any known controller, unless the authorised officer considers that it would not be appropriate to give the notice to a particular controller, in which case the authorised officer need not give the notice to that controller.

(3) Notwithstanding subsection (2), an authorised officer may enter the premises immediately where an adult occupier or, in the absence of any adult occupier, a controller, consents to immediate entry by an authorised officer.

(4) Where notice is given under subsection (2) but an adult occupier or, in the absence of any adult occupier, a controller, consents to entry by an authorised officer at the end of a period of less than 24 hours, an authorised officer may instead enter the premises at the end of that lesser period.

(5) On entry into the premises, the authorised officer may –

- (a) be accompanied by any other person, and may bring any equipment or materials, that the authorised officer considers necessary for any purpose for which the power of entry is being exercised,
- (b) make such examination and investigation as the authorised officer considers necessary, including investigation about the identity of an unregistered controller,
- (c) direct that the premises, or any part of it, or anything in it, must be left undisturbed (whether generally or in particular respects) for a specified period, such period being as long as is reasonably necessary for the purpose of any examination or investigation,
- (d) take such measurements and photographs, and make such recordings, as the authorised officer considers necessary for the purpose of the examination or investigation,

- (e) leave recording equipment on the premises for later collection,
- (f) take and retain samples of –
 - (i) any articles or substances found in the premises, and
 - (ii) the atmosphere in, or in the vicinity of, the premises,
- (g) either -
 - (i) copy any documents found on the premises that are relevant to the examination or investigation, or
 - (ii) remove such a document to copy it, in which case that document must be copied and returned as soon as reasonably practicable, and
- (h) take any other steps that are reasonably necessary in order to effectively exercise the powers listed in this subsection.

(6) When exercising powers under this section, an authorised officer must produce evidence of that officer's authority whenever requested to do so by –

- (a) a controller,
- (b) an occupier, or

(c) anyone else having a relevant interest in the premises under investigation.

(7) An authorised officer entering premises under this section, and anyone accompanying that officer, may only remain in the premises as long as is necessary to achieve the purpose for which the entry was made.

(8) If the premises are unoccupied or if the occupier is temporarily absent when the authorised officer enters the premises, the authorised officer must leave the premises as effectually secured against trespassers as the authorised officer found the premises.

(9) An authorised officer may carry out more than one inspection of the premises, irrespective of whether other enforcement action under this Ordinance is being taken in respect of those premises, and the provisions of this section will apply to each subsequent entry in the same way that they apply to an initial entry.

(10) Force may not be used by the authorised officer, or anyone accompanying the authorised officer, when exercising the powers under this section (but see section 71).

(11) The power under subsection (5)(g) does not apply to a document subject to legal professional privilege.

Further provisions concerning a section 8(5)(c) direction.

9. (1) A direction under section 8(5)(c) must be given in writing by the authorised officer and, if a form is prescribed by regulations made by the Committee, in that form.

(2) A person commits an offence if they fail to comply with a direction under section 8(5)(c).

(3) It is a defence for a person charged with an offence under subsection (2) to prove, on the balance of probabilities, that they had a reasonable excuse for the failure to comply with the direction.

(4) A person guilty of an offence under subsection (2) is liable on conviction to a fine not exceeding level 4 on the uniform scale.

Power to require information and documents: general.

10. (1) Where an authorised officer considers that further information in respect of premises is required, the authorised officer may serve a notice under either section 11 or 12 –

- (a) on any person specified in subsection (2), and
- (b) for either of the purposes specified in subsection (3).

(2) The notice may be served on –

- (a) an adult occupier,
- (b) a controller, or
- (c) any person who has a relevant interest in the premises.

(3) The notice may be served for –

- (a) any purpose connected with the exercise of the authorised officer's functions under the housing standards enactments, or
- (b) the purpose of investigating whether an offence has been committed under the housing standards enactments.

(4) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of a person's compliance with a notice under section 11 or 12.

(5) A notice served under section 11 or 12 may be withdrawn at any time by an authorised officer and, if withdrawn after a notice of appeal against the notice has been filed, has the effect of terminating the appeal.

Notice to furnish information.

11. (1) A notice under this section ("**a notice to furnish information**") requires the person served with the notice to furnish a written and signed statement to the authorised officer specified in the notice, confirming –

- (a) the nature of that person's interest in the premises, and
- (b) the name and address of each person who that person believes is, in respect of the premises, a person falling within section 10(2).

(2) The notice to furnish information must specify –

- (a) the premises in question,
- (b) that the notice is being served by an authorised officer,
- (c) that the notice is being served under the power conferred by this section,
- (d) the information required to be given under subsection (1),

- (e) a time period for complying with the notice, being not less than 7 days from the service of the notice,
- (f) the form or manner in which the information must be supplied to the authorised officer to comply with the notice,
- (g) that failing to comply with the notice is a criminal offence,
- (h) the right under section 13 to appeal the decision to serve the notice, and
- (i) the period within which an appeal may be made.

Notice to produce documents.

12. (1) A notice under this section ("**a notice to produce documents**") requires the person served with the notice to produce, to the authorised officer specified in the notice, any documents –

- (a) that are specified or described in the notice, or within a class of document so specified or described, and
 - (b) that the authorised officer reasonably believes to be within that person's custody or control.
- (2) The notice to produce documents must specify –
- (a) the premises in question,
 - (b) that the notice is being served by an authorised officer,
 - (c) that the notice is being served under the power conferred by this section,

- (d) the documentation required to be produced,
- (e) a time period for complying with the notice, being not less than 7 days from the service of the notice,
- (f) the form or manner in which the documentation must be produced to the authorised officer to comply with the notice,
- (g) that failing to comply with the notice is a criminal offence,
- (h) the effect of subsections (3) and (4),
- (i) the right under section 13 to appeal the decision to serve the notice, and
- (j) the period within which an appeal may be made.

(3) Nothing in this section confers a power to require a person to produce a document that the person would be entitled to refuse to produce in court proceedings on the grounds of legal professional privilege.

(4) Where a copy of a document produced under this section is sufficient for an authorised officer to exercise that officer's functions under this Ordinance –

- (a) that document may be copied,
- (b) a copy or copies of that document may be retained by an authorised officer, and
- (c) after an authorised officer has had an opportunity to copy the document pursuant to paragraph (a), the

original document must be returned to the person who produced the document.

Appeal against notice to furnish information or produce documents.

13. (1) A person (in this section "**the relevant person**") served with a notice under section 11 or 12 may appeal to the Magistrate's Court against the decision to serve it.

(2) A person wishing to appeal must file a notice of appeal, setting out the grounds for appeal, within the period of seven days beginning with the date on which the notice was served.

(3) The Magistrate's Court may allow an appeal to be made to it after the end of the period specified in subsection (2) if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of the applicable period, and
- (b) any delay since then in applying for permission to appeal out of time.

(4) An appeal may be brought on the grounds that –

- (a) the decision was unreasonable,
- (b) the decision was ultra vires, or
- (c) there was some other error of law.

(5) Without prejudice to the generality of subsection (4), an appeal may also be brought on the grounds that –

- (a) the relevant person has been given an unreasonably short period of time to comply with it,
- (b) the notice was defective in a material respect,
- (c) the relevant person was not the proper person to be served with such a notice, or
- (d) it is unreasonable or disproportionate to oblige the relevant person to comply with the notice.

(6) The filing of a notice of appeal has the effect of suspending the notice until the determination of the appeal.

Determination of appeal under section 13.

14. (1) To determine whether any of the grounds for appeal under section 13(4) or 13(5) are established the Magistrate's Court may –

- (a) receive evidence, and
- (b) have regard to any relevant matters of which the authorised officer was unaware when the authorised officer made the decision to serve the notice appealed against, in which case any reference to something being unreasonable or disproportionate (and related expressions) in those subsections is a reference to a decision being unreasonable or disproportionate if the authorised officer had been aware of such matters.

(2) On appeal, the Magistrate's Court may–

- (a) confirm, quash or vary the notice, and

(b) make such further order as is necessary to give effect to its decision.

(3) In exercising its powers under subsection (2), the Magistrate's Court may vary the time period for complying with the notice if the court considers it to be in the interests of justice.

(4) The power in subsection (3) may be exercised whether or not the appeal is successful.

(5) If the Magistrate's Court exercises its power under this section to vary the notice –

(a) it must issue the notice in the varied terms, and

(b) it must provide an authorised officer with such directions as to service, and such other practical directions necessary to give effect to the notice, as the court sees fit.

Offences in connection with notices to furnish information or produce documents.

15. (1) A person commits an offence if they fail to comply with a requirement imposed upon them by or under a notice made under section 11 or 12.

(2) It is a defence for a person charged with an offence under subsection (1) to prove, on the balance of probabilities, that they had a reasonable excuse for the failure to comply with the requirement.

(3) A person commits an offence if, having received a notice under section 12, they falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, a document that is covered by that notice.

(4) A person guilty of an offence under subsection (1) or (3) is liable on conviction to a fine not exceeding level 5 on the uniform scale.

Disclosure and sharing of information.

16. (1) The Director may request that a specified body provides the Director with information or a document held by that body for the purpose of assisting the Director or an authorised officer in the exercise of functions under this Ordinance.

(2) Where a disclosure of information or documents to the Director by a specified body is necessary or expedient for a purpose under this Ordinance, such a disclosure does not breach —

- (a) any obligation of confidence, whether imposed by statute or otherwise, in relation to the matter so disclosed, or
- (b) any other restriction, whether imposed by statute or otherwise, on the access to or disclosure of the information.

(3) The Director may disclose information acquired under the housing standards enactments by the Director or an authorised officer to a specified body to the extent that the disclosure is necessary for the purpose of enabling that body to carry out —

- (a) its statutory functions in relation to —
 - (i) housing,
 - (ii) environmental health, or
 - (iii) public health, or

- (b) any function incidental to the functions described in paragraph (a).
- (4) In this section, a "**specified body**" is any one of the following —
 - (a) a committee of the States of Guernsey,
 - (b) the Constables or the Douzaine of any parish, or
 - (c) a public office, or the holder of a public office.
- (5) The Committee may by regulation amend subsection (3)(a).

Selection of appropriate enforcement action

Enforcement action in respect of category 1 hazards.

17. (1) If an authorised officer considers that a category 1 hazard exists on any rented dwelling, the authorised officer must take the appropriate enforcement action in relation to the hazard.

(2) If an authorised officer considers that a category 1 hazard exists on any dwelling that is not a rented dwelling, the authorised officer may take the appropriate enforcement action in relation to the hazard.

(3) In subsections (1) and (2) "**the appropriate enforcement action**" means whichever of the following courses of action is considered by the authorised officer to be the most appropriate in all the circumstances of the case –

- (a) serving an improvement notice under section 21,
- (b) serving a prohibition order under section 42,
- (c) serving an emergency prohibition order under section 54,

- (d) serving a hazard awareness notice under section 59,
- (e) taking emergency remedial action under section 62, or
- (f) taking a combination of actions described at paragraphs (a) to (e), whether concurrently or consecutively.

(4) If an authorised officer considers that enforcement action already taken in respect of a dwelling has not proved satisfactory, the authorised officer may take either –

- (a) the same type of enforcement action again, or
- (b) a different type of enforcement action.

Enforcement action in respect of category 2 hazards.

18. (1) If an authorised officer considers that a category 2 hazard exists on any dwelling, the authorised officer may take the appropriate enforcement action in relation to the hazard.

(2) In subsection (1) "**the appropriate enforcement action**" means whichever of the following courses of action is considered by the authorised officer to be the most appropriate in all the circumstances of the case –

- (a) serving an improvement notice under section 21,
- (b) serving a prohibition order under section 42,
- (c) serving a hazard awareness notice under section 59, or
- (d) taking a combination of the actions described at paragraphs (a) to (c), whether concurrently or consecutively.

(3) If an authorised officer considers that enforcement action already taken in respect of a dwelling has not proved satisfactory, the authorised officer may take either –

- (a) the same type of enforcement action again, or
- (b) a different type of enforcement action.

Enforcement action in respect of minimum standards.

19. (1) If an authorised officer considers that a rented dwelling fails to comply with minimum standards, the authorised officer may take the appropriate enforcement action in relation to that failure.

(2) In subsection (1) "**the appropriate enforcement action**" means whichever of the following courses of action is considered by the authorised officer to be the most appropriate in all the circumstances of the case –

- (a) serving an improvement notice under section 23,
- (b) serving a prohibition order under section 44, or
- (c) taking a combination of actions described at paragraphs (a) and (b), whether concurrently or consecutively.

(3) If an authorised officer considers that enforcement action already taken in respect of a dwelling has not proved satisfactory, the authorised officer may take either –

- (a) the same type of enforcement action again, or
- (b) a different type of enforcement action.

Duty to give reasons.

20. (1) When an authorised officer decides to take enforcement action under any of sections 17 to 19, the authorised officer must prepare a statement of reasons in respect of that decision.

(2) The statement must include why that particular type of enforcement action was considered by the authorised officer to be the most appropriate in all the circumstances of the case.

(3) A copy of the statement prepared under subsection (1) must accompany the relevant notice or copy of the order (as the case may be) being served in connection with the taking of that enforcement action.

Improvement notices

Improvement notices in respect of prescribed hazards: general.

21. (1) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice.

(2) The notice may require remedial action to be taken in relation to any part of the premises specified in the notice ("**the specified premises**"), including any common parts.

(3) If the specified premises are different premises to the dwelling at which the prescribed hazard exists, the authorised officer must be satisfied—

- (a) that the deficiency from which the prescribed hazard arises is situated at the specified premises, and
- (b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential

occupiers of the dwelling at which the prescribed hazard exists.

(4) If an authorised officer considers that multiple prescribed hazards exist at a dwelling, the authorised officer may either serve an improvement notice that relates to multiple prescribed hazards, or a separate improvement notice for each prescribed hazard, or a combination of the two.

(5) Subsection (4) applies irrespective of whether the multiple hazards are in the same category or include both a category 1 hazard and a category 2 hazard.

(6) An improvement notice under this section cannot also relate to a non-compliance with minimum standards (meaning that, where an authorised officer also intends to serve an improvement notice in respect of a non-compliance with minimum standards, it will be necessary to serve a separate notice under section 23 in respect of that non-compliance).

(7) Where the improvement notice relates to a category 1 hazard, the remedial action required to be taken by the improvement notice—

(a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard, but

(b) may extend beyond such action.

(8) An improvement notice under this section is void if, at any time between the date it is served and the completion date, the specified premises are the subject of a management order under Part VII.

Contents of improvement notice relating to prescribed hazards.

22. (1) An improvement notice served under section 21 must specify, in relation to each prescribed hazard to which it relates –

- (a) that the notice is served under section 21,
- (b) the person or persons on whom the notice is served,
- (c) the nature and category of the prescribed hazard,
- (d) the dwelling at which the prescribed hazard exists,
- (e) the deficiency giving rise to the prescribed hazard,
- (f) the premises ("**the specified premises**") in relation to which remedial action is to be taken in respect of the prescribed hazard,
- (g) that remedial action is required to remove or reduce the prescribed hazard,
- (h) the nature of that remedial action,
- (i) the date on which the notice was issued,
- (j) the date on which the notice becomes operative ("**the operative date**"), not being less than 14 days from the date that the notice is served,
- (k) the date by which the remedial action must be completed ("**the completion date**"), being such a period of time after the operative date as the authorised officer considers reasonable to complete the remedial action, and

- (1) that failure to comply with the improvement notice is a criminal offence under section 36 and the maximum penalty, including the power to make a disqualification order under section 170.
- (2) The notice must also notify the recipient of—
 - (a) the right to request a variation of the notice under section 27(1),
 - (b) the right to request a revocation of the notice under section 31(1),
 - (c) the right under section 34 to appeal the decision to serve the notice, and
 - (d) the period within which an appeal may be made.
- (3) The nature of the remedial action specified in subsection (1)(h) may be framed –
 - (a) to any extent by reference to approved codes of practice or guidance, and
 - (b) so as to afford a choice between different types of remedial action.
- (4) If no appeal against the improvement notice is made, the notice is final and conclusive as to matters that could have been raised on an appeal.

Improvement notices in respect of minimum standards: general.

23. (1) An improvement notice under this section is a notice requiring the person on whom it is served to take remedial action in relation to a rented dwelling

specified in the notice ("**the specified premises**"), whether in the form of carrying out works or otherwise, to ensure that the specified premises comply with minimum standards.

(2) The notice may require remedial action to be taken in relation to any part of the specified premises.

(3) If an authorised officer considers that the specified premises contravene minimum standards in multiple respects, the authorised officer may either serve an improvement notice that relates to multiple contraventions, or a separate improvement notice for each contravention, or a combination of the two.

(4) An improvement notice under this section cannot also relate to the presence of a prescribed hazard at the specified premises (meaning that, where an authorised officer also intends to serve an improvement notice in respect of a prescribed hazard, it will be necessary to serve a separate notice under section 21 in respect of that prescribed hazard).

(5) An improvement notice under this section is void if, at any time between the date it is served and the completion date, the specified premises are the subject of a management order under Part VII.

Contents of improvement notices relating to minimum standards.

24. (1) An improvement notice served under section 23 must specify, in relation to each contravention of minimum standards to which it relates -

- (a) that the notice is served under section 23,
- (b) the person or persons on whom the notice is served,
- (c) the minimum standard being contravened,

- (d) the rented dwelling at which the contravention exists, ("**the specified premises**"),
 - (e) the deficiency giving rise to the contravention,
 - (f) that remedial action is required to ensure that the specified premises comply with minimum standards,
 - (g) the nature of that remedial action,
 - (h) the date on which the notice was issued,
 - (i) the date on which the notice becomes operative ("**the operative date**"), not being less than 14 days from the date that the notice is served,
 - (j) the date by which remedial action must be completed ("**the completion date**"), being such a period of time after the operative date as the authorised officer considers reasonable to complete the remedial action, and
 - (k) that failure to comply with the improvement notice is a criminal offence under section 36 and the maximum penalty, including the power of to make a disqualification order under section 170.
- (2) The notice must also notify the recipient of -
- (a) the right to request a variation of the notice under section 27(1),

- (b) the right to request a revocation of the notice under section 31(1),
 - (c) the right under section 34 to appeal the decision to serve the notice, and
 - (d) the period within which an appeal may be made.
- (3) The nature of the remedial action specified in subsection (1)(g) may be framed –
- (a) to any extent by reference to approved codes of practice or guidance, and
 - (b) so as to afford a choice between different types of remedial action.
- (4) If no appeal against the improvement notice is made, the notice is final and conclusive as to matters that could have been raised on an appeal.

Service of an improvement notice.

25. (1) Subject to subsection (6), where the specified premises (within the meaning of section 21 or 23, as the case may be) are registered under Part V, an authorised officer must serve the improvement notice on every registered controller of the specified premises.

(2) A failure to comply with subsection (1) invalidates the improvement notice.

(3) Subject to subsections (4) and (6), where the specified premises are not registered under Part V, an authorised officer must serve the improvement notice on every unregistered controller of the specified premises known to the authorised officer.

(4) If the authorised officer is satisfied that it would not be appropriate to serve the improvement notice under subsection (3) on a particular unregistered controller, the authorised officer need not serve the notice on that controller.

(5) A failure to comply with subsection (3) does not invalidate the improvement notice, meaning it still has effect in relation to any unregistered controller served with it.

(6) Where the specified premises are common parts of a building containing one or more flats, the authorised officer must serve the notice on a person who –

- (a) is an owner of the specified premises concerned, and
- (b) in the authorised officer's opinion ought to take the action specified in the notice.

(7) For the purpose of subsection (6) a person is an owner of any common parts of a building if that person is an owner of the building or part of the building concerned, or (in the case of external common parts) of the particular premises in which the common parts are comprised.

(8) An authorised officer must also serve, within seven days of service of the notice under this section, a copy of the notice on every other person who, to the authorised officer's knowledge—

- (a) is an unregistered controller of the whole or part of the specified premises who was not served with the improvement notice,

(b) is an adult occupier of the whole or part of the specified premises, or

(c) has a relevant interest in the whole or part of the specified premises.

(9) A failure to provide a copy of the notice to persons entitled under subsection (8) does not invalidate the improvement notice.

(10) A copy of the improvement notice is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of the specified premises.

Change in person liable to comply with improvement notice.

26. (1) This section applies where—

(a) an improvement notice has been served on a person (in this section "**the original recipient**") in respect of specified premises, and

(b) at a later date ("**the changeover date**") that person ceases to be a controller of the specified premises.

(2) Where this section applies, subsections (3) to (6) stipulate who becomes "**the liable person**" in respect of the specified premises, and subsections (7) to (9) stipulate the extent of that person's liability.

(3) If the original recipient was served with the improvement notice because the original recipient was an owner of the specified premises, the liable person is the owner's successor in title on the changeover date.

(4) If the original recipient was served with an improvement notice because the original recipient was the landlord of the specified premises (whether or

not registered under Part V), and there is a new landlord as from the changeover date, that new landlord is the liable person.

(5) If the original recipient was served with the improvement notice because the original recipient was a representative registered under Part V, and there is a new representative registered under that Part, that new representative is the liable person.

(6) If the original recipient was served with the improvement notice because the original recipient was employed to carry out property management work in respect of specified premises not registered under Part V, and there is a new person employed to carry out such activities, that new person is the liable person.

(7) As from the changeover date, the liable person in respect of the specified premises is to be in the same position as if—

- (a) the improvement notice had originally been served on the liable person, and
- (b) the liable person had taken all steps relevant for the purposes of this Part that the original recipient had taken.

(8) The effect of subsection (7) is that, in particular, any period for compliance with the notice or for bringing any appeal is unaffected.

(9) Where the original recipient has become subject to any liability arising by virtue of this Part before the changeover date, nothing in this section has the effect of—

- (a) relieving the original recipient of the liability, or
- (b) making the liable person subject to it.

(10) Where a person becomes but then ceases to be the liable person, this section, with any necessary modifications, also applies for the purpose of determining who becomes the liable person in that person's place.

Request to vary improvement notice.

27. (1) A person on whom an improvement notice is served (in this section "**the recipient**") may, prior the completion date, submit a written request for a variation, by submitting such a request in the prescribed form to the Director.

(2) Without prejudice to the generality of subsection (1), the recipient may submit that the recipient should be excluded from service under section 25(4).

(3) Upon the Director receiving a request under subsection (1), an authorised officer must decide within 14 days whether or not to grant the request.

(4) If an authorised officer decides to refuse a request submitted under subsection (1), the authorised officer must serve within the period of 14 days mentioned in subsection (3) –

(a) a notice of refusal, together with a copy of the request, on any person on whom the authorised officer would be required to serve an improvement notice under section 25, and

(b) a copy of the notice of refusal, together with a copy of the request, on any person on whom the authorised officer would be required to serve a copy of an improvement notice under section 25.

(5) A notice of refusal served under subsection (4) must set out –

- (a) the authorised officer's decision not to vary the improvement notice,
- (b) the reasons for that decision,
- (c) the date on which this decision was made,
- (d) the right of appeal against this decision under section 34, and
- (e) the period within which an appeal may be made.

(6) Where service in accordance with subsection (4) would mean that a person on whom the improvement notice or a copy of it was served would not receive either document mentioned in that subsection, the authorised officer must serve a copy of the notice of refusal on that person, unless the authorised officer considers that it would not be appropriate to do so.

(7) A copy of the notice of refusal is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of those premises.

(8) If an authorised officer decides to grant the request, the authorised officer must act in accordance with section 28.

Power to vary improvement notice.

28. (1) Regardless of whether a written request has been submitted under section 27(1), an authorised officer may vary an improvement notice as the authorised officer thinks fit.

(2) Where an improvement notice is suspended under section 29, the power under this section to vary an improvement notice includes a power to alter the time or events by reference to which the suspension is to come to an end.

(3) If an authorised officer intends to vary an improvement notice, the authorised officer must also vary the operative date and completion date if it would otherwise be unreasonable to require a person served with the varied improvement notice to comply with it.

(4) A varied improvement notice must –

- (a) include the matters that must be included in an improvement notice under sections 22 or 24 (as the case may be),
- (b) notify the recipient of –
 - (i) the right under section 34 to appeal the decision to vary the improvement notice, and
 - (ii) the period within which an appeal may be made.

(5) A varied improvement notice must include an explanatory note summarising the variations and the reasons for them.

(6) If an authorised officer varies an improvement notice the authorised officer must serve –

- (a) the varied improvement notice on any person on whom the authorised officer would be required to serve an improvement notice under section 25, and
- (b) a copy of the varied improvement notice on any person on whom the authorised officer would be required to serve a copy of an improvement notice under section 25.

(7) If a decision to vary an improvement notice is in response to a request made under section 27(1), a varied improvement notice and any copy required to be served under subsection (6) must be served within 14 days of that request.

(8) Where service in accordance with subsection (6) would mean that a person on whom the improvement notice or a copy of it was served would not receive either document mentioned in that subsection, an authorised officer must serve a copy of the varied improvement notice on that person, unless that authorised officer considers that it would not be appropriate to do so.

(9) A copy of the varied improvement notice is to be regarded as having been served on every adult occupier of the specified premises if a copy of the notice is fixed to some conspicuous part of those premises.

(10) As soon as a varied improvement notice is served, the variations take effect.

Suspension of improvement notice.

29. (1) An improvement notice may provide for the operation of the notice to be suspended until a time, or the occurrence of an event, specified in the notice.

(2) If a time is specified it may, for example, be the time when a person of a particular description begins, or ceases, to occupy any premises.

(3) If an event is specified it may, for example, be a notified breach of an undertaking that was accepted by an authorised officer for the purposes of this section from a person on whom the notice is served.

(4) In subsection (3) a "**notified breach of an undertaking**" means an act or omission by the person on whom the notice is served—

- (a) which an authorised officer considers to be a breach of the undertaking, and
- (b) which is notified to that person in accordance with the terms of the undertaking.

(5) If an improvement notice provides for the operation of the notice to be suspended under this section, the operative date and the completion date must be fixed by reference to the day on which the suspension ends, and sections 22(1)(j), 22(1)(k), 24(1)(i) and 24(1)(j) are to be construed accordingly.

(6) An authorised officer –

- (a) may at any time review a suspended improvement notice, and
- (b) must review a suspended improvement notice not later than one year after the date on which the notice is issued and at subsequent intervals of not more than one year.

(7) Following a review under subsection (6) the authorised officer must decide whether the suspension should continue, and whether that is with or without variation under section 28, after which the authorised officer must serve –

- (a) a notice of the decision on any person on whom the authorised officer would be required to serve an improvement notice under section 25, and
- (b) a copy of the notice of the decision on any person on whom the authorised officer would be required to

serve a copy of an improvement notice under section 25.

(8) Where service in accordance with subsection (7) would mean that a person on whom the improvement notice or a copy of it was served would not receive either document mentioned in that subsection, the authorised officer must serve a copy of the notice of the decision on that person, unless the authorised officer considers that it would not be appropriate to do so.

(9) A copy of the notice of the decision is to be regarded as having been served on every adult occupier of the specified premises if a copy of the notice is fixed to some conspicuous part of those premises.

Power to withdraw improvement notice.

30. (1) An authorised officer may withdraw an improvement notice prior to it becoming operative.

(2) If an authorised officer withdraws an improvement notice, the authorised officer must serve a notice (a "**withdrawal notice**") confirming the withdrawal, on anyone who was served with –

- (a) the improvement notice, or
- (b) a copy of the improvement notice.

(3) A withdrawal notice is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of the specified premises.

(4) The withdrawal of an improvement notice does not affect the power of an authorised officer to –

- (a) serve a further improvement notice in respect of the same dwelling, including where this is in respect of the same prescribed hazard or contravention of minimum standards (as the case may be), or
- (b) take any other enforcement action under this Ordinance.

Request to revoke improvement notice.

31. (1) A person on whom an improvement notice has been served may, prior the completion date, submit a written request for a revocation, by submitting such a request in the prescribed form to the Director.

(2) Upon receipt of a request under subsection (1), an authorised officer must decide within 14 days whether or not to grant the request.

(3) If the authorised officer decides to refuse a request submitted under subsection (1), the authorised officer must serve within the period of 14 days mentioned in subsection (2) –

- (a) A notice of refusal, together with a copy of the request, on any person on whom the authorised officer would be required to serve an improvement notice under section 25, and
- (b) a copy of the notice of refusal, together with a copy of the request, on any person on whom the authorised officer would be required to serve a copy of an improvement notice under section 25.

(4) A notice of refusal served under subsection (3) must set out –

- (a) the authorised officer's decision not to revoke the improvement notice,
- (b) the reasons for that decision,
- (c) the date on which this decision was made,
- (d) the right of appeal against this decision under section 34, and
- (e) the period within which an appeal may be made.

(5) Where service in accordance with subsection (3) would mean that a person on whom the improvement notice or a copy of it was served would not receive either document mentioned in that subsection, the authorised officer must serve a copy of the notice of refusal on that person, unless the authorised officer considers that it would not be appropriate to do so.

(6) A copy of the notice of refusal is to be regarded as having been served on every adult occupier of the specified premises if a copy of the notice is fixed to some conspicuous part of those premises.

(7) If an authorised officer decides to grant the request, the authorised officer must act in accordance with section 32.

Revocation of improvement notice.

32. (1) An authorised officer must revoke an improvement notice if the authorised officer is satisfied that all requirements of the notice have been complied with.

(2) If subsection (1) does not apply then an authorised officer may revoke an improvement notice prior to compliance if—

- (a) in the case of an improvement notice served in respect of a category 1 hazard that is still persisting at a dwelling specified in the notice, the authorised officer considers that there are any special circumstances making it appropriate to revoke the notice, or
- (b) in the case of any other type of improvement notice, the authorised officer considers that it is appropriate to revoke the notice.

(3) The power to revoke an improvement notice applies regardless of whether or not a request to revoke under section 31(1) has been received.

(4) A revocation under this section comes into force at the time that the decision is made.

(5) Following a decision to revoke an improvement notice, an authorised officer must serve –

- (a) a notice of revocation on any person on whom the authorised officer would be required to serve an improvement notice under section 25, and
- (b) a copy of the notice of revocation on any person on whom the authorised officer would be required to serve a copy of an improvement notice under section 25.

(6) A notice of revocation under subsection (5) must set out –

- (a) the decision to revoke the improvement notice,
- (b) the reasons for the decision, and

(c) the date on which the decision was made.

(7) Service under subsection (5) must be –

(a) within 14 days of a request under section 31(1), if such a request was made, or

(b) in any other case, within 14 days of the decision to revoke the improvement notice.

(8) Where service in accordance with subsection (5) would mean that a person on whom the improvement notice or a copy of it was served would not receive either document mentioned in that subsection, an authorised officer must serve a copy of the notice of revocation on that person, unless the authorised officer considers that it would not be appropriate to do so.

(9) A copy of the notice of revocation is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of those premises.

(10) A revocation under this section means a revocation in full, and if only part of an improvement notice is revoked, it is instead deemed a variation under section 28.

Compliance with improvement notice.

33. An improvement notice served under section 21 or 23 is complied with if, by the compliance date, the remedial action specified in the notice has been completed.

Appeals in respect of improvement notices.

34. (1) The relevant person may appeal to the Magistrate's Court against the following decisions made by an authorised officer –

- (a) to serve an improvement notice,
- (b) to vary an improvement notice,
- (c) to refuse a request to vary an improvement notice, and
- (d) to refuse a request to revoke an improvement notice.

(2) In subsection (1) "**the relevant person**" means –

- (a) in relation to a decision within paragraphs (a) or (b) of that subsection, a person on whom the notice was served,
- (b) in relation to a decision within paragraphs (c) or (d) of that subsection, the person who requested the variation or revocation (as the case may be).

(3) A person wishing to appeal must file a notice of appeal, setting out the grounds for appeal, within the period of 14 days beginning with –

- (a) if the appeal is under subsection (1)(a), the date on which the improvement notice was served, or
- (b) if the appeal is under any of subsections (1)(b) to (1)(d), the date on which notice of the decision was served.

(4) The Magistrate's Court may allow an appeal to be made to it after the end of the period specified in subsection (3) if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of the applicable period, and

(b) any delay since then in applying for permission to appeal out of time.

(5) An appeal may be brought on the grounds that –

(a) the decision was unreasonable,

(b) the decision was ultra vires, or

(c) there was some other error of law.

(6) Without prejudice to the generality of subsection (5), an appeal may also be brought on any of the following grounds –

(a) that it was unreasonable to issue an improvement notice instead of taking a different type of enforcement action under this Ordinance,

(b) that the completion date imposes an unreasonably short period of time to carry out the remedial works,

(c) that the improvement notice was defective in a material respect,

(d) that the improvement notice was not accompanied by a statement of reasons in accordance with section 20,

(e) that the person on whom the improvement notice was served was not the proper person to be served with such a notice,

(f) that in respect of an improvement notice served under section 21 –

- (i) the prescribed hazard specified in the notice does not in fact exist, or
 - (ii) that it is unreasonable or disproportionate to oblige the relevant person to take the remedial action specified in the notice,
- (g) that in respect of an improvement notice served under section 23, the specified premises already complied with minimum standards when the notice was served,
- (h) that in respect of a decision to vary an improvement notice under section 28, the authorised officer has not reasonably discharged the duty under section 28(3),
- (i) that another person, as a controller of the specified premises, ought to—
 - (i) take the action concerned, or
 - (ii) pay the whole or part of the cost of taking that action.

(7) Where the grounds on which an appeal is made consist of or include the ground mentioned in subsection (6)(i), the appellant must serve a copy of the notice of appeal on the controller named under that ground, and that controller may apply to be joined as a party to the appeal proceedings.

(8) The filing of a notice of appeal under subsection (1)(a), (1)(b), or under section 73 after such an appeal is refused, has the effect of suspending the decision until the determination of the appeal or further appeal (as the case may be).

Determination of appeal in respect of improvement notice.

35. (1) To determine whether any of the grounds for appeal under section 34(5) or 34(6) are established the Magistrate's Court may –

- (a) receive evidence, and
- (b) have regard to any relevant matters of which the authorised officer was unaware when the authorised officer made the decision appealed against, in which case any reference to something being unreasonable or disproportionate (and related expressions) in those subsections is a reference to a decision being unreasonable or disproportionate if the authorised officer had been aware of such matters.

(2) On appeal, the Magistrate's Court may–

- (a) if the appeal is under section 34(1)(a), confirm, quash or vary the improvement notice,
- (b) if the appeal is under section 34(1)(b) or 34(1)(c), confirm, quash or vary the decision,
- (c) if the appeal is under section 34(1)(d), confirm the decision or revoke the improvement notice as from the date specified in the order,
- (d) if the appeal includes the ground under section 34(6)(i),
 - (i) vary the improvement notice so as to require the action to be taken by a controller mentioned in the notice of appeal, or

(ii) make such order as it considers appropriate with respect to the payment to be made by any such controller to the appellant or, where the action is taken by the Director, to the Director,

(e) make such further order as is necessary to give effect to its decision.

(3) In the exercise of its powers under subsection (2)(d), the Magistrate's Court must take into account, as between the appellant and any such controller—

(a) their relative interests in the premises concerned, considering both the nature of the interests and the rights and obligations arising under or by virtue of them,

(b) their relative responsibility for the state of the premises which gives rise to the need for the taking of the action concerned, and

(c) the relative degree of benefit to be derived from the taking of the action concerned.

(4) Where, by virtue of the exercise of the court's powers under subsection (2)(d)(i), a person other than the appellant is required to take the action specified in the improvement notice, that person is to be regarded for the purposes of this Part as the person on whom the notice was served (in place of any other person) for so long that person remains a controller of the premises to which the notice relates.

(5) In exercising its powers under subsection (2), the Magistrate's Court may vary the completion date if the court considers it in the interests of justice

to allow more time to comply with the notice, and this power may be exercised whether or not the appeal is successful.

(6) If the Magistrate's Court exercises its power under this section to vary the improvement notice –

- (a) it must issue an improvement notice in the varied terms, and
- (b) it must provide an authorised officer with such directions as to service, and such other practical directions necessary to give effect to the notice, as the court sees fit.

(7) If the Magistrate's Court allows an appeal on the basis that it was unreasonable to issue an improvement notice instead of taking a different type of enforcement action under this Ordinance, it must include in its decision a finding to that effect and identify that alternative course of action.

(8) If an appeal is made against an improvement notice that is not suspended, and the Magistrate's Court's decision on appeal confirms the notice, the operative date is varied to –

- (a) if a further appeal is not filed under section 73, at the end of the 14-day period for appealing under section 73(3), or
- (b) if a further appeal is filed under section 73, the date that the Royal Court confirms the improvement notice on appeal.

(9) If an appeal is made against an improvement notice that is suspended, and the Magistrate's Court's decision on appeal confirms the notice, the operative date is –

- (a) subject to paragraph (c), if a further appeal is not filed under section 73, at the end of the 14-day period for appealing under section 73(3),
- (b) subject to paragraph (c), if a further appeal is filed under section 73, the date that the Royal Court confirms the improvement notice on appeal, or
- (c) if later than the date that would be applicable under either paragraph (a) or (b), the time when the suspension ends according to the terms of the improvement notice.

(10) For the purpose of subsections (8) and (9) –

- (a) the withdrawal of an appeal has the same effect as a decision that confirms the notice, and
- (b) references to a decision that confirms the notice are to a decision that confirms it with or without variation.

Offence of failing to comply with improvement notice.

36. (1) A person commits an offence if, having been served with an improvement notice that has become operative, they fail to comply with it by the compliance date, and is liable on conviction to a fine not exceeding level 5 on the uniform scale.

(2) It is a defence for a person charged with an offence under subsection (1) to prove, on the balance of probabilities, that they had a reasonable excuse for failing to comply with the improvement notice.

(3) Subsection (4) applies if, after receiving representations from the defendant and the prosecution at a sentencing hearing for an offence under subsection (1), the court is satisfied that –

- (a) remedial action required by an improvement notice is incomplete, and
- (b) it would not be unjust to make an order under subsection (4).

(4) Where this subsection applies, and in addition to any other penalty that the court imposes, the court must either –

- (a) order the defendant to pay a further fine not exceeding level 1 on the uniform scale in respect of each day during which the remedial action remains incomplete –
 - (i) after the date of sentence, or
 - (ii) after such future date as the court may specify, not being later than 28 days after the date of sentence, or
- (b) order the defendant, within a time period specified in the order, to take such steps as may be specified in the order to remedy the deficiencies in the premises identified in the improvement notice.

(5) In setting the amount of any further fine imposed under subsection (4)(a), the court must consider –

(a) any financial benefit that appears to it to have accrued or to be likely to accrue, in consequence of the offence, to the defendant or to any person associated with the defendant, and

(b) the level of fine that would sufficiently encourage the completion of the remedial action.

(6) An order under subsection (4) is part of the sentence imposed on the defendant for the purpose of any appeal.

(7) Where the court makes an order under subsection (4), the defendant may apply to that court for the variation or revocation of that order on the basis that there has been a material change in circumstances since the making of that order (for example where the dwelling in question has ceased to be a rented dwelling).

(8) For the avoidance of doubt, the maximum penalty mentioned in subsection (1) does not include a further fine imposed under subsection (4) meaning, in particular, that the aggregate of fines imposed under both subsections may exceed that maximum, even when imposed by the Magistrate's Court.

(9) On an application by the defendant before the end of the time period specified in an order under subsection (4)(b), that time period may be extended by the court that made the order.

(10) Where the court has extended the time period under subsection (9), and on an application by the defendant before the end of that extended time period, the court that made the order may further extend the time period.

(11) A person who fails to comply with an order made by the court under subsection (4)(b) is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the uniform scale, or both.

(12) In proceedings against a person for an offence under subsection (11) it is a defence if they prove, on the balance of probabilities, that they have a reasonable excuse for failing to comply with the order.

(13) Subsection (14) applies where –

(a) the court has –

(i) declined to impose either order under subsection (4) when sentencing the defendant for an offence under subsection (1), or

(ii) sentenced the defendant for an offence under subsection (11),

(b) there are no outstanding appeals against conviction or sentence for an offence under subsections (1) or (11) (as the case may be) and the time limit for appealing has expired, and

(c) remedial action required by the improvement notice is incomplete.

(14) Where this subsection applies, an authorised officer may –

(a) take improvement action under section 37 or section 38, or

(b) revoke the improvement notice and take fresh enforcement action, whether or not that is in respect of the same prescribed hazard or contravention of minimum standards (as the case may be) that was the subject of the previous conviction and, for the avoidance of doubt, this means that the defendant may be convicted of a further offence under this Part if the defendant fails to comply with such fresh enforcement action.

(15) For the avoidance of doubt, a person is not served with an improvement notice for the purpose of subsection (1) if that person was merely served with a copy of the notice.

Power to take improvement action by agreement.

37. (1) An authorised officer may, by agreement with the person on whom an operative improvement notice has been served (in this section "**the relevant person**"), take any action that the relevant person is required to take in relation to the specified premises in pursuance of the notice.

(2) When acting under subsection (1), the authorised officer has all the rights that the relevant person would have against any occupier of, and any other person having an interest in, the specified premises (or any part of those premises).

(3) Before agreeing to exercise the discretion under this section, the authorised officer may insist that the relevant person provides the Director with sufficient funds to cover the action, or part of the action, and if there is any surplus in funds after taking such action, the Director must refund the surplus to the relevant person.

(4) Where multiple persons have been served with an improvement notice, the agreement under subsection (1) must be with all such persons.

Power to take improvement action without agreement.

38. (1) An authorised officer may take the action required to be taken by a person served with an operative improvement notice if the conditions in subsection (2) are satisfied.

(2) The conditions referred to in subsection (1) are –

- (a) the completion date specified in the improvement notice has passed,
- (b) the notice has not been complied with,
- (c) there are no outstanding requests, and
- (d) there are no outstanding appeals.

(3) For the purpose of subsection (2)(c), there is an outstanding request if a request under either section 27(1) or 31(1) has been made and either –

- (a) a decision on whether to grant or refuse the request has not yet been made by an authorised officer, or
- (b) the request was refused (whether in full or in part) and the time limit under section 34 for appealing such a refusal has not yet passed.

(4) For the purpose of subsection (2)(d), there is an outstanding appeal if –

- (a) the time limit under section 34 or 73 (as the case may be) for appealing a decision has not yet passed, or
- (b) an appeal has been filed under section 34 or 73 but not yet determined.

(5) For the avoidance of doubt, an authorised officer may exercise the discretion under subsection (1) irrespective of whether –

- (a) a person has been convicted of an offence under section 36(1), or –
- (b) a person served with the improvement notice disagrees with the authorised officer taking that action.

(6) Subject to subsection (7), an authorised officer may –

- (a) enter any part of the specified premises for the purpose of taking any action that the authorised officer is entitled to take under subsection (1),
- (b) be accompanied by any other person, and
- (c) bring any equipment or materials, that the authorised officer considers necessary for that purpose.

(7) The power mentioned in subsection (6) is exercisable –

- (a) only after a notice has been served (an "**entry for remedial action notice**") in accordance with this section,
- (b) only after 24 hours have passed since the service of that notice,

- (c) only at a reasonable time of day, and
- (d) multiple times in respect of the same remedial action.

(8) The entry for remedial action notice must identify the improvement notice to which it relates and state—

- (a) that the notice is served under this section,
- (b) the date on which the entry for remedial action notice is issued,
- (c) the specified premises,
- (d) the prescribed hazard or contravention of minimum standards concerned,
- (e) that the authorised officer intends to enter the specified premises for the purpose of taking remedial action,
- (f) the nature of the remedial action that the authorised officer intends to take on the specified premises,
- (g) the date that the remedial action will commence,
- (h) the expected duration of the remedial action,
- (i) that entry will be required, from time to time, throughout this period.

(9) The authorised officer must serve –

- (a) the entry for remedial action notice on any person on whom the authorised person would be required to serve an improvement notice under section 25,

(b) a copy of the entry for remedial action notice on any person on whom the authorised person would be required to serve a copy of an improvement notice under section 25.

(10) Where service in accordance with subsection (9) would mean that a person on whom the improvement notice or a copy of it was served would not receive either document mentioned in that subsection, the authorised officer must serve a copy of the entry for remedial action notice on that person, unless the authorised officer considers that it would not be appropriate to do so.

(11) A copy of the entry for remedial action notice is to be regarded as having been served on every adult occupier if a copy of the notice is fixed to some conspicuous part of the specified premises.

(12) Action taken by an authorised officer under this section is not rendered unlawful by virtue of the fact that the remedial action takes longer than the expected duration specified under subsection (8)(h).

(13) An authorised officer may vary the entry for remedial action notice at any time, in which case the varied notice must be served as though the references to a remedial action notice in subsections (8) to (11) were instead a reference to a varied remedial action notice.

(14) An authorised officer may revoke the entry for remedial action notice at any time, in which case notice of this decision must be served as though the references to a remedial action notice in subsections (9) to (11) were instead a reference to such a notice of revocation.

Determining recoverable expenses following improvement action.

39. (1) Subject to the provisions of this section, any expenses reasonably incurred by the Director in taking action under section 37 or section 38 are recoverable by the Director –

- (a) from a person on whom the improvement notice was served (in this section "**the relevant person**"), and
- (b) where the relevant person receives the rent of the premises as agent or trustee for another person, from that other person, or partly from that other person and partly from the relevant person, although this is subject to subsection (2).

(2) The relevant person's liability is limited to the total amount of the money that the relevant person has, or has had, in their possession as mentioned in paragraph (b) if the relevant person proves that –

- (a) subsection (1)(b) applies, and
- (b) the relevant person has not, and since the date of the service on the relevant person of the demand has not had, in their possession on behalf of the other person sufficient money to discharge the whole demand of the Director.

(3) Without prejudice to the generality of subsection (1), the expression "**expenses reasonably incurred**" includes –

- (a) such sum as appears to the Director to be reasonable in respect of the Director's administrative and overhead expenses, and

- (b) expenses incurred through the taking of necessary preliminary action, such as the instruction of an expert to advise on –
 - (i) a hazard,
 - (ii) its cause, and
 - (iii) the type of remedial action that might adequately address that hazard.

Demand for expenses relating to improvement notices.

40. (1) Where expenses are recoverable under section 39, a demand for expenses under this section, together with interest, must be served on each person from whom the Director is seeking to recover them.

(2) Expenses in respect of which a demand is served carry interest, at such reasonable rate as the Director may determine, from the date of service until payment of all sums due under the demand.

(3) If no appeal is brought under section 41, and subject to subsection (4), the demand becomes operative at the end of the period of 21 days beginning with the date of service of the demand.

(4) Notwithstanding subsection (3), a demand ceases to be operative if the Magistrate's Court permits an appeal out of time under section 41(3).

(5) Subject to subsection (4) and section 41(7) –

- (a) a demand that is operative is final and conclusive as to matters that could have been raised on an appeal, and

- (b) once a demand becomes operative it is enforceable as a civil debt and interest continues to accrue until the sum demanded is recovered.

Appeals against demands for expenses relating to improvement notices.

41. (1) A person on whom a demand for the recovery of expenses has been served under section 40 may appeal to the Magistrate's Court against the demand.

(2) An appeal must be made within the period of 21 days beginning with the date of service of the demand.

(3) The Magistrate's Court may allow an appeal to be made to it after the end of the period mentioned in subsection (2) if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of that period, and
- (b) any delay since then in applying for permission to appeal out of time.

(4) The grounds for an appeal under this section are –

- (a) that another person who is a controller of the specified premises ought to pay the whole or part of the expenses, or
- (b) that the expenses incurred (including any interest demanded) were disproportionate or unreasonable.

(5) Where the grounds on which an appeal is made consist of or include the ground mentioned in subsection (4)(a), the appellant must serve a copy of

the notice of appeal on the controller named under that ground, and that controller may apply to be joined as a party to the appeal proceedings.

(6) The Magistrate's Court may, on an appeal, make such order confirming, quashing or varying the demand as it considers appropriate, and if it confirms or varies the demand –

- (a) if a further appeal is not filed under section 73 then, subject to subsection (7), the demand becomes operative at the end of the 14 day period for appealing under section 73(3), or
- (b) if a further appeal is filed under section 73, the demand becomes operative on the Royal Court confirming or varying the demand.

(7) Notwithstanding subsection (6)(a), a demand that has become operative under that paragraph ceases to be operative if the Royal Court permits an appeal out of time under section 73(4).

(8) For the purposes of subsection (6)(b) the withdrawal of an appeal has the same effect as a decision that confirms the demand.

(9) If the appeal includes the ground under subsection (4)(a), the Magistrate's Court may make such order as it considers appropriate with respect to the payment to be made by the controller named under that ground to the Director.

(10) In addition to the powers stipulated in this section, the Magistrate's Court may also make such further order as is necessary to give effect to its decision.

(11) No question may be raised on appeal under this section, or further appeal under section 73, that might have been raised on an appeal under section 34.

Prohibition orders

Prohibition orders in respect of prescribed hazards: general.

42. (1) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises specified in the order ("**the specified premises**") as an authorised officer considers appropriate in view of a prescribed hazard or prescribed hazards existing at a dwelling.

(2) The order may impose prohibitions in relation to the use of any part of the specified premises, including any common parts.

(3) If the specified premises are different premises to the dwelling at which the prescribed hazard exists, the authorised officer must be satisfied –

- (a) that the deficiency from which the prescribed hazard arises is situated at the specified premises, and
- (b) that the prohibition is necessary in order to protect the health or safety of any actual or potential occupiers of the dwelling at which the prescribed hazard exists.

(4) If an authorised officer considers that multiple prescribed hazards exist at a dwelling, the authorised officer may either make a prohibition order that relates to multiple prescribed hazards, or make a prohibition order for each prescribed hazard, or a combination of the two.

(5) Subsection (4) applies irrespective of whether the multiple hazards are in the same category or include both a category 1 hazard and a category 2 hazard.

(6) A prohibition order under this section cannot also relate to a non-compliance with minimum standards (meaning that, where an authorised officer also intends to make a prohibition order in respect of a non-compliance with minimum standards, it will be necessary to make a separate order under section 44 in respect of that non-compliance).

(7) Subject to subsection (9), a prohibition order may prohibit the use of the specified premises, or of any part of those premises, either -

- (a) for all purposes, or
- (b) for any particular purpose.

(8) A prohibition may, in particular, relate to—

- (a) occupation of the specified premises or part by more than a particular number of households or persons, or
- (b) occupation of the specified premises or part by a particular description of persons.

(9) An authorised officer can, by giving written approval, permit use that would otherwise contravene a prohibition order, and such written approval –

- (a) may be requested by any person with an interest in the use of the specified premises, and
- (b) must not be unreasonably withheld.

(10) Upon receipt of a request under subsection (9)(a), an authorised officer must decide within 14 days whether or not to grant the request.

(11) If an authorised officer decides to refuse a request submitted under subsection (9)(a), the authorised officer must serve within the period of 14 days mentioned in subsection (10) a notice of refusal on the person who applied for the approval.

(12) A notice of refusal served under subsection (11) must set out –

- (a) the authorised officer's decision to refuse the request,
- (b) the date on which it was made,
- (c) the reasons for it,
- (d) the right to appeal against the decision under section 56, and
- (e) the period within which an appeal may be made.

Contents of prohibition orders relating to prescribed hazards.

43. (1) A prohibition order made under section 42 must specify, in relation to each prescribed hazard to which it relates -

- (a) that the order is made under section 42,
- (b) the nature and category of the prescribed hazard,
- (c) the dwelling at which the prescribed hazard exists,
- (d) the deficiency giving rise to the prescribed hazard,
- (e) the premises ("**the specified premises**") in relation to which a prohibition is imposed by the order,

- (f) the prohibition or prohibitions being imposed in respect of the specified premises,
- (g) the date on which the order was made,
- (h) the date on which the order becomes operative ("**the operative date**"), not being less than 14 days from the date that the order is made, and
- (i) that failure to comply with the prohibition order is a criminal offence under section 58 and the maximum penalty, including the power to make a disqualification order under section 170.

(3) A prohibition order must also mention -

- (a) the right to request a variation of the order under section 48(1),
- (b) the right to request a revocation of the order under section 52(1),
- (c) the right under section 56 to appeal the decision to make the order, and
- (d) the period within which an appeal may be made.

(4) A prohibition order may include a recommendation as to any specific remedial action that might lead to the revocation of the order, and such a recommendation may be framed –

- (a) to any extent by reference to approved codes of practice or guidance, and

(b) so as to afford a choice between different types of remedial action.

(5) If no appeal against a prohibition order is made, the order is final and conclusive as to matters that could have been raised on an appeal.

Prohibition orders in respect of minimum standards: general.

44. (1) A prohibition order under this section is an order imposing such prohibition or prohibitions on a rented dwelling specified in the order ("**the specified premises**") as an authorised officer considers appropriate in view of the specified premises being in contravention of minimum standards.

(2) The order may impose prohibitions in relation to the use of any part of the specified premises, including any common parts.

(3) If an authorised officer considers that the specified premises contravene minimum standards in multiple respects, the authorised officer may either make a prohibition order that relates to multiple contraventions, or a separate prohibition order for each contravention, or a combination of the two.

(4) A prohibition order under this section cannot also relate to the presence of a prescribed hazard at the specified premises (meaning that, where an authorised officer also intends to make a prohibition order in respect of a prescribed hazard, it will be necessary to make a separate order under section 42 in respect of that prescribed hazard).

(5) Subject to subsection (7), a prohibition order may prohibit the use of the specified premises, or of any part of the specified premises, either—

(a) for all purposes, or

(b) for any particular purpose.

- (6) A prohibition may, in particular, relate to—
- (a) occupation of the specified premises or part by more than a particular number of households or persons, or
 - (b) occupation of the specified premises or part by a particular description of persons.

(7) An authorised officer can, by giving written approval, permit use that would otherwise contravene a prohibition order, and such written approval –

- (a) may be requested by any person with an interest in the use of the specified premises, and
- (b) must not be unreasonably withheld.

(8) Upon receipt of a request under subsection (7)(a), an authorised officer must decide within 14 days whether or not to grant the request.

(9) If an authorised officer decides to refuse a request submitted under subsection (7)(a), the authorised officer must serve within the period of 14 days mentioned in subsection (8) a notice of refusal on the person who applied for the approval.

- (10) A notice of refusal served under subsection (9) must set out –
- (a) the authorised officer's decision to refuse the request,
 - (b) the date on which it was made,
 - (c) the reasons for it,
 - (d) the right to appeal against the decision under section 56, and

- (e) the period within which an appeal may be made.

Contents of prohibition orders relating to minimum standards.

45. (1) A prohibition order made under section 44 must specify, in relation to each contravention of minimum standards to which it relates -

- (a) that the order is made under section 44,
- (b) the minimum standard being contravened,
- (c) the rented dwelling at which the contravention exists ("**the specified premises**"),
- (d) the deficiency giving rise to the contravention,
- (e) the prohibition or prohibitions being imposed in respect of the specified premises,
- (f) the date on which the order was made,
- (g) the date on which the order becomes operative ("**the operative date**"), not being less than 14 days from the date that the order is made, and
- (h) that failure to comply with the prohibition order is a criminal offence under section 58 and the maximum penalty, including the power to make a disqualification order under section 170.

(2) A prohibition order must also mention –

- (a) the right to request a variation of the order under section 48(1),

- (b) the right to request a revocation of the order under section 52(1),
- (c) the right under section 56 to appeal the decision to make the order, and
- (d) the period within which an appeal may be made.

(3) A prohibition order may include a recommendation as to any specific remedial action that might lead to the revocation of the order, and such a recommendation may be framed –

- (a) to any extent by reference to approved codes of practice or guidance, and
- (b) so as to afford a choice between different types of remedial action.

(4) If no appeal against a prohibition order is made, the order is final and conclusive as to matters that could have been raised on an appeal.

Service of copies of a prohibition order.

46. (1) An authorised officer must serve a copy of the prohibition order (whether made under section 42 or section 44) on every person who, to the authorised officer's knowledge -

- (a) is a controller of the whole or part of the specified premises,
- (b) is an adult occupier of the whole or part of the specified premises, or

(c) has a relevant interest in the whole or part of the specified premises.

(2) A failure to serve a copy of the prohibition order on any of the persons entitled under subsection (1) does not invalidate the prohibition order.

(3) A copy of the prohibition order is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of the specified premises.

Change of status of person served with copy of prohibition order.

47. (1) This section applies where -

(a) a copy of a prohibition order has been served on a person (in this section "**the original recipient**") in respect of specified premises, and

(b) at a later date ("**the changeover date**") another person ("**the acquiring person**") acquires from the original recipient the original recipient's interest in the specified premises or the original recipient's duties in respect of those premises.

(2) As from the changeover date, the acquiring person is to be in the same position as if a copy of the prohibition order had originally been served on the acquiring person and, in particular, any period for bringing any appeal is unaffected.

(3) This section also applies, with any necessary modifications, where another person acquires from the acquiring person the acquiring person's interest in the specified premises or the acquiring person's duties in respect of those premises.

(4) Without prejudice to subsections (2) and (3), an authorised officer may provide anyone acquiring an interest in the specified premises, or duties in respect of those premises, with a copy of the prohibition order to ensure that this person is aware of the terms.

(5) Nothing in this section alters the obligation of the prosecution to prove knowledge of the prohibition order for the purpose of sections 58(1) and 58(3).

Request to vary prohibition order.

48. (1) A person served with a copy of a prohibition order may submit a written request for a variation, by submitting such a request in the prescribed form to the Director.

(2) Upon the Director receiving a request under subsection (1), an authorised officer must decide within 14 days whether or not to grant the request.

(3) If an authorised officer decides to refuse a request submitted under subsection (1), the authorised officer must serve within the period of 14 days mentioned in subsection (2) a notice of refusal, together with a copy of the request, on any person on whom the authorised officer would be required to serve a copy of a prohibition order under section 46.

- (4) A notice of refusal served under subsection (3) must set out –
- (a) the authorised officer's decision not to vary the prohibition order,
 - (b) the reasons for that decision,
 - (c) the date on which this decision was made,

(d) the right of appeal against this decision under section 56, and

(e) the period within which an appeal may be made.

(5) Where service in accordance with subsection (3) would mean that a person on whom a copy of the prohibition order was served would not receive a notice of refusal, the authorised officer must serve the notice of refusal on that person, unless the authorised officer considers that it would not be appropriate to do so.

(6) A notice of refusal is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of those premises.

(7) If an authorised officer decides to grant the request, the authorised officer must act in accordance with section 49.

Power to vary prohibition order.

49. (1) Regardless of whether a written request has been submitted under section 48(1), an authorised officer may vary a prohibition order as the authorised officer thinks fit.

(2) Where a prohibition order is suspended under section 50, the power under this section to vary a prohibition order includes a power to alter the time or events by reference to which the suspension is to come to an end.

(3) If an authorised officer intends to vary a prohibition order, the authorised officer must also vary the operative date if the authorised officer considers that it would otherwise be unreasonable to require compliance with it.

(4) A varied prohibition order must –

- (a) include the matters that must be included in a prohibition order under section 43 or section 45 (as the case may be),
- (b) notify the recipient of –
 - (i) the right under section 56 to appeal the decision to vary the prohibition order, and
 - (ii) the period within which an appeal may be made.

(5) A varied prohibition order must include an explanatory note summarising the variations and the reasons for them.

(6) If an authorised officer varies a prohibition order the authorised officer must serve a copy of the varied prohibition order on any person on whom the authorised officer would be required to serve a copy of the prohibition order under section 46.

(7) If a decision to vary a prohibition order is in response to a request made under section 48(1), any copy of the varied prohibition order required to be served under subsection (6) must be served within 14 days of that request.

(8) Where service in accordance with subsection (6) would mean that a person on whom a copy of the prohibition order was served would not receive a copy of the varied prohibition order, an authorised officer must serve a copy of the varied prohibition order on that person, unless that authorised officer considers that it would not be appropriate to do so.

(9) A copy of the varied prohibition order is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of the specified premises.

(10) Variations to a prohibition order take effect immediately.

Suspension of prohibition order.

50. (1) A prohibition order may provide for the operation of the order to be suspended until a time, or the occurrence of an event, specified in the order.

(2) If a time is specified it may, for example, be the time when a person of a particular description begins, or ceases, to occupy any premises.

(3) If an event is specified it may, for example, be a notified breach of an undertaking that was accepted by an authorised officer for the purposes of this section from a person on whom a copy of the order is served.

(4) In subsection (3) a "**notified breach of an undertaking**" means an act or omission by the person on whom a copy of the order is served -

(a) which an authorised officer considers to be a breach of the undertaking, and

(b) which is notified to that person in accordance with the terms of the undertaking.

(5) If a prohibition order provides for the operation of the order to be suspended under this section, the operative date must be fixed by reference to the day on which the suspension ends, and sections 43(1)(h) and 45(1)(g) are to be construed accordingly.

(6) An authorised officer –

- (a) may at any time review a suspended prohibition order, and
- (b) must review a suspended prohibition order not later than one year after the date on which the order is made and at subsequent intervals of not more than one year.

(7) Following a review under subsection (6) the authorised officer must decide whether the suspension should continue, and whether that is with or without variation under section 49, after which the authorised officer must serve notice of the decision on any person on whom the authorised officer would be required to serve a copy of the prohibition order under section 46.

(8) Where service in accordance with subsection (7) would mean that a person on whom a copy of the prohibition order was served would not receive a notice of the decision, the authorised officer must serve a notice of the decision on that person, unless the authorised officer considers that it would not be appropriate to do so.

(9) A notice of the decision is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of the specified premises.

Power to withdraw prohibition order.

51. (1) An authorised officer may withdraw a prohibition order prior to it becoming operative.

(2) If an authorised officer withdraws a prohibition order, the authorised officer must serve a notice (a "**withdrawal notice**") confirming the withdrawal on anyone who was served with a copy of the prohibition order.

(3) A withdrawal notice is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of the specified premises.

(4) The withdrawal of a prohibition order does not affect the power of an authorised officer to –

- (a) make a further prohibition order in respect of the same dwelling, including where this is in respect of the same prescribed hazard or contravention of minimum standards (as the case may be), or
- (b) take any other enforcement action under this Ordinance.

Request to revoke prohibition order.

52. (1) A person on whom a copy of a prohibition order has been served may submit a written request for a revocation, by submitting such a request in the prescribed form to the Director.

(2) Upon receipt of a request under subsection (1), an authorised officer must decide within 14 days whether or not to grant the request.

(3) If the authorised officer decides to refuse a request submitted under subsection (1), the authorised officer must serve within the period of 14 days mentioned in subsection (2) a notice of refusal, together with a copy of the request, on any person on whom the authorised officer would be required to serve a copy of a prohibition order under section 46.

(4) A notice of refusal served under subsection (3) must set out –

- (a) the authorised officer's decision not to revoke the prohibition order,
- (b) the reasons for that decision,
- (c) the date on which this decision was made,
- (d) the right of appeal against this decision under section 56, and
- (e) the period within which an appeal may be made.

(5) Where service in accordance with subsection (3) would mean that a person on whom a copy of the prohibition order was served would not receive a notice of refusal, the authorised officer must serve a notice of refusal on that person, unless the authorised officer considers that it would not be appropriate to do so.

Revocation of prohibition order.

53. (1) An authorised officer must revoke a prohibition order if at any time the authorised officer is satisfied that –

- (a) in respect of an order made under section 42, all prescribed hazards in respect of which the order was made do not exist at a dwelling, or
- (b) in respect of an order made under section 44, the specified premises comply with all minimum standards to which the prohibition order related.

(2) If subsection (1) does not apply then an authorised officer may revoke a prohibition order if the authorised officer considers it appropriate to revoke the order.

(3) The power to revoke a prohibition order applies regardless of whether or not a request to revoke under section 52(1) has been received.

(4) A revocation under this section comes into force at the time that the decision is made.

(5) Following a decision to revoke a prohibition order, an authorised officer must serve a notice of revocation on any person on whom the authorised officer would be required to serve a copy of a prohibition order under section 46.

(6) A notice of revocation under subsection (5) must set out –

- (a) the decision to revoke the prohibition order,
- (b) the reasons for the decision, and
- (c) the date on which the decision was made.

(7) Service under subsection (5) must be –

- (a) within 14 days of a request under section 52(1), if such a request was made, or
- (b) in any other case, within 14 days of the decision to revoke the prohibition order.

(8) Where service in accordance with subsection (5) would mean that a person on whom a copy of the prohibition order was served would not receive a notice of revocation, an authorised officer must serve a copy of the notice of revocation on that person, unless the authorised officer considers that it would not be appropriate to do so.

(9) A notice of revocation is to be regarded as having been served on every adult occupier of the specified premises if it is fixed to some conspicuous part of those premises.

(10) A revocation under this section means a revocation in full, and if only part of a prohibition order is revoked, it is instead deemed a variation under section 49.

Emergency prohibition orders.

54. (1) An emergency prohibition order may be made if –

- (a) an authorised officer is satisfied that a category 1 hazard exists at any dwelling, and
- (b) that authorised officer is further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of that or any other dwelling.

(2) The provisions of sections 42, 43, 46 to 49, 52 and 53, apply to an emergency prohibition order as though any reference to a prohibition order in those sections is instead a reference to an emergency prohibition order, but with the following modifications –

- (a) an emergency prohibition order may only be made in respect of a category 1 hazard or hazards, and so must not include a category 2 hazard,
- (b) in section 43(1)(a), for "section 42", substitute "section 54",

- (c) substitute the whole of section 43(1)(h) with "that the emergency prohibition order takes immediate effect",
- (d) section 49(3) is omitted,
- (e) the phrase "14 days" wherever it appears in sections 42, 48, 49, 52 and 53 is substituted with the phrase "seven days".

Taking possession to comply with prohibition order.

55. (1) Regardless of any enactment or contract to the contrary, an owner may take immediate possession of specified premises in relation to which a prohibition order is operative if immediate possession is necessary for the purpose of complying with the order.

(2) For the avoidance of doubt, subsection (1) is without prejudice to the operation of section 179(3).

Appeals in respect of prohibition orders and emergency prohibition orders.

56. (1) The relevant person may appeal to the Magistrate's Court against the following decisions made by an authorised officer –

- (a) to make a prohibition order or emergency prohibition order,
- (b) to vary a prohibition order or emergency prohibition order,
- (c) to refuse to give written approval under section 42(9) or 44(7),
- (d) to refuse a request to vary a prohibition order or emergency prohibition order, and

(e) to refuse a request to revoke a prohibition order or emergency prohibition order.

(2) In subsection (1) "**the relevant person**" means-

(a) in relation to a decision within paragraphs (a) or (b) of that subsection, a person on whom a copy of the order was served,

(b) in relation to a decision within paragraph (c) of that subsection, the person who requested the approval,

(c) in relation to a decision within paragraphs (d) or (e) of that subsection, the person who requested the variation or revocation (as the case may be).

(3) A person wishing to appeal must file a notice of appeal, setting out the grounds for appeal, within the period of 14 days beginning with –

(a) if the appeal is under subsection (1)(a), the date on which a copy of the order was served.

(b) if the appeal is under any of subsections (1)(b) to (1)(e), the date on which notice of the decision was served.

(4) The Magistrate's Court may allow an appeal to be made to it after the end of the period specified in subsection (3) if it is satisfied that there is a good reason for –

(a) the failure to appeal before the end of the applicable period, and

(b) any delay since then in applying for permission to appeal out of time.

(5) An appeal may be brought on the grounds that –

(a) the decision was unreasonable,

(b) the decision was ultra vires, or

(c) there was some other error of law.

(6) Without prejudice to the generality of subsection (5), an appeal may also be brought on any of the following grounds –

(a) that it was unreasonable to make a prohibition order or emergency prohibition order (as the case may be) instead of taking a different type of enforcement action under this Ordinance,

(b) that, in respect of a prohibition order, the operative date required compliance within an unreasonably short period of time,

(c) that the prohibition order was defective in a material respect,

(d) that a copy of the order was not accompanied by a statement of reasons in accordance with section 20,

(e) that in respect of a prohibition order made under section 42, or an emergency prohibition order made under section 54 –

- (i) the prescribed hazard specified in the order does not in fact exist,
 - (ii) a prohibition exceeds what is reasonably necessary to mitigate the risk that the prescribed hazard poses, or
 - (iii) a prohibition does not sufficiently relate to the prescribed hazard,
- (f) that, in respect of an emergency prohibition order, the prescribed hazard specified in the notice –
- (i) was incorrectly categorised as being of category 1, or
 - (ii) did not present an imminent risk of serious harm to the health or safety of any occupier of any dwelling.
- (g) that in respect of a prohibition order made under section 44,
- (i) the specified premises already complied with minimum standards when the order was made,
 - (ii) a prohibition exceeds what is reasonably necessary to address a contravention of minimum standards, or
 - (iii) a prohibition does not sufficiently relate to a contravention of minimum standards,

(h) that in respect of a decision to vary a prohibition order under section 49, the authorised officer has not reasonably discharged the duty under section 49(3).

(7) The filing of a notice of appeal under subsection (1)(a), (1)(b), or under section 73 after such an appeal is refused, –

(a) in respect of a prohibition order, has the effect of suspending the decision until the determination of the appeal or further appeal (as the case may be),

(b) in respect of an emergency prohibition order, does not have the effect of suspending the decision until the determination of the appeal or further appeal (as the case may be) unless the appeal court orders its suspension, on application by the appellant.

Determination of appeal against prohibition order or emergency prohibition order.

57. (1) To determine whether any of the grounds for appeal under section 56(5) or 56(6) are established the Magistrate's Court may –

(a) receive evidence, and

(b) have regard to any relevant matters of which the authorised officer was unaware when the authorised officer made the decision appealed against, in which case any reference to something being unreasonable (and related expressions) in those subsections is a reference to a decision being unreasonable if the authorised officer had been aware of such matters.

(2) On appeal, the Magistrate's Court may–

- (a) if the appeal is under section 56(1)(a), confirm, quash or vary the prohibition order or emergency prohibition order (as the case may be),
- (b) if the appeal is under section 56(1)(b) to 56(1)(d), confirm, quash or vary the decision,
- (c) if the appeal is under section 56(1)(e), confirm the decision or revoke the prohibition order or emergency prohibition order (as the case may be) as from the date specified in the order,
- (d) make such further order as is necessary to give effect to its decision.

(3) In exercising its powers under subsection (2) in respect of a prohibition order, the Magistrate's Court may vary the operative date if the court considers it in the interests of justice to allow more time to prepare for the prohibition, and this power may be exercised whether or not the appeal is successful.

(4) If the Magistrate's Court exercises its power under this section to vary a prohibition order or emergency prohibition order –

- (a) it must issue a prohibition order or emergency prohibition order (as the case may be) in the varied terms, and
- (b) it must provide an authorised officer with such directions as to service, and such other practical directions necessary to give effect to the order, as the court sees fit.

(5) If the Magistrate's Court allows an appeal on the basis that it was unreasonable to issue a prohibition order or emergency prohibition order instead of taking a different type of enforcement action under this Ordinance, it must include in its decision a finding to that effect and identify that alternative course of action.

(6) If an appeal is made against a prohibition order that is not suspended, and the Magistrate's Court's decision on appeal confirms the notice, then, unless the Magistrate's Court exercises its power under subsection (3), the operative date is varied to –

- (a) if a further appeal is not filed under section 73, the end of the 14-day period for appealing under section 73(3),
or
- (b) if a further appeal is filed under section 73, the date that the Royal Court confirms the prohibition order on appeal.

(7) If an appeal is made against a prohibition order that is suspended, and the Magistrate's Court's decision on appeal confirms the notice, then, unless the Magistrate's Court exercises its power under subsection (3), the operative date is –

- (a) subject to paragraph (c), if a further appeal is not filed under section 73, at the end of the 14-day period for appealing under section 73(3),
- (b) subject to paragraph (c), if a further appeal is filed under section 73, the date that the Royal Court confirms the prohibition notice on appeal, or

- (c) if later than the date that would be applicable under either paragraph (a) or (b), the time when the suspension ends according to the terms of the prohibition order.
- (8) For the purpose of subsections (6) and (7) –
- (a) the withdrawal of an appeal has the same effect as a decision that confirms the notice, and
 - (b) references to a decision that confirms the notice are to a decision that confirms it with or without variation.

Offence of failing to comply with prohibition order or emergency prohibition order.

58. (1) A person commits an offence if, knowing that a prohibition order or emergency prohibition order is operative, they contravene that order, and is liable on conviction to a fine not exceeding level 5 on the uniform scale.

(2) In proceedings against a person for an offence under subsection (1) it is a defence if they prove, on the balance of probabilities, that they had a reasonable excuse for contravening the prohibition order.

(3) A controller of a dwelling is guilty of an offence if, knowing that a prohibition order or emergency prohibition order is operative in respect of that dwelling, they fail to ensure, so far as is reasonably practicable, that others do not contravene the prohibition order, and is liable on conviction to a fine not exceeding level 5 on the uniform scale.

(4) In proceedings for an offence under subsection (3), it is for the accused to prove, on the balance of probabilities, that it was not reasonably practicable

to do more than was in fact done to prevent others from contravening the prohibition order.

(5) A prohibition order continues to have effect notwithstanding a conviction under this section and, for the avoidance of doubt, this means that where a person has been convicted of an offence under this section, a further contravention of subsection (1) or (3) in respect of the same order by that same person may result in further criminal proceedings against that person.

Hazard awareness notices

Power to serve hazard awareness notice.

59. (1) If an authorised officer is satisfied that a category 1 or category 2 hazard exists at any dwelling, the authorised officer may serve a hazard awareness notice.

(2) A hazard awareness notice is a notice advising the person on whom it is served –

- (a) that a prescribed hazard exists at a dwelling, and
- (b) that this prescribed hazard arises as a result of a deficiency on the premises in respect of which the notice is served.

(3) A notice under this section may relate to more than one prescribed hazard.

Contents of hazard awareness notice.

60. (1) A notice under this section must specify, in relation to the hazard (or each of the hazards) to which it relates -

- (a) the nature of the prescribed hazard and whether it is a category 1 or category 2 hazard,
- (b) the dwelling (in this section and section 61 "**the affected dwelling**") at which the prescribed hazard exists,
- (c) the deficiency giving rise to the hazard,
- (d) the premises (in this section and section 61 "**the specified premises**") at which the deficiency exists, and
- (e) the authorised officer's reasons for serving the notice.

(2) The hazard awareness notice may also contain recommendations as to any remedial action that the authorised officer considers would be practicable and appropriate to take in relation to the hazard.

Service of hazard awareness notice.

61. (1) Where the specified premises are registered under Part V, an authorised officer who decides to serve a hazard awareness notice must serve it on every registered controller of the specified premises.

(2) Where the specified premises are not registered under Part V, an authorised officer who decides to serve a hazard awareness notice must be serve it on every unregistered controller of the specified premises known to the authorised officer, unless the authorised officer is satisfied that it would not be appropriate to serve the notice on a particular unregistered controller, in which case the authorised officer need not serve the notice on that particular controller.

(3) An authorised officer must serve, within 7 days of service under subsection (1) or (2), a copy of the hazard awareness notice on every other person who, to the authorised officer's knowledge –

- (a) is an adult occupier of the specified premises, or
- (b) has a relevant interest in the whole or part of the specified premises.

(4) If the affected dwelling is not the whole or part of the specified premises, an authorised officer may also serve a copy of the hazard awareness notice on any controller or adult occupier of the affected dwelling, if the authorised officer considers it appropriate to do so.

Emergency remedial action

Emergency remedial action: general.

62. (1) Emergency remedial action is such action in respect of a category 1 hazard as an authorised officer considers immediately necessary in order to remove an imminent risk of serious harm to the health or safety of any person.

(2) An authorised officer may take emergency remedial action if the authorised officer considers that –

- (a) a category 1 hazard exists at a dwelling (in this section "**the affected dwelling**"), and
- (b) this hazard presents an imminent risk of serious harm to the health or safety of any person.

(3) Emergency remedial action may be taken –

- (a) in relation to any part of premises (in this section "**the specified premises**") in relation to which remedial action could be required to be taken by an improvement notice under section 21, and
- (b) in respect of one or more than one category 1 hazard existing on the affected dwelling.

(4) The power to take emergency remedial action includes a right of entry into the specified premises at any time, provided that, before exercising such a right of entry, the authorised officer serves a notice (an "**emergency remedial action notice**") on the adult occupiers of the specified premises.

(5) Service under subsection (4) may be achieved by affixing the emergency remedial action notice to some conspicuous part of the specified premises.

(6) An emergency remedial action notice must specify, in relation to each prescribed hazard to which it relates –

- (a) that the notice is issued under this section,
- (b) the nature of the category 1 hazard,
- (c) the affected dwelling,
- (d) the deficiency giving rise to the category 1 hazard,
- (e) the specified premises, being the premises in relation to which emergency remedial action is to be taken,
- (f) that the authorised officer intends to enter the specified premises for the purpose of taking emergency remedial action,

- (g) the nature of the emergency remedial action that the authorised officer intends to take on the specified premises, which may be of a general description or subject to the findings of an investigation into the cause of the hazard,
- (h) the date on which the emergency remedial action is expected to begin,
- (i) the expected duration of the emergency remedial action,
- (j) that entry will be required, from time to time, throughout this period, and
- (k) the date on which the notice is issued.

(7) Within the period of seven days beginning on the date on which the authorised officer served the emergency remedial action notice on the adult occupiers of the specified premises under subsection (4), the authorised officer must serve the emergency remedial action notice –

- (a) where the specified premises are registered under Part V, on every registered controller of the specified premises,
- (b) where the specified premises are not registered under Part V, on every person who, to the authorised officer's knowledge, is –
 - (i) an unregistered controller of the specified premises, or

- (ii) has a relevant interest in the whole or part of the specified premises.

(8) Where the specified premises are unregistered, a failure to serve the emergency remedial action notice on every person entitled to service under subsection (7)(b) does not invalidate the emergency remedial action notice.

(9) Subsections (5) to (8) of section 8 apply to an entry under this section in the same way that they apply to an entry under section 8.

(10) If the expected duration of emergency remedial action specified in the emergency remedial action notice proves to be insufficient to complete the remedial works, an authorised officer may serve a further notice specifying a different period of time, with service of that further notice being in accordance with this section as though it were the original notice.

(11) An authorised officer may not use force in exercising the powers under this section (but see section 63).

Warrant to authorise entry by force to take emergency remedial action.

63. (1) An authorised officer may apply to the Magistrate's Court for a warrant authorising an authorised officer, a police officer and such other persons as the warrant may specify to enter premises (in this section "**the relevant premises**") at such time stipulated in the order in order to take emergency remedial action.

(2) The Magistrate's Court must be satisfied that –

- (a) emergency remedial action is necessary, and
- (b) there are reasonable grounds for believing that the authorised officer will not be able to gain entry to the relevant premises without a warrant.

(3) An application under this section may, if the court considers it necessary or otherwise appropriate, be heard *ex parte* and *in camera*.

(4) Upon granting a warrant under this section, the court must provide an authorised officer with two copies of the warrant, and the copies must be clearly certified as copies.

(5) The power of entry conferred by a warrant under this section includes a power to enter by force, if necessary.

(6) Unless otherwise specified in the warrant, subsections (5) to (8) of section 8 apply to an entry under a warrant issued under this section in the same way that they apply to an initial inspection under section 8, save that in section 8(5)(a) for the words "any other person" substitute "any person stipulated in the warrant, whether by name or by description".

(7) A warrant issued under this section continues in force until the purpose for which the entry is required is satisfied or for a period of 28 days from the making of the order, whichever is the earlier, and the warrant may authorise access to the relevant premises on more than one occasion during that period.

(8) Where an occupier of the relevant premises is present at the time when an authorised officer seeks to execute the warrant to enter the relevant premises, the authorised officer must identify themselves to the occupier and supply the occupier with a copy of the warrant.

(9) Where no occupier of the relevant premises is present at the time when an authorised officer seeks to execute such a warrant, but some other person who appears to the authorised officer to be in charge of the premises is present, subsection (8) has effect as if any reference to the occupier was a reference to that other person.

(10) If neither subsection (8) or (9) apply, the authorised officer must leave a copy of the warrant in a prominent place on the specified premises.

(11) A person who obstructs someone acting under the authority of a warrant issued under this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding three months, or to a fine, or to both.

(12) A warrant that has been executed, or that has not been executed within the time authorised for its execution, must be returned to His Majesty's Greffier.

(13) A warrant that is returned under subsection (12) must be retained for 12 months beginning on the date of its return and if during this retention period an occupier or controller of the premises to which it relates asks to inspect it, that person must be allowed to do so.

(14) An authorised officer entering premises under the authority of a warrant issued under this section must serve the emergency remedial action notice in accordance with section 62.

Appeals against emergency remedial action.

64. (1) A person served with an emergency remedial action notice may appeal to the Magistrate's Court against the decision of an authorised officer to take emergency remedial action in respect of the specified premises.

(2) A person wishing to appeal must file a note of appeal, setting out the grounds for appeal, within 14 days beginning with the date when the emergency remedial action notice was served on that person.

(3) The Magistrate's Court may allow an appeal to be made to it after the end of that period if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of that period, and
 - (b) any delay since then in applying for permission to appeal out of time.
- (4) An appeal may be brought on the grounds that –
- (a) the decision was unreasonable,
 - (b) the decision was ultra vires, or
 - (c) there was some other error of law.
- (5) Without prejudice to the generality of subsection (4), an appeal may also be brought on any of the following grounds –
- (a) that it was unreasonable to take emergency remedial action instead of using a different type of enforcement action,
 - (b) that the emergency remedial action notice was defective in a material respect,
 - (c) that the emergency remedial action notice was not accompanied by a statement of reasons in accordance with section 20,
 - (d) that the prescribed hazard alleged in the emergency remedial action notice does not in fact exist,
 - (e) that the prescribed hazard alleged in the emergency remedial action notice was incorrectly categorised as a category 1 hazard,

- (f) that the proposed remedial action exceeds what is reasonably necessary to mitigate the risk that the prescribed hazard poses,
- (g) that the proposed remedial action does not sufficiently relate to the prescribed hazard, or
- (h) that the prescribed hazard did not present an imminent risk of serious harm to the health or safety of any person.

(6) The filing of a notice of appeal under subsection (2) or under section 73 does not prevent an authorised officer from commencing emergency remedial action, or from continuing emergency remedial action that has already commenced, unless, on application by the appellant, the appeal court suspends the authorised officer's decision to take emergency remedial action until the determination of the appeal.

(7) To determine whether any of the grounds for appeal under subsection (4) or (5) are established the Magistrate's Court may –

- (a) receive evidence, and
- (b) have regard to any relevant matters of which the authorised officer was unaware when the authorised officer made the decision to take emergency remedial action, in which case any reference to a decision being unreasonable (and related expressions) in those subsections is a reference to a decision being unreasonable if the authorised officer had been aware of such matters.

- (8) On appeal, the Magistrate's Court may –
- (a) confirm, reverse or vary the decision of the authorised officer to take emergency remedial action, and
 - (b) make such further order as is necessary to give effect to its decision.

Determining recoverable expenses following emergency remedial action.

65. (1) Subject to the provisions of this section, any expenses reasonably incurred by the Director in taking action under section 62 are recoverable by the Director –

- (a) from any controller on whom an emergency remedial action notice was served (in this section "**the relevant person**"), and
- (b) where the relevant person receives the rent of the premises as agent or trustee for another person, from that other person, or partly from that other person and partly from the relevant person, although this is subject to subsection (2).

(2) The relevant person's liability is limited to the total amount of the money which the relevant person has, or has had, in their possession as mentioned in paragraph (b) if the relevant person proves that –

- (a) subsection (1)(b) applies, and
- (b) the relevant person has not, and since the date of the service on the relevant person of the demand has not had, in their possession on behalf of the other person

sufficient money to discharge the whole demand of the Director.

(3) Subject to subsection (4), no amount is recoverable under this section until –

(a) if no appeal is made under section 64 before the end of the 14 day period mentioned in section 64(2), the end of that period, or

(b) if an appeal is made under section 64 and the Magistrate's Court on appeal confirms the authorised officer's decision –

(i) if no appeal is made under section 73 before the end of the 14 day period mentioned in section 73(3), the end of that period,

(ii) if an appeal is made under section 73, the Royal Court confirms the authorised officer's decision on appeal.

(4) Notwithstanding subsection (3) –

(a) an amount that would be recoverable in accordance with subsection (3)(a) ceases to be recoverable if the Magistrate's Court permits an appeal out of time in accordance with section 64(3), in which case the question of when the amount becomes recoverable again is determined in accordance with subsection (3)(b), and

(b) an amount that would be recoverable in accordance with subsection (3)(b)(i) ceases to be recoverable if the Royal Court permits an appeal out of time in accordance with section 73(4), in which case the amount becomes recoverable again if the Royal Court confirms the authorised officer's decision on appeal.

(5) For the purposes of subsection (3) -

(a) the withdrawal of an appeal has the same effect as a decision that confirms the authorised officer's decision, and

(b) references to a decision that confirms the authorised officer's decision are to a decision that confirms it with or without variation.

(6) If a decision on appeal revokes the authorised officer's decision then, subject to the Director's right of appeal under section 73, no expenses are recoverable.

(7) Without prejudice to the generality of subsection (1), the expression "**expenses reasonably incurred**" includes -

(a) such sum as appears to the Director to be reasonable in respect of the Director's administrative and overhead expenses, and

(b) expenses incurred through the taking of necessary preliminary action, such as the instruction of an expert to advise on -

- (i) a hazard,
- (ii) its cause, and
- (iii) the type of remedial action that might adequately address that hazard.

Demand for emergency remedial action expenses.

66. (1) Where expenses are recoverable under section 65, a demand for expenses under this section, together with interest, must be served on each person from whom the Director is seeking to recover them.

(2) Expenses in respect of which a demand is served carry interest, at such reasonable rate as the Director may determine, from the date of service until payment of all sums due under the demand.

(3) If no appeal is brought under section 67 then, subject to subsection (4), the demand becomes operative at the end of the period of 21 days beginning with the date of service of the demand.

(4) Notwithstanding subsection (3), a demand ceases to be operative if the Magistrate's Court permits an appeal out of time under section 67(3).

(5) Subject to subsection (4) and section 67(7) –

- (a) a demand that is operative is final and conclusive as to matters that could have been raised on an appeal, and
- (b) once a demand becomes operative it is enforceable as a civil debt and interest continues to accrue until the sum demanded is recovered.

Appeals against demands for emergency remedial action expenses.

67. (1) A person on whom a demand for the recovery of expenses has been served under section 66 may appeal to the Magistrate's Court against the demand.

(2) An appeal must be made within the period of 21 days beginning with the date of service of the demand.

(3) The Magistrate's Court may allow an appeal to be made to it after the end of the period mentioned in subsection (2) if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of that period, and
- (b) any delay since then in applying for permission to appeal out of time.

(4) The grounds for an appeal under this section are –

- (a) that another person who is a controller of the specified premises ought to pay the whole or part of the expenses, or
- (b) that the expenses incurred (including any interest demanded) were disproportionate or unreasonable.

(5) Where the grounds on which an appeal is made consist of or include the ground mentioned in subsection (4)(a), the appellant must serve a copy of the notice of appeal on the controller named under that ground, and that controller may apply to be joined as a party to the appeal proceedings.

(6) The Magistrate's Court may, on an appeal, make such order confirming, quashing or varying the demand as it considers appropriate, and if it confirms or varies the demand –

- (a) if a further appeal is not filed under section 73 then, subject to subsection (7), the demand becomes operative at the end of the 14 day period for appealing under section 73(3), or
- (b) if a further appeal is filed under section 73, the demand becomes operative on the Royal Court confirming or varying the demand.

(7) Notwithstanding subsection (6)(a), a demand that has become operative under that paragraph ceases to be operative if the Royal Court permits an appeal out of time under section 73(4), in which case the demand becomes operative again in accordance with subsection (6)(b).

(8) For the purposes of subsection (6)(b) the withdrawal of an appeal has the same effect as a decision that confirms the demand.

(9) If the appeal includes the ground under subsection (4)(a), the Magistrate's Court may make such order as it considers appropriate with respect to the payment to be made by the controller named in that ground to the Director.

(10) In addition to the powers stipulated in this section, the Magistrate's Court may also make such further order as is necessary to give effect to its decision.

(11) No question may be raised on appeal under this section, or further appeal under section 73, that might have been raised on an appeal under section 64.

Monitoring compliance with enforcement action

Power of entry to survey or examine premises subject to enforcement order.

68. (1) This section applies where –
- (a) an improvement notice, prohibition order or emergency prohibition order is operative in respect of relevant premises, and
 - (b) an authorised officer considers that a survey or examination of the relevant premises is necessary.

(2) Where this section applies, and subject to subsections (3) and (4), an authorised officer may enter the relevant premises at any reasonable time to carry out the survey or examination but the authorised officer must, prior entry, give 24 hours' notice to all adult occupiers.

(3) Notwithstanding subsection (2), an authorised officer may enter the relevant premises immediately where an adult occupier or, in the absence of any adult occupier, a controller, consents to immediate entry by an authorised officer.

(4) Where notice is given under subsection (2) but an adult occupier or, in the absence of any adult occupier, a controller, consents to entry by an authorised officer at the end of a period of less than 24 hours, an authorised officer may instead enter the relevant premises at the end of that lesser period.

(5) Subsections (2) to (11) of section 8 apply to a survey or examination of the relevant premises under this section in the same way that they apply to an inspection under section 8.

(6) In this section and section 69 "**the relevant premises**" means either –

- (a) the specified premises within the meaning of section 22, 24, 43 or 45 (as the case may be), or
- (b) the dwelling specified by an improvement notice, prohibition order or emergency prohibition order as being a dwelling at which a prescribed hazard exists.

Power of entry to ascertain whether offence under this Part is being committed.

69. (1) This section applies where –

- (a) an improvement notice, prohibition order or emergency prohibition order is operative, and
- (b) an authorised officer considers that the relevant premises need to be entered for the purpose of ascertaining whether an offence has been committed under this Part.

(2) An authorised officer may enter the relevant premises (within the meaning of section 68(6)) for this purpose at any reasonable time and without giving any notice.

(3) Subsections (5) to (11) of section 8 apply to an investigation under this section in the same way that they apply to an inspection under section 8.

Court powers relating to enforcement action

Power of court to order occupier or controller to allow action to be taken on premises.

70. (1) An order under this section ("**an order to permit action**") is an order requiring an occupier or controller of the specified premises (within the

meaning of section 22, 24, 43 or 45, as the case may be) to permit something to be done on those premises.

(2) The following persons (in this section "**the applicant**") may apply to the Magistrate's Court for an order under this section:

- (a) a person on whom an improvement notice was served,
- (b) a person on whom a copy of the prohibition order was served, or
- (c) an authorised officer.

(3) The grounds of an application are that –

- (a) an improvement notice, prohibition order or emergency prohibition order has become operative,
- (b) a person (in this section "**the relevant person**") is an occupier or controller of the specified premises,
- (c) the relevant person has received reasonable notice of any intended action by the applicant in relation to the specified premises,
- (d) the intended action is a reasonable step to take, having regard to the contents of the improvement notice, prohibition order or emergency prohibition order (as the case may be), and
- (e) the relevant person has prevented the applicant, or a person instructed by the applicant, from taking the intended action.

(4) An application under this section is made inter partes and the relevant person must be given 14 days' notice of the hearing.

(5) When hearing the application, the Magistrate's Court may receive representations from both the applicant and the relevant person (if the relevant person chooses to attend) and, if satisfied that the grounds in subsection (3) are met, the Magistrate's Court may make an order to permit action, which must specify –

- (a) the date on which the order is made.
- (b) the relevant person against whom the order is made,
- (c) that the order is made under this section,
- (d) the improvement notice, prohibition order or emergency prohibition order to which the order relates,
- (e) the specified premises,
- (f) the nature of the intended action,
- (g) the applicant,
- (h) that the relevant person is ordered to permit the applicant to carry out the intended action on the relevant premises, and
- (i) that failure to comply with the order is a criminal offence under this section and the maximum penalty.

(6) If the relevant person is not present in court when the Magistrate's Court makes the order, the court may issue such directions as to service,

and such other practical directions necessary to give effect to the order, as the court sees fit.

(7) When an order under this section is made, it becomes operative once it is served on the relevant person.

(8) A person who fails to comply with an order under this section commits an offence and is liable on conviction to a fine not exceeding level 5 on the uniform scale.

(9) In proceedings for an offence under subsection (8) it is a defence for a person to prove, on the balance of probabilities, that they had a reasonable excuse for failing to comply with the order.

(10) In this section "**intended action**" means action that—

- (a) where an improvement notice has become operative -
 - (i) is action that would result in the improvement notice being complied with, or
 - (ii) is action that will assist in confirming whether compliance with the notice has been achieved,
- (b) where a prohibition order or emergency prohibition order has become operative –
 - (i) is action that would assist in ensuring that the prohibition order or emergency prohibition order is not contravened by anyone, or

- (ii) is action that might lead to the revocation of the prohibition order or emergency prohibition order.

Power of court to issue a warrant to authorise entry under this Part.

71. (1) This section applies where the Magistrate's Court is satisfied, on an application made by an authorised officer, that admission to premises (in this section "**the relevant premises**") specified in the application is reasonably required by any number of persons specified in subsection (2) for a purpose specified in subsection (3).

- (2) The persons referred to in subsection (1) are –
 - (a) an authorised officer,
 - (b) a person acting on the instructions of an authorised officer,
 - (c) a police officer, or
 - (d) any combination of the above.
- (3) The purposes referred to in subsection (1) are –
 - (a) to carry out an inspection of the relevant premises under section 8,
 - (b) to take improvement action without agreement under section 38,
 - (c) to survey or examine the relevant premises under section 68, or

(d) to ascertain whether an offence has been committed under section 69.

(4) Where this section applies, the Magistrate's Court may by warrant authorise such of those persons as may be specified in the warrant to enter the relevant premises for such of those purposes as may be specified in the warrant.

(5) The court must not grant the warrant unless it is satisfied —

(a) that admission to the relevant premises has been sought in accordance with sections 8, 38, 68 or 69 (as the case may be) but has been refused,

(b) a refusal of admission to the relevant premises is anticipated,

(c) that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the purpose of the entry to await the occupier's return,

(d) the case is one of emergency, or

(e) that to seek admission without a warrant under sections 8, 38, 68 or 69 (as the case may be) would defeat the purpose of the entry.

(6) An application under this section may, if the court considers it necessary or otherwise appropriate, be heard *ex parte* and *in camera*.

(7) Upon granting a warrant under this section, the court must provide an authorised officer with two copies of the warrant, and the copies must be clearly certified as copies.

(8) The power of entry conferred by a warrant under this section includes a power to enter by force, if necessary.

(9) Unless otherwise specified in the warrant, subsections (5) to (8) of section 8 apply to an entry under a warrant issued under this section in the same way that they apply to an entry under that section, save that in section 8(5)(a) for the words "any other person" substitute "any person stipulated in the warrant, whether by name or by description".

(10) A warrant issued under this section continues in force until the purpose for which the entry is required is satisfied or until the end of a period of 28 days from the issuing of the warrant, whichever is the earlier, and the warrant may authorise access to the relevant premises on more than one occasion during that period.

(11) Where an occupier of the relevant premises is present at the time when an authorised officer seeks to execute the warrant to enter the relevant premises, the authorised officer must identify themselves to the occupier and supply the occupier with a copy of the warrant.

(12) Where no occupier of the relevant premises is present at the time when an authorised officer seeks to execute such a warrant, but some other person who appears to the authorised officer to be in charge of the relevant premises is present, subsection (11) has effect as if any reference to the occupier was a reference to that other person.

(13) If neither subsection (11) or (12) apply, the authorised officer must leave a copy of the warrant in a prominent place on the specified premises.

(14) A person who obstructs someone acting under the authority of a warrant issued under this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding three months, or to a fine, or to both.

(15) A warrant that has been executed, or that has not been executed within the time authorised for its execution, must be returned to His Majesty's Greffier.

(16) A warrant that is returned under subsection (15) must be retained for 12 months beginning on the date of its return and if during this retention period an occupier or controller of the relevant premises asks to inspect it, that person must be allowed to do so.

Consultation in respect of fire hazards

Obligation to consult with Chief Fire Officer.

72. (1) Subject to subsection (2), if an authorised officer is proposing to take action in relation to a prescribed hazard relating to fire, the authorised officer must, before taking that action, consult with the Chief Fire Officer.

(2) In the case of a decision to make an emergency prohibition order under section 54, or take emergency remedial action under section 62, the duty under subsection (1) is a duty to consult with the Chief Fire Officer so far as is practicable to do so before taking those measures.

Further appeal to Royal Court under this Part

Further appeal to Royal Court under this Part.

73. (1) An appellant or the Director may further appeal to the Royal Court against a decision of the Magistrate's Court on an appeal under section 34, 41, 56, 64 or 67.

(2) An appeal under this section may only be on a question of law (meaning it is before a single judge presiding alone).

(3) An appeal under subsection (1) must be made before the end of the period of 14 days beginning with the date of the decision being appealed.

(4) The Royal Court may allow an appeal to be made to it after the end of the period mentioned in subsection (3) if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of that period, and
- (b) any delay since then in applying for permission to appeal out of time.

(5) In disposing of the matter, and subject to subsection (2), the Royal Court has the same powers that the Magistrate's Court had when it was disposing of the previous appeal.

PART III OVERCROWDING

Meaning of Overcrowding.

74. A dwelling is overcrowded for the purpose of this Part when the number of persons sleeping in the dwelling is such as to contravene—

- (a) the standard specified in section 75 (the room standard), or
- (b) the standard specified in section 76 (the space standard).

The room standard.

75. (1) The room standard is contravened when the number of persons sleeping in a dwelling and the number of sleeping rooms is such that two persons of different sex who are not married, or living together as though they are a married

couple, must sleep in the same room, and for this purpose children under the age of ten are left out of account.

(2) A room is a "**sleeping room**" for the purpose of subsection (1) and section 76 if it is of a type normally used in the locality either as a bedroom or as a social room.

(3) A room is a "**social room**" for the purpose of subsection (2) if it is a room other than a bedroom, bathroom or kitchen.

The space standard.

76. (1) The space standard is contravened when the number of persons sleeping in a dwelling is in excess of the permitted number, having regard to the number and floor area of the sleeping rooms in the dwelling.

(2) For the purpose of this section, no account is taken of a child under the age of one and a child aged one or over but under ten is reckoned as one-half of a unit for the purpose of Table I and Table II.

(3) The "**permitted number**" of persons in relation to a dwelling is whichever is the less of -

(a) the number specified in Table I in relation to the number of sleeping rooms in the dwelling, and

(b) the aggregate for all such rooms in the dwelling of the numbers specified in column 2 of Table II in relation to each room of the floor area specified in column 1.

(4) No account is taken for the purposes of Table I or Table II of a room having a floor area of less than 4.6 square metres.

Table I

Number of sleeping rooms	Number of persons
1	2
2	3
3	5
4	7 ½
5	2 for each room

Table II

Floor area of room	Number of persons
10.2 square metres or more.	2
8.3 square metres or more but less than 10.2 square metres.	1 ½
6.5 square metres or more but less than 8.3 square metres.	1
4.6 square metres or more but less than 6.5 square metres.	½

(5) For the purpose of Table II, the area of any room is determined in accordance with the following –

- (a) measurements should be taken at floor level, and to the back of any projecting skirting board,
- (b) any part of the room with a floor to ceiling height of less than 1.5 metres is excluded from the total floor area,
- (c) any part of the floor covered by fixed cupboards or chimney breasts is included in the total floor area, and
- (d) any part of the floor in any bay is included in the total floor area.

Offence of occupier causing or permitting overcrowding.

77. (1) An occupier of a dwelling who causes or permits it to be overcrowded commits an offence, subject to subsection (2).

(2) The occupier is not guilty of an offence -

- (a) if the overcrowding is within an exception specified in section 78 or 79,
- (b) by reason of anything done under the authority of, and in accordance with any conditions specified in, a licence granted under section 80, or
- (c) if the occupier proves, on the balance of probabilities, that the occupier had no reasonable alternative other than to cause or permit the overcrowding, having regard to all the circumstances, including the availability of suitable alternative accommodation.

(3) A person guilty of an offence under this section is liable on conviction to a fine not exceeding level 2 on the uniform scale and to a further fine not exceeding level 1 on the uniform scale in respect of every day subsequent to the date on which the person is convicted on which the offence continues.

(4) If, after hearing representations from the prosecution and defence, the sentencing court is satisfied that an offence under this section is still continuing on the date of sentencing, it must schedule a review hearing for the purpose of deciding whether to impose a further fine in accordance with subsection (3), and must continue to hold review hearings, at such intervals as the court deems appropriate, until the overcrowding ceases.

Exception for children attaining the age of 1 or 10 years.

78. (1) Subject to subsection (4), where a dwelling that would not otherwise be overcrowded becomes overcrowded by reason of a child attaining the age of one year or ten years, the occupier does not commit an offence under section 77 provided the conditions in both subsections (2) and (3) are met.

(2) The first condition is that either –

(a) the occupier applies, within 28 days of the date when the child attains the age in question, to the States Committee for Employment & Social Security for suitable alternative accommodation, or

(b) has so applied before the date when the child attained the age in question.

(3) The second condition is that all the persons sleeping in the dwelling are either –

- (a) persons who were living there when the child attained that age and thereafter continuously live there, or
 - (b) children born after that date of any of those persons.
- (4) The exception in subsection (1) does not apply if –
- (a) suitable alternative accommodation is offered to the occupier on or after the date on which the child attains that age, or, if the occupier has applied before that date, is offered at any time after the application, and the occupier fails to accept it, or
 - (b) the removal from the dwelling of some person who is not a member of the occupier's family is on that date, or thereafter becomes, reasonably practicable having regard to all the circumstances, including the availability of suitable alternative accommodation for that person, and the occupier fails to require that person's removal.

Exception for visiting family members.

79. (1) Where the persons sleeping in an overcrowded dwelling include a member of the occupier's family who does not live there but is sleeping there temporarily, the occupier is not guilty of an offence under section 77 unless the circumstances are such that the occupier would be so guilty if that family member was not sleeping there.

(2) In subsection (1), "**temporarily**" means no more than 14 nights in a calendar year.

Licence to permit excess number of persons.

80. (1) The occupier or intending occupier of a dwelling may apply to the Director for a licence authorising that person to permit a number of persons in excess of the permitted number to sleep in the dwelling.

(2) On receipt of an application under subsection (1), an authorised officer may grant such a licence if it appears to the authorised officer that there are exceptional circumstances and that it is expedient to do so.

(3) A licence granted under subsection (2) must specify the number of persons authorised in excess of the permitted number.

(4) The licence must be in the prescribed form and may be granted either unconditionally or subject to conditions specified in it.

(5) An authorised officer may revoke the licence by notice in writing served on the occupier and specifying a period (at least 28 days from the date of service) at the end of which the licence will cease to be in force.

(6) Unless revoked earlier, the licence continues in force for such period not exceeding twelve months as may be specified in it.

(7) A copy of the licence and of any notice of revocation must, within seven days of the issue of the licence or the service of the notice (as the case may be) on the occupier, be served by an authorised officer on any controller of the dwelling known to the authorised officer.

(8) In this section, "**prescribed**" means prescribed by regulations made by the Committee.

Offence of controller causing or permitting overcrowding.

81. (1) A controller of a dwelling who causes or permits it to be overcrowded commits an offence.

(2) A controller is deemed to cause or permit a dwelling to be overcrowded in the following circumstances, and not otherwise—

(a) if that controller, or a person effecting the letting of the dwelling on the controller's behalf -

(i) had reasonable cause to believe that the dwelling would become overcrowded in circumstances rendering the occupier guilty of an offence, or

(ii) failed to make inquiries of the proposed occupier as to the number, age and sex of the persons who would be allowed to sleep in the dwelling, or

(b) if notice is served on that controller or that controller's agent by an authorised officer that the dwelling is overcrowded in such circumstances as to render the occupier guilty of an offence and that controller fails to take such steps as are reasonably open to that controller for securing the abatement of the overcrowding, including if necessary legal proceedings for possession of the dwelling.

(3) A person guilty of an offence under this section is liable on conviction to a fine not exceeding level 2 on the uniform scale and to a further fine not

exceeding level 1 on the uniform scale in respect of every day subsequent to the day on which the person is convicted on which the offence continues.

(4) If, after hearing representations from the prosecution and defence, the court is satisfied that an offence under this section is still continuing on the date of sentencing, it must schedule a review hearing for the purpose of deciding whether to impose a further fine in accordance with subsection (3), and must continue to hold review hearings, at such intervals as the court deems appropriate, until the overcrowding ceases.

Duty to inform Director of overcrowding.

82. (1) Unless subsection (2) applies, a controller of a dwelling who becomes aware that the dwelling is overcrowded must notify the Director of the overcrowding within seven days of the controller becoming aware of it.

(2) This obligation to notify does not arise where the overcrowding -

- (a) has already been notified to the Director,
- (b) has been notified to the controller by an authorised officer, or
- (c) is permitted by a licence in force under section 80.

(3) A controller who fails to notify the Director in accordance with this section commits an offence and is liable on conviction to a fine not exceeding level 1 on the uniform scale.

Power to require information about persons sleeping in dwelling.

83. (1) An authorised officer may, for the purpose of enabling the authorised officer to discharge a duty under this Part, serve a notice on an adult

occupier of a dwelling requiring that occupier to give the authorised officer within 14 days a written statement of the number, ages and sexes of the persons sleeping in the dwelling.

(2) A person served with a notice under subsection (1) commits an offence if they fail to comply with the notice, liable on conviction to a fine not exceeding level 1 on the uniform scale.

(3) It is a defence for a person charged with an offence under subsection (2) to prove, on the balance of probabilities, that they had a reasonable excuse for the failure to comply with the notice.

Notice to abate overcrowding.

84. (1) Where a dwelling is overcrowded in circumstances such as to render the occupier guilty of an offence, an authorised officer may serve on the occupier notice in writing requiring the occupier to abate the overcrowding within such period as is specified in the notice.

(2) If at any time within three months from the end of that period—

(a) the dwelling is in the occupation of the person on whom the notice was served or of a member of that person's family, and

(b) it is overcrowded in circumstances such as to render the occupier guilty of an offence,

an authorised officer may apply to the Magistrate's Court for an order for vacant possession of the dwelling to be given to the controller entitled to vacant possession, and within such period as is specified in the order.

(3) If, having received an application under subsection (2), the Magistrate's Court is satisfied that subsection (2)(a) and (2)(b) apply, it must grant the application.

(4) Expenses incurred by the Director under this section in securing the giving of possession of a dwelling to the controller entitled to possession are recoverable as a civil debt from that controller.

Right of entry under this Part.

85. (1) This section applies where an authorised officer considers it necessary to enter premises (in this section "**the relevant premises**") –

- (a) for a survey and examination where it appears to the authorised officer that survey or examination is necessary in order to determine whether any power under this Part should be exercised, or
- (b) for the purpose of measuring the rooms of a dwelling in order to ascertain for the purpose of this Part the number of persons permitted to use the dwelling for sleeping.

(2) Where this section applies, and subject to subsections (3) and (4), an authorised officer may enter the relevant premises at any reasonable time for any of the purposes mentioned in subsection (1) but the authorised officer must, prior entry, give 24 hours' notice to –

- (a) all adult occupiers, and
- (b) any controller known to the authorised officer, unless the authorised officer considers that it would not be appropriate to give the notice to a particular controller,

in which case the authorised officer need not serve the notice on that controller.

(3) Notwithstanding subsection (2), an authorised officer may enter the relevant premises immediately where an adult occupier or, in the absence of any adult occupier, a controller, consents to immediate entry by an authorised officer.

(4) Where notice is given under subsection (2) but an adult occupier or, in the absence of any adult occupier, a controller, consents to entry by an authorised officer at the end of a period of less than 24 hours, an authorised officer may instead enter the relevant premises at the end of that lesser period.

- (5) On entry into the premises, the authorised officer may –
- (a) be accompanied by any other person, and may bring any equipment or materials, that the authorised officer considers necessary for any purpose for which the power of entry is being exercised,
 - (b) make such examination and investigation as the authorised officer considers necessary,
 - (c) take such measurements and photographs, and make such recordings, as the authorised officer considers necessary for the purpose of the examination or investigation,
 - (d) either -
 - (i) copy any documents found on the premises that are relevant to the purpose of entry, or

(ii) remove such a document to copy it, in which case that document must be copied and returned as soon as reasonably practicable, and

(e) take any other steps that are reasonably necessary in order to effectively exercise the powers listed in this subsection.

(6) When exercising powers under this section, an authorised officer must produce evidence of that officer's authority whenever requested to do so by –

(a) a controller,

(b) an occupier, or

(c) anyone else having a relevant interest in the relevant premises.

(7) An authorised officer entering the relevant premises under this section, and anyone accompanying that officer, may only remain in the relevant premises as long as is necessary to achieve the purpose for which the entry was made.

(8) If the relevant premises are unoccupied or if the occupier is temporarily absent when the authorised officer enters the premises, the authorised officer must leave the premises as effectually secured against trespassers as the authorised officer found the premises.

(9) An authorised officer may carry out more than one inspection of the premises, irrespective of whether other enforcement action under this Ordinance is being taken in respect of those premises, and the provisions of this

section will apply to each subsequent entry in the same way that they apply to an initial entry.

(10) Force may not be used by the authorised officer, or anyone accompanying the authorised officer, when exercising the powers under this section (but see section 86).

(11) The power under subsection (5)(d) does not apply to a document subject to legal professional privilege.

Power of the court to issue a warrant to authorise entry under this Part.

86. (1) Where the Magistrate's Court is satisfied, on an application made by an authorised officer, that admission to premises (in this section "**the relevant premises**") specified in the application is reasonably required for any of the purposes mentioned in section 85(1), the court may by warrant authorise the authorised officer to enter the relevant premises.

(2) A warrant under subsection (1) may also permit the authorised officer to be accompanied by a police officer.

- (3) The court must not grant the warrant unless it is satisfied —
- (a) that admission to the relevant premises has been sought in accordance with section 85 but has been refused,
 - (b) a refusal of admission to the relevant premises is anticipated, or
 - (c) that to seek admission without a warrant would defeat the purpose of the entry.

(4) An application under this section may, if the court considers it necessary or otherwise appropriate, be heard *ex parte* and *in camera*.

(5) Upon granting a warrant under this section, the court must provide an authorised officer with two copies of the warrant, and the copies must be clearly certified as copies.

(6) The power of entry conferred by a warrant under this section includes a power to enter by force, if necessary.

(7) Unless otherwise specified in the warrant, subsection (5) to (8) of section 85 apply to an entry under a warrant issued under this section in the same way that they apply to an entry under that section, save that in section 85(5)(a) for the words "any other person" substitute "any person stipulated in the warrant, whether by name or by description."

(8) A warrant issued under this section continues in force until the purpose for which the entry is required is satisfied or until the end of a period of 28 days from the issuing of the warrant, whichever is the earlier, and the warrant may authorise access to the relevant premises on more than one occasion during that period.

(9) Where an occupier of the relevant premises is present at the time when an authorised officer seeks to execute the warrant to enter the relevant premises, the authorised officer must identify themselves to the occupier and supply the occupier with a copy of the warrant.

(10) Where no occupier of the relevant premises is present at the time when an authorised officer seeks to execute such a warrant, but some other person who appears to the authorised officer to be in charge of the relevant premises is present, subsection (9) has effect as if any reference to the occupier was a reference to that other person.

(11) If neither subsection (9) or (10) apply, the authorised officer must leave a copy of the warrant in a prominent place on the specified premises.

(12) A person who obstructs someone acting under the authority of a warrant issued under this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding three months, or to a fine, or to both.

(13) A warrant that has been executed, or that has not been executed within the time authorised for its execution, must be returned to His Majesty's Greffier.

(14) A warrant that is returned under subsection (13) must be retained for 12 months beginning on the date of its return and if during this retention period an occupier or controller of the relevant premises asks to inspect it, that person must be allowed to do so.

PART IV

THE REGISTER OF LANDLORDS AND HMO LICENCES

Duty of Director to establish Register.

87. (1) The Director must establish and maintain a register (in this Ordinance "**the Register**") containing entries relating to -

- (a) the registered landlord of every rented dwelling in the Island of Guernsey,
- (b) the nominated representative of such a landlord, where that landlord chooses to nominate a representative,
- (c) every rented dwelling, and
- (d) where the rented dwelling is an HMO,

- (i) any licence granted under Part VI that is in force, and
- (ii) any management order made under Part VII that is in force.

(2) The Register must contain the information specified in the Schedule.

(3) The Committee may by Regulations amend the Schedule and, without prejudice to the generality of that power, such a power includes a power to list information that is not mandatory but which may be included in the Register.

(4) An entry on the Register concerning a registered landlord or a registered representative must be kept for six years after that registration has expired, after which it must be deleted from the Register as soon as practicable.

(5) The Director must keep the register in electronic form and may keep it in any other form the Director considers appropriate.

Access to Register.

88. (1) The Director must ensure that a registered landlord can access all entries on the Register that directly relate to the landlord's registration, including all rented dwellings registered under that landlord's name.

(2) The Director must ensure that a registered representative can access all entries on the Register that directly relate to a landlord represented by that registered representative and this –

- (a) includes all rented dwellings for which the registered representative act as representative,

(b) excludes any other rented dwellings registered to that landlord.

(3) The Director must ensure that a member of the public can access sufficient information to ascertain –

(a) whether a rented dwelling has been registered under Part V, and,

(b) where that rented dwelling is an HMO, whether that HMO –

(i) has been licensed under Part VI, or

(ii) is the subject of a management order made under Part VII.

(4) The access referred to in subsections (1) to (3) may be limited to online access.

(5) The Committee may make regulations specifying –

(a) any other information on the Register that may be accessed and the persons or description of persons entitled to that access,

(b) the terms on which information will be provided,

(c) the form by which requests for access to information on the Register may be made,

(d) the means by which the Register may be searched,

- (e) the exceptions to the provision of information and the circumstances in which a request for access to information on the Register may be refused,
- (f) the procedures for appealing against a refusal of a request for access to information on the Register,
- (g) the fees payable for the provision of access to the Register, and
- (h) the form of any provision of information following a request.

PART V

REGISTRATION OF LANDLORDS AND RENTED DWELLINGS

Duty to register

Duty to register landlord and rented dwellings.

89. (1) Subject to subsections (2) to (4), a landlord of a rented dwelling must, within 28 days beginning with the date on which that person became a landlord of a rented dwelling —

- (a) register as a landlord on the Register in accordance with this Part, unless the only rented dwelling or dwellings of which that person is a landlord are exempt from registration under any of sections 92 to 95, and
- (b) register on the Register any rented dwelling that —
 - (i) the person is the landlord of, and

- (ii) is not exempt from registration under any of sections 92 to 95.

(2) If, in respect of all rented dwellings that a person is obliged to register under subsection (1)(b), the person was a landlord of those rented dwellings immediately prior the commencement of this section, that person instead has until midnight on the prescribed date to comply with the duty under subsection (1).

(3) Subject to subsection (4), only one person may register as a landlord of a rented dwelling and, where a single lease or licence is entered into by multiple landlords, they all comply with subsection (1) so long one of them is registered as the landlord of that rented dwelling.

(4) If trustees constitute the landlord, a collective description of the trustees as the trustees of the trust in question may be given as the name of the landlord, and where such a collective description is given –

- (a) the address of the landlord may be given as the address from which the affairs of the trust are conducted, and
- (b) a change in the persons who are for the time being the trustees of the trust is not treated for the purpose of subsection (1) as a change of landlord.

(5) For the avoidance of doubt, if a building contains –

- (a) more than one HMO,
- (b) more than one household that does not reside within an HMO, or
- (c) a combination of at least one HMO and at least one household that does not reside within an HMO,

then each HMO or part of the premises containing a household that does not reside within an HMO (as the case may be) is a separate dwelling requiring separate registration.

(6) In this section "**prescribed date**" means a date prescribed by Regulations made by the Committee.

Offence of failing to register.

90. (1) A landlord who contravenes section 89(1) is guilty of an offence, liable on conviction to a fine not exceeding four times level 5 on the uniform scale.

(2) The maximum fine mentioned in subsection (1) may be imposed by the Magistrate's Court on summary conviction.

(3) It is a defence for a person charged with an offence under subsection (1) to prove, on the balance of probabilities, that they had a reasonable excuse for the contravention.

(4) Subsection (5) applies if, after receiving representations from the defendant and the prosecution at a sentencing hearing for an offence under subsection (1), the court is satisfied that -

- (a) the contravention is continuing, and
- (b) it would not be unjust to make an order under subsection (5).

(5) Where this subsection applies, and in addition to any other penalty that the court imposes, the court must order the defendant to pay a further fine not exceeding level 1 on the uniform scale in respect of each day during which the contravention continues -

- (a) after the date of sentence, or

(b) after such future date as the court may specify, not being later than 28 days after the date of sentence.

(6) In setting the amount of any further fine imposed under subsection (5), the court must consider -

(a) any financial benefit that appears to it to have accrued or to be likely to accrue, in consequence of the offence, to the defendant or to any person associated with the defendant, and

(b) the level of fine that would sufficiently encourage compliance with this Part.

(7) An order under subsection (5) is part of the sentence imposed on the defendant for the purpose of any appeal.

(8) For the avoidance of doubt, the maximum penalty mentioned in subsection (1) does not include a further fine imposed under subsection (5) meaning, in particular, that the aggregate of fines imposed under both subsections may exceed that maximum, even when imposed by the Magistrate's Court.

(9) Subsection (10) applies where -

(a) the court has declined to impose a further fine under subsection (5) when sentencing a defendant for an offence under subsection (1),

(b) there are no outstanding appeals against conviction or sentence for that offence and the time limit for appealing has expired, and

(c) the defendant continues, after the sentencing date, to contravene section 89(1).

(10) Where this subsection applies, the defendant is deemed to have committed a fresh offence under subsection (1) for which the defendant may be prosecuted.

Registration of landlord's representative.

91. (1) In this Ordinance, "**representative**" means a person (including a legal person) who has agreed to undertake, on a landlord's behalf, property management work.

(2) A representative may be nominated by a registered landlord and registered (meaning the representative's name is entered into the Register) in respect of a rented dwelling that –

(a) is also being registered at the same time as the registration of that representative, or

(b) has already been registered.

(3) Only one person may register as a representative in respect of each registered rented dwelling, but the same person may register as a representative in respect of multiple rented dwellings.

(4) A person cannot be registered as a representative under this section unless that person is resident in the Island of Guernsey and the registration of a representative must be treated as revoked the moment that representative ceases to be so resident.

(5) A person must not act as a landlord's representative in respect of a rented dwelling unless either –

- (a) that person is registered as a landlord's representative in respect of that rented dwelling, or
- (b) that rented dwelling is exempt from registration by virtue of any of sections 92 to 95.

(6) A person who contravenes subsection (5) is guilty of an offence, liable on conviction to a fine not exceeding four times level 5 on the uniform scale.

(7) It is a defence for a person charged with an offence under subsection (6) to prove, on the balance of probabilities, that they had a reasonable excuse for the contravention.

(8) The landlord of a rented dwelling must not appoint or continue to allow a person to act as a representative in relation to that rented dwelling, if—

- (a) the representative is contravening subsection (5), and
- (b) the landlord knows or should know of the circumstances that render the representative in contravention of that subsection.

(9) A landlord who contravenes subsection (8) commits an offence and is liable on conviction to a fine not exceeding level 4 on the uniform scale.

(10) It is a defence for a person charged with an offence under subsection (9) to prove, on the balance of probabilities, that they had a reasonable excuse for the contravention.

Exception to duty to register: family cohabitation.

92. (1) A landlord is exempt from the duty to register a particular rented dwelling if the landlord is an individual and every occupier of the rented dwelling is a close relative of the landlord.

- (2) In this section, "**a close relative of the landlord**" means —
- (a) a spouse or civil partner of the landlord,
 - (b) a person living with the landlord as though that person is the landlord's spouse,
 - (c) a parent, grandparent, great grandparent, child, grandchild or great grandchild of the landlord,
 - (d) a sister, brother, uncle, aunt, nephew or niece of the landlord.
- (3) For the purpose of subsection (2) —
- (a) a relationship of the half blood is to be treated as a relationship of the whole blood,
 - (b) a relationship by marriage or civil partnership is to be treated as a relationship by blood,
 - (c) "**child**" includes adopted child, stepchild, foster child, or any other child being looked after by the landlord on a permanent or semi-permanent basis, and
 - (d) a person ("**A**") brought up or treated by another person ("**B**") as if A were the child of B is to be treated as B's child.

Exception to duty to register: small lodgings.

93. A landlord is exempt from the duty to register a particular rented dwelling if —

- (a) the terms of the lease or licence granted by the landlord to an occupier provide for the occupier to share that rented dwelling with the landlord,
- (b) the landlord occupies (and continues to occupy) the rented dwelling, or part of that rented dwelling, as the landlord's only or principal home, and
- (c) a lease or licence of the rented dwelling shared with the landlord is granted to no more than two occupiers.

Exception to duty to register: landlords pursuing possession.

94. (1) Subject to subsection (2), a landlord is exempt from the duty to register a particular rented dwelling if the landlord takes steps to recover possession of the rented dwelling within a period of 28 days beginning with the date on which the landlord acquired the landlord's interest in that rented dwelling.

(2) Subsection (1) only applies for so long as the landlord diligently continues to pursue the recovery of possession of that rented dwelling.

Exception to duty to register: particular landlords.

95. (1) A landlord is exempt from the duty to register a particular rented dwelling if –

- (a) that rented dwelling is bona vacantia belonging to the Crown or has escheated to the Crown,
- (b) the landlord is the heir of a person who was the landlord of that rented dwelling but died, although this exception only applies for a period not exceeding six months beginning with the date of the death of that former landlord,

- (c) the landlord is a secured creditor who acquires lawful possession of that rented dwelling, although this exception only applies for a period not exceeding six months beginning with the date on which possession is acquired, or
- (d) the landlord is either the States of Guernsey or the Guernsey Housing Association and the rented dwelling is -
 - (i) social rental housing, and
 - (ii) not an HMO.

(2) In this section "**social rental housing**" means a rented dwelling that is occupied by a person on the basis that, by virtue of that person's housing needs, financial means and any other circumstances deemed relevant by the landlord, that person is eligible to occupy the rented dwelling under criteria set out in an allocation policy implemented and published by that landlord.

Power to amend exceptions by Regulation.

96. The Committee may by Regulation amend any of sections 92 to 95 to add, alter or remove the circumstances in which a landlord, a rented dwelling or a landlord's representative are exempt from the duty to register under this Part.

The registration process

Registration requirements.

97. (1) In order to comply with sections 89 or 100, a landlord must complete and submit to the Director a form (a "**registration form**") specified by the Committee for the purpose of registering landlords, rented dwellings and representatives.

- (2) The phrase "**registration form**" in this Part includes a reference to –
- (a) a form submitted for the purpose of a renewal under section 100(1), and
 - (b) a form submitted for the purpose of updating registration details under section 102(1).
- (3) A person may only be registered as a landlord if –
- (a) a registration form is submitted and includes –
 - (i) all information listed in items (a) to (g) of paragraph 1 of the Schedule, and
 - (ii) such other supporting documents as may be prescribed by regulations made by the Committee, and
 - (b) that person is at the same time registering at least one rented dwelling of which that person is the landlord.
- (4) A landlord may only register a rented dwelling if –
- (a) the landlord is already registered, or is being registered at the same time as the rented dwelling,
 - (b) a registration form is submitted and includes –
 - (i) all information listed in items (a) to (e) of paragraph 2 of the Schedule, and

- (ii) such other supporting documents as may be prescribed by regulations made by the Committee,
- (c) the rented dwelling complies with minimum standards, and
- (d) either -
 - (i) the landlord is resident in the Island of Guernsey, or
 - (ii) the landlord is nominating in the registration form, in respect of that rented dwelling, a representative resident in the Island of Guernsey, in which case the registration form must include all information listed in items (a) to (g) of paragraph 3 of the Schedule.

(5) The landlord must declare on the registration form that the requirements of this section have been complied with.

(6) Whether or not the landlord has assistance from another person in completing the registration form, it is the landlord who must submit the form, and must personally confirm, as part of the form, that –

- (a) the landlord has read through the registration form, and
- (b) the information provided in that form is accurate to the best of the landlord's knowledge and belief.

(7) The registration form will only be accepted on the payment of any applicable fee prescribed by regulations made under subsection (8).

(8) The Committee may make regulations specifying —

- (a) the procedure to be followed in respect of registration under this Part, including any documentation that is required to be filed as part of the registration process,
- (b) the procedure to be followed in respect of the updating of any entries on the Register under section 102,
- (c) the fees to be paid in respect of registration under this Part, including —
 - (i) the manner in which those fees are calculated, and
 - (ii) circumstances in which the fee may be waived or a discounted rate of fee may be accepted,
- (d) any other matter the Committee considers necessary or expedient to give effect to the proper functioning of the Register and the registration procedures and requirements under this Part.

Registration and assignment of registration number.

98. (1) Upon successful submission of a registration form —

- (a) an authorised officer must notify the landlord and the landlord's representative (if applicable) that the registration or update of details (as the case may be) has been effective, and

(b) the details or updated details (as the case may be) must be entered into the Register.

(2) The notification referred to in subsection (1)(a) may be via email.

(3) The following will be assigned a unique registration number on registration –

(a) the landlord,

(b) any rented dwelling registered by that landlord, and

(c) any representative nominated in respect of that rented dwelling.

(4) The notification in subsection (1)(a) must confirm any applicable unique registration number assigned in accordance with subsection (3).

(5) If a registration form indicates that a representative has been nominated in respect of a rented dwelling –

(a) the notification referred to in subsection (1) must invite that representative to confirm that the representative –

(i) is resident in the Island of Guernsey, and

(ii) has accepted instructions to act as a representative in respect of the rented dwelling specified in the notification, and

(b) that nomination will only be deemed effective once such confirmation is received.

Duration of Registration.

99. (1) Subject to subsection (2), the registration of a landlord expires if, for a continuous period of three months, that landlord has no registered rented dwellings attached to that landlord's registration.

(2) A registration of a landlord (and in consequence any related registration of a rented dwelling) expires entirely -

- (a) in the case of a landlord who is an individual, when that landlord dies,
- (b) in the case of a landlord that is a legal entity or association, when that landlord is dissolved or otherwise ceases to exist, or
- (c) when the Director receives notice from the registered landlord that the registered landlord has ceased to be a landlord of any registered rented dwelling and that the registered landlord wishes to be removed from the Register immediately.

(3) Subject to subsection (4) and section 100, the registration of a rented dwelling expires after three years from the date of its registration.

(4) The registration of a rented dwelling expires immediately upon the Director receiving notice from the landlord registered in respect of that rented dwelling that either -

- (a) that person has ceased being the landlord of that rented dwelling, or

- (b) although that person remains the landlord of that rented dwelling –
 - (i) that rented dwelling is now subject to an exception under any of sections 92 to 95,
 - (ii) that accordingly the landlord wishes to revoke the registration of that rented dwelling, and
 - (iii) an authorised officer accepts that an exception under any of sections 92 to 95 applies.

Renewal of registration of a rented dwelling.

100. (1) A registered landlord of a registered rented dwelling may renew the registration of that rented dwelling no more than three months prior to the date on which that registration would otherwise expire (in this section "**the expiry date**") by submitting a further registration form in accordance with section 97.

(2) Upon successful submission of a registration form under subsection (1), the registration of that rented dwelling will be renewed for a further three years from midnight on the expiry date.

Offence of failing to renew registration of a rented dwelling.

- 101.** (1) A person commits an offence if –
- (a) that person fails to renew the registration of a rented dwelling in accordance with subsection (1),
 - (b) no exceptions in sections 92 to 95 apply in respect of that rented dwelling, and
 - (c) that person continues to act as a landlord of that rented dwelling after the expiry date.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding level 3 on the uniform scale.

(3) It is a defence for a person charged with an offence under subsection (1) to prove, on the balance of probabilities, that they had a reasonable excuse for the failure.

(4) Subsection (5) applies if, after receiving representations from the defendant and the prosecution at a sentencing hearing for an offence under subsection (1), the court is satisfied that –

- (a) the contravention is continuing, and
- (b) it would not be unjust to make an order under subsection (5).

(5) Where this subsection applies, and in addition to any other penalty that the court imposes, the court must order the defendant to pay a further fine not exceeding level 1 on the uniform scale in respect of each day during which the contravention continues –

- (a) after the date of sentence, or
- (b) after such future date as the court may specify, not being later than 28 days after the date of sentence.

(6) In setting the amount of any further fine imposed under subsection (7), the court must consider -

- (a) any financial benefit which appears to it to have accrued or to be likely to accrue, in consequence of the offence, to the defendant or to any person associated with the defendant, and

(b) the level of fine that would sufficiently encourage compliance with this Part.

(7) An order under subsection (5) is part of the sentence imposed on the defendant for the purpose of any appeal.

(8) For the avoidance of doubt, the maximum penalty mentioned in subsection (2) does not include a further fine imposed under subsection (5) meaning, in particular, that the aggregate of fines imposed under both subsections may exceed that maximum, even when imposed by the Magistrate's Court.

(9) Subsection (10) applies where –

(a) the court has declined to impose a further fine under subsection (5) when sentencing a defendant for an offence under subsection (1),

(b) there are no outstanding appeals against conviction or sentence for that offence and the time limit for appealing has expired, and

(c) the circumstances described in subsection (1) continue after the sentencing date.

(10) Where this subsection applies, the defendant is deemed to have committed a fresh offence under subsection (1) for which the defendant may be prosecuted.

Changes in circumstances after registration

Updating registration details.

102. (1) A registered landlord must, within 28 days beginning with the first day on which the landlord knew or ought to have known of the occurrence, submit a registration form whenever the following occurs —

- (a) a change to any of the registered details of the landlord specified in items (a) to (g) of paragraph 1 of the Schedule,
- (b) a change to any of the registered details of a rented dwelling specified in items (a) to (d) of paragraph 2 of the Schedule,
- (c) the termination of the appointment of a representative registered in respect of a rented dwelling, or
- (d) the appointment of a new representative in respect of a rented dwelling.

(2) If a registered landlord ceases to be the landlord of a registered rented dwelling that person must, within 28 days beginning with the first day on which that person knew or ought to have known of that cessation, notify the Director of that fact.

(3) A person who contravenes subsections (1) or (2) commits an offence and is liable on conviction to a fine not exceeding level 1 on the uniform scale.

(4) It is a defence for a person charged with an offence under subsection (3) to prove, on the balance of probabilities, that they had a reasonable excuse for the contravention.

Duty to rectify loss of representative.

103. (1) Subsection (2) applies when –

- (a) a landlord was obliged under section 97(4)(d) to appoint a representative in respect of a registered rented dwelling because the landlord is not resident in the Island of Guernsey, and
- (b) that registered representative either –
 - (i) ceases to act as representative in respect of that registered rented dwelling, or
 - (ii) ceases to be resident in the Island of Guernsey.

(2) Where this subsection applies, a registered landlord must, within 28 days of the occurrence of the relevant event stipulated in subsection (1)(b), register a new representative in respect of the registered rented dwelling and submit a registration form under section 102 to update the registration details accordingly.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding level 1 on the uniform scale.

(4) It is a defence for a person charged with an offence under subsection (3) to prove, on the balance of probabilities, that they had a reasonable excuse for the contravention.

Remedies in connection with non-registration

Notice of registration enquiry.

104. (1) The provisions of this section apply if an authorised officer considers that a person (in this section "**the relevant person**") is an unregistered landlord, and "**unregistered landlord**" for the purpose of this Part means a person –

- (a) who is contravening section 89(1), or
- (b) to whom the circumstances described in section 101(1) are applicable.

(2) Where this section applies, an authorised officer may issue a notice (a "**notice of registration enquiry**") to the relevant person setting out the following matters —

- (a) that the authorised officer has reasonable grounds to believe that the person is an unregistered landlord,
- (b) the basis of those grounds,
- (c) that, within 28 days of the date on which the relevant person received the notice of registration enquiry, the relevant person may —
 - (i) submit a registration form in compliance with section 89 or section 100 (as the case may be), or
 - (ii) make representations, and provide any evidence or information in support of those representations, on the question of whether the relevant person is an unregistered landlord,
- (d) that if an authorised officer is satisfied that the relevant person is an unregistered landlord, the authorised officer may issue a notice of non-registration to —
 - (i) the relevant person, and

- (ii) any adult occupier of any rented dwelling in respect of which the relevant person is acting as an unregistered landlord, and
- (e) the consequences of the issue of a notice of non-registration (see section 106).

Notice of non-registration.

105. (1) An authorised officer may issue a notice (a "**notice of non-registration**") to a person (in this section "**the relevant person**") if —

- (a) a notice of registration enquiry has been issued to the relevant person,
- (b) the relevant person has not submitted an application form as mentioned in section 104(2)(c)(i),
- (c) either -
 - (i) an authorised officer has considered any representations made by the relevant person under section 104(2)(c)(ii), or
 - (ii) no such representations have been received and the period for making such representations has expired, and
- (d) an authorised officer is satisfied that the person is an unregistered landlord (within the meaning of section 104(1)).

(2) A notice of non-registration must advise the relevant person of the following matters —

- (a) the date on which the notice takes effect, which must be no less than 28 days after the notice is served,
- (b) that the authorised officer is satisfied that the relevant person is an unregistered landlord,
- (c) that if the relevant person submits a registration form in compliance with section 89 or section 100 (as the case may be), this may lead to the revocation of the notice of non-registration,
- (d) the rights of an occupier under section 106,
- (e) the right of the relevant person under section 107 to appeal against the decision to issue the notice of non-registration, and
- (f) the period within which an appeal may be made.

(3) A copy of a notice of non-registration must be provided to any adult occupier of a rented dwelling to which the notice relates, with an explanation of the notice, its effects and how it affects the occupier, but a failure to provide a copy of a notice under this subsection does not affect the validity of the notice.

(4) If an authorised officer is aware that a representative has been appointed in respect of the dwelling to which the notice relates, a copy of a notice of non-registration may also be provided to that representative.

(5) A notice of non-registration must be revoked by an authorised officer if –

- (a) the Director receives a registration form in compliance with section 89 or section 100 (as the case may be) from the relevant person, and
- (b) as a result, the relevant person ceases to be an unregistered landlord.

(6) If an authorised officer revokes a notice of non-registration under subsection (5) the authorised officer must notify within seven days –

- (a) the relevant person, and
- (b) any person who received a copy of the notice of non-registration.

(7) A copy of a notice of non-registration under subsection (3) or a notice of revocation under subsection (6) (as the case may be) is to be regarded as having been served on every adult occupier of a rented dwelling to which the document relates if it is fixed to some conspicuous part of that rented dwelling.

Termination of lease or licence for non-registration.

106. (1) An occupier may terminate, with immediate effect, a lease or a licence in respect of a rented dwelling on the grounds that –

- (a) a notice of non-registration has been issued to the landlord of that rented dwelling, and
- (b) that notice –
 - (i) has taken effect, and
 - (ii) has not been suspended or revoked.

(2) A provision in a lease or licence is void and without effect insofar as it—

(a) purports to disapply, or to impose a penalty for exercising, an occupier's right to terminate a lease or licence under this section, or

(b) requires notice of termination to be given where this section applies.

Appeal against notice of non-registration.

107. (1) A landlord (in this section "**the appellant**") may, within 28 days of receiving a notice of non-registration, appeal to the Magistrate's Court against the decision to issue that notice.

(2) An appeal under this section is commenced by filing a notice of appeal, a copy of which must be served on the Director and on any adult occupier of the rented dwelling to which the notice of non-registration relates.

(3) The filing of an appeal under this section has the effect of automatically suspending the notice of non-registration.

(4) The appeal is determined by way of a rehearing.

(5) The Magistrate's Court may –

(a) confirm, vary, or revoke the decision to issue a notice of non-registration, and

(b) make such further order as is necessary to give effect to its decision.

(6) Where the Magistrate's Court confirms or varies the decision, it may set a different date by which the notice of non-registration is to take effect.

(7) Notice of the outcome of the appeal must be given by the Magistrate's Court to –

- (a) the appellant,
- (b) the Director, and
- (c) any adult occupier of the rented dwelling to which the notice of non-registration relates.

(8) The appellant or the Director may, within 14 days of the Magistrate's Court's decision, further appeal against that decision to the Royal Court, but only on a question of law (meaning it is before a single judge presiding alone).

(9) Subsections (2) to (3) and (5) to (7) apply to such a further appeal, but as though any reference to the Magistrate's Court in those subsections is instead a reference to the Royal Court.

PART VI HMO LICENCES

Meaning of HMO.

108. (1) "HMO", being an abbreviation of "house in multiple occupation", means a dwelling in which –

- (a) more than two people occupy the dwelling as living accommodation,
- (b) more than one household occupies the dwelling as living accommodation,

- (c) at least one person pays rent in respect of that person's occupation, and
 - (d) at least one household only has access to at least one basic amenity on the basis that it is shared with another household.
- (2) In subsection (1)(d) "**basic amenity**" means –
- (a) cooking facilities,
 - (b) a toilet,
 - (c) a hand wash basin, and
 - (d) a shower or a bath.
- (3) "**household**" means –
- (a) an individual or a family, and
 - (b) anyone residing with that individual or family rent free under a contract of employment to carry out work of an exclusively domestic nature, for the benefit of that individual, or a member of that family (as the case may be).
- (4) Two people form part of the same "**family**" if –
- (a) they are or have been married to each other,
 - (b) they are or have been civil partners of each other,

- (c) although not married to, or civil partners of, each other, they are or have been living together as if they are a married couple,
 - (d) they are relatives, or
 - (e) in relation to a child, each of them is a parent of the child or has, or has had, parental responsibility for the child.
- (5) In this section -
- (a) "**child**" means a person under the age of 18 years,
 - (b) "**foster child**" includes any child that is being looked after by the other person on a permanent or semi-permanent basis, whether that is under a formal foster arrangement or otherwise,
 - (c) "**parental responsibility**" has the same meaning as in section 5 of the Children (Guernsey and Alderney) Law, 2008^e,
 - (d) "**relative**", in relation to a person, means—
 - (i) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, foster child, grandmother, grandfather, grandson or granddaughter of that person or of that person's

^e Order in Council No. XIV of 2009; this enactment has been amended.

spouse, civil partner, former spouse or former civil partner, or

- (ii) the brother, sister, uncle, aunt, niece or nephew of that person or of that person's spouse, civil partner, former spouse or former civil partner,

and includes, in relation to a person who is living or has lived with another person as if they were a married couple or civil partners, a person who would fall within paragraph (i) or (ii) if the parties were married to, or civil partners of, each other,

- (e) "son" and "daughter" includes via adoption,
- (f) a relationship of the half blood is to be treated as a relationship of the whole blood,
- (g) a person ("A") brought up or treated by another person ("B") as if A were the child of B is to be treated as B's child.

Requirement for HMOs to be licenced.

109. (1) An HMO must be licenced if –

- (a) it is required to be registered as a rented dwelling under section 89(1)(b), and
- (b) no interim or final management order under Part VII is in force in relation to it.

(2) For the avoidance of doubt, the obligation under subsection (1) is in addition to the duty to comply with any registration requirements under Part V.

(3) A licence under this Part ("**an HMO licence**") is granted to a registered landlord and is a licence authorising occupation of the HMO concerned by not more than the maximum number of households or persons specified in the HMO licence.

(4) The person holding an HMO licence is in this Part referred to as "**the licence holder**".

(5) An HMO licence may not relate to more than one HMO.

Application for HMO licence.

110. (1) An application for an HMO licence is made to the Director by the registered landlord of the registered rented dwelling to which the application relates.

(2) The application must be made in accordance with such requirements as the Committee may specify in regulations made under subsection (3).

(3) The Committee may by regulations make provision about the making of applications under this section, or under section 115 for the renewal of an HMO licence, and such regulations may, in particular –

- (a) specify the manner and form in which applications are to be made,
- (b) require the applicant to give copies of the application, or information about it, to particular persons,
- (c) specify the information that is to be supplied in connection with applications,
- (d) require the application to be accompanied by a fee (which may be non-refundable, irrespective of whether

the application is successful) and may specify the amount of the fee or the methods for calculating the amount, and

- (e) specify cases in which no fees are to be charged or fees are to be discounted, refunded or partially refunded.

Grant or refusal of HMO Licence.

111. (1) Where an application for an HMO licence is made by a registered landlord (in this section "**the applicant**") under section 110 an authorised officer must as soon as practicable either –

- (a) grant an HMO licence to the applicant, or
- (b) refuse to grant an HMO licence.

(2) An authorised officer must refuse to grant an HMO licence under subsection (1) unless the authorised officer is satisfied of the following matters –

- (a) that the applicant and HMO are registered under Part V,
- (b) that the HMO is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (5) or that it can be made so suitable by the imposition of conditions under section 113,
- (c) that no disqualification order under section 170 is in force against the applicant,
- (d) that the proposed manager of the HMO is either –

- (i) the registered landlord, or
- (ii) the registered representative, or a person who is an agent or employee of the registered representative, and

(e) that the proposed management arrangements for the HMO are otherwise satisfactory.

(3) If an authorised officer is satisfied of the matters in subsection (2) the authorised officer must decide whether or not to grant an HMO licence and, in deciding how to exercise this discretion, the authorised officer must additionally consider the following matters –

- (a) the HMO's compliance with minimum standards,
- (b) the presence of any prescribed hazards in the HMO,
- (c) whether the proposed number of occupants would be compliant with the overcrowding provisions contained in Part III,
- (d) the HMO's compliance with any other provision of any other enactment designed to ensure the health or safety of occupants of a dwelling (such as fire safety), and
- (e) any other matter that appears to the authorised officer to be relevant.

(4) The Committee may by regulations amend the list of matters in subsection (3).

(5) The maximum number of households or persons is –

- (a) the maximum number specified in the application, or
- (b) some other maximum number decided by the authorised officer in the circumstances of that particular case.

(6) If an authorised officer decides to grant an HMO licence, the authorised officer must serve on the applicant –

- (a) the HMO licence, and
- (b) a notice setting out –
 - (i) the decision to grant the HMO licence,
 - (ii) the date on which the decision was made,
 - (iii) the right of appeal against any terms or conditions of the HMO licence under section 118, and
 - (iv) the period within which an appeal may be made.

(7) If an authorised officer decides to refuse to grant an HMO licence, the authorised officer must serve on the applicant a notice setting out –

- (a) the decision not to grant an HMO licence,
- (b) the reasons for the decision,
- (c) the date on which the decision was made,
- (d) the right of appeal against the decision under section 118, and

- (e) the period within which an appeal may be made.

Transitional arrangements for the introduction of licensing.

112. (1) Where section 89(2) applies, the effect of section 109(1)(a) is that the landlord is not obliged to apply for an HMO licence until the prescribed date specified in section 89(2), but the landlord may nevertheless choose to register under Part V and apply for a licence under this Part at any time prior that date.

(2) Without prejudice to the generality of section 110(3), fees prescribed under that section may set a lower or discounted amount in circumstances where section 89(2) applies.

Licence conditions.

113. (1) An HMO licence must include the following conditions –
- (a) if gas is supplied to the HMO, requiring the licence holder to produce to an authorised officer on request, within two weeks of that request from the authorised officer, a gas safety certificate obtained in respect of the HMO within the last 12 months,
 - (b) requiring the licence holder to keep electrical appliances and furniture made available by the licence holder in the HMO in a safe condition,
 - (c) requiring the licence holder to ensure that every electrical installation in the HMO is in proper working order and safe for continued use,
 - (d) requiring the licence holder to supply to every adult occupier of the HMO a written statement of the terms and conditions on which that occupier occupies it.

(2) An HMO licence may also include such further conditions as an authorised officer considers appropriate for regulating all or any of the following—

- (a) the management, use and occupation of the HMO concerned, and
- (b) its condition and contents.

(3) Those further conditions may, in particular, include (so far as appropriate in the circumstances)—

- (a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the HMO by persons occupying it,
- (b) conditions requiring facilities and equipment to be made available in the HMO,
- (c) conditions requiring such facilities and equipment to be kept in repair and proper working order,
- (d) where works are necessary in order for any such facilities or equipment to be made available and in proper working order, that the works are carried out within such period or periods as may be specified in, or determined under, the HMO licence, and
- (e) conditions relating to the storage and disposal of household waste at the HMO pending collection.

(4) As regards the relationship between an authorised officer's power to impose conditions under this section and functions exercisable by the authorised officer under or for the purposes of Part II ("**Part II functions**")—

- (a) the authorised officer must proceed on the basis that, in general, the authorised officer should seek to identify, remove or reduce category 1 or category 2 hazards in the HMO by the exercise of Part II functions and not by means of licence conditions,
- (b) this does not, however, prevent the authorised officer from imposing licence conditions relating to the installation or maintenance of facilities or equipment, even if the same result could be achieved by the exercise of Part II functions, and
- (c) the fact that licence conditions are imposed for a particular purpose that could be achieved by the exercise of Part II functions does not affect the way in which Part II functions may be subsequently exercised by the authorised officer.

(5) An HMO licence may not include conditions imposing restrictions or obligations on a particular person other than the licence holder unless that person –

- (a) has consented to the imposition of the restrictions or obligations, and
- (b) has been served with a copy of the HMO licence.

(6) An HMO 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 HMO.

(7) The Committee may by regulations amend this section so as to alter (by the addition or removal of conditions) the conditions which must be included, or which may be included, in an HMO licence.

Commencement and duration of HMO licences.

114. (1) An HMO licence comes into force –

- (a) upon a date specified in the HMO licence, or
- (b) if no date is specified, immediately upon being issued.

(2) Unless terminated under subsection (4) or revoked under section 117, an HMO licence continues in force for a period of three years from the date that the HMO licence first comes into force.

(3) An HMO licence cannot be transferred to another person.

(4) An HMO licence terminates—

- (a) in the case of a registered landlord who is an individual, when that landlord dies,
- (b) in the case of a registered landlord that is a legal entity or association, when that landlord is dissolved or otherwise ceases to exist,
- (c) when the landlord ceases to be a registered landlord,
or
- (d) when the HMO ceases to be a registered rented dwelling.

Application by existing licence holder for further HMO licence.

115. (1) The licence holder may apply to the Director for a further HMO licence in respect of an HMO no more than three months prior to the date (in this section "**the expiry date**") on which the existing HMO licence for that HMO is due to expire.

(2) If the application is successful, the further HMO licence commences on the expiry date.

(3) For the purposes of this Part, and for the avoidance of doubt –

- (a) such an application is otherwise treated in the same way as any other application for an HMO licence, and
- (b) if the application is granted, the further HMO licence is otherwise treated in the same way as any other HMO licence.

Variation of HMO licences.

116. (1) An authorised officer may vary an HMO licence in accordance with subsection (2) either –

- (a) on an application ("**an application to vary**") made by the licence holder, or
- (b) on the authorised officer's own initiative.

(2) An authorised officer may only vary an HMO licence if –

- (a) the authorised officer does so on an application to vary,
- (b) the authorised officer does so with the agreement of the licence holder, or

- (c) the authorised officer considers that there has been a change of circumstances (including any discovery of new information) since the time when the HMO licence was granted.

(3) Where an application to vary is received, an authorised officer must decide as soon as practicable whether to grant or refuse that application.

(4) If an authorised officer is proposing to refuse an application to vary, the authorised officer must –

- (a) serve a notice on the licence holder stating that the authorised officer is proposing to refuse to vary the HMO licence and setting out –

- (i) the reasons for refusing to vary the HMO licence, and

- (ii) that the licence holder has the right to make representations, and the period ("**the consultation period**") within which the licence holder may exercise that right, and

- (b) consider any representations made by the licence holder within the consultation period and not withdrawn.

(5) If, after complying with subsection (4), an authorised officer decides to refuse an application to vary, the authorised officer must serve on the licence holder a notice setting out –

- (a) the authorised officer's decision not to vary the HMO licence,
- (b) the reasons for the decision and the date on which it was made,
- (c) the right of appeal against the decision under section 118, and
- (d) the period within which an appeal may be made.

(6) Before varying a licence under subsection (2)(c), and subject to subsection (7), an authorised officer must –

- (a) serve a notice on the licence holder stating that the authorised officer is proposing to make the variation and setting out –
 - (i) the effect of the proposed variation,
 - (ii) the reasons for the proposed variation, and
 - (iii) that the licence holder has the right to make representations, and the period ("**the consultation period**") within which the licence holder may exercise that right, and
- (b) consider any representations made by the licence holder within the consultation period and not withdrawn.

(7) Subsection (6) does not apply if either –

- (a) the authorised officer considers that the variation is not material, or
- (b) an authorised officer has already served a notice under that subsection in relation to a proposed variation, and the authorised officer considers that the variation that is now being proposed is not materially different from the previous proposed variation.

(8) If an authorised officer decides to vary an HMO licence under subsection (2)(c), the authorised officer must serve on the licence holder –

- (a) a copy of the decision to vary the HMO licence, and
- (b) a notice setting out -
 - (i) the reasons for the decision,
 - (ii) the date on which it was made,
 - (iii) the right of appeal against the decision under section 118, and
 - (iv) the period within which an appeal may be made.

(9) A variation takes effect –

- (a) upon a date specified by the authorised officer in writing, or
- (b) if no date is specified, immediately upon being made.

(10) The consultation period referred to in subsections (4)(a)(ii) and (6)(a)(iii) is such period as specified in the notice but must be at least 14 days.

(11) The power of the Committee to make Regulations under section 110(3) also applies to applications for a variation under this section, as though the reference in that subsection to applications under section 110 were a reference to applications for a variation under this section.

Revocation of HMO Licences.

117. (1) An authorised officer may revoke an HMO Licence in accordance with subsection (2) either -

- (a) on an application ("**an application to revoke**") made by the licence holder, or
- (b) on the authorised officer's own initiative.

(2) An authorised officer may only revoke an HMO licence -

- (a) on an application to revoke,
- (b) with the agreement of the licence holder,
- (c) where the authorised officer considers that there has been –
 - (i) a serious breach of a condition of the licence, or
 - (ii) repeated breaches of a condition,
- (d) if the premises to which the HMO licence relates ceases to be an HMO,

- (e) where the authorised officer considers at any time that, were the HMO licence to expire at that time, the authorised officer would, for a particular reason relating to the structure or condition of the HMO, refuse to grant a new licence to the licence holder on similar terms in respect of it,
- (f) where an offence has been committed under this Ordinance, or
- (g) in any other circumstances prescribed by regulations made by the Committee.

(3) Where an application to revoke is received, an authorised officer must decide as soon as practicable whether to grant or refuse that application.

(4) If an authorised officer is proposing to refuse an application to revoke, the authorised officer must –

- (a) serve a notice on the licence holder stating that the authorised officer is proposing to refuse to revoke the HMO licence and setting out –
 - (i) the reasons for that refusal, and
 - (ii) that the licence holder has the right to make representations, and the period ("**the consultation period**") within which the licence holder may exercise that right, and

- (b) consider any representations made by the licence holder within the consultation period and not withdrawn.

(5) If, after complying with subsection (4), an authorised officer decides to refuse an application to revoke, the authorised officer must serve on the licence holder a notice setting out –

- (a) the authorised officer's decision not to revoke the HMO licence,
- (b) the reasons for the decision and the date on which it was made,
- (c) the right of appeal against the decision under section 118, and
- (d) the period within which an appeal may be made.

(6) Before revoking a licence otherwise than under subsection (1)(a) or subsection (9), an authorised officer must –

- (a) serve a notice on the licence holder stating that the authorised officer is proposing to revoke the HMO licence and setting out –
 - (i) the reasons for the revocation, and
 - (ii) that the licence holder has the right to make representations, and the period ("**the consultation period**") within which the licence holder may exercise that right, and

- (b) consider any representations made by the licence holder within that consultation period and not withdrawn.

(7) If an authorised officer decides to revoke the HMO licence otherwise than under subsection (1)(a) or subsection (9), the authorised officer must serve on the licence holder –

- (a) a copy of that decision to revoke the HMO licence, and
- (b) a notice setting out –
 - (i) the reasons for the decision and the date on which it was made,
 - (ii) the right of appeal against the decision under section 118, and
 - (iii) the period within which an appeal may be made.

(8) The consultation period referred to in subsections (4)(a)(ii) and (6)(a)(ii) is such period as specified in the notice but must be at least 14 days.

(9) An authorised officer must revoke an HMO licence if a disqualification order under section 170 is imposed in respect of the licence holder.

(10) A revocation under this section takes effect –

- (a) upon a date specified by the authorised officer in writing, or
- (b) if no date is specified, immediately upon being made.

Appeals in respect of HMO licences.

118. (1) The relevant person may appeal to the Magistrate's Court against the following decisions –

- (a) to refuse to grant an HMO licence,
- (b) to impose a particular condition or conditions on an HMO licence,
- (c) to vary an HMO licence under section 116(2)(c),
- (d) to revoke an HMO licence under section 117(2)(c) to 117(2)(g),
- (e) to refuse an application to vary an HMO licence,
- (f) to refuse an application to revoke an HMO licence.

(2) In this section "**the relevant person**" means the licence holder or, where subsection (1)(a) applies, the landlord who applied for the HMO licence.

(3) A relevant person wishing to so appeal must file a notice of appeal, setting out the grounds for appeal, within 14 days beginning with the date on which notice of the decision being appealed against was served on the relevant person.

(4) The Magistrate's Court may allow an appeal to be made to it after the end of the period specified in subsection (3) if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of the applicable period, and
- (b) any delay since then in applying for permission to appeal out of time.

(5) A copy of the notice of appeal must be served on the Director, who is a party to the appeal.

(6) When the appeal is in respect of a decision stipulated in subsection (1)(c) or (1)(d), the Magistrate's Court may, on the application of the relevant person, and on such terms as the court thinks just, suspend or modify the effect of the decision pending the determination of the appeal.

(7) The appeal is determined by way of a rehearing.

(8) The Magistrate's Court may –

(a) confirm, vary, or revoke the decision, and

(b) make such further order as is necessary to give effect to its decision.

(9) Notice of the outcome of the appeal must be given by the Magistrate's Court to –

(a) the relevant person, and

(b) the Director.

(10) The appellant or the Director may further appeal against a decision of the Magistrate's Court under subsection (8) to the Royal Court, but only on a question of law (meaning it is before a single judge presiding alone).

(11) Subsections (2) to (6), (8) and (9) apply with any necessary modification to such a further appeal, but as though any reference to the Magistrate's Court in those subsections is instead a reference to the Royal Court.

Offence of being controller of unlicensed HMO.

119. (1) A controller of an HMO commits an offence if –

(a) that HMO is required to be licenced under section 109,
and

(b) that HMO is not so licenced.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding level 5 on the uniform scale.

(3) Subsection (1) applies even if the occupation of the HMO began before, or in pursuance of a contract made before, this Part came into force.

(4) In proceedings against a person for an offence under subsection (1) it is a defence if –

(a) at the material time an application for a licence had been duly made in respect of the HMO under section 110, and that application was still effective, or

(b) the person proves, on the balance of probabilities, that they had a reasonable excuse for contravening subsection (1).

(5) For the purposes of subsection (4)(a) an application is "**effective**" at a particular time if at that time it has not been withdrawn, and either -

(a) an authorised officer has not decided whether to grant a licence in pursuance of the application, or

(b) an authorised officer has refused the application and one of the conditions set out in subsection (6) is met.

(6) The conditions referred to in subsection (5)(b) are that—

- (a) the period for appealing against the decision not to grant an HMO licence has not expired,
- (b) an appeal has been brought against that decision and that appeal has not been determined or withdrawn, or
- (c) the Magistrate's Court has, on appeal, confirmed the authorised officer's decision (with or without variation) and either –
 - (i) the period for appealing against this decision of the Magistrate's Court has not expired, or
 - (ii) an appeal has been brought against this decision of the Magistrate's Court and this appeal has not been determined or withdrawn.

Offence of permitting unauthorised number of occupiers.

120. (1) A licence holder commits an offence if -

- (a) that licence holder knowingly permits another person to occupy the HMO, and
- (b) that other person's occupation results in the HMO being occupied by more households or persons than is authorised by the licence.

(2) A person who commits an offence under this section is liable on conviction to a fine not exceeding level 5 on the uniform scale.

(3) In proceedings for an offence under subsection (1) it is a defence for the defendant to prove, on the balance of probabilities, that the defendant had a reasonable excuse for permitting the person to occupy the HMO.

- (4) Subsection (5) applies where –
- (a) an HMO that is licensed under this Part, or a part of such an HMO, is occupied by more households or persons than the number permitted by the licence, and
 - (b) the occupation of all or any of those households or persons began before, or in pursuance of a contract made before, this Part came into force.

(5) Where this subsection applies, in proceedings for an offence under subsection (1) it is a defence for the defendant to prove, on the balance of probabilities, that at the material time the defendant was taking all reasonable steps to try to reduce the number of households or persons occupying the HMO to the number permitted by the licence.

Offences in connection with licence conditions etc.

121. (1) A licence holder commits an offence if they fail to comply with any condition of the licence.

(2) In proceedings for an offence under subsection (1) it is a defence for the defendant to prove, on the balance of probabilities, that the defendant had a reasonable excuse for failing to comply with the condition.

- (3) A person commits an offence if –
- (a) a restriction or obligation has been imposed on that person under a condition of an HMO licence, and
 - (b) that person fails to comply with that restriction or obligation.

(4) In proceedings for an offence under subsection (3) it is a defence for the defendant to prove, on the balance of probabilities, that the defendant had a reasonable excuse for failing to comply with the restriction or obligation.

(5) A person who commits an offence under this section is liable on conviction to a fine not exceeding level 5 on the uniform scale.

Offence of failing to display HMO licence.

122. (1) A licence holder commits an offence if, once the HMO licence has been received by the licence holder, the licence holder –

(a) fails to display a copy of it in a conspicuous place in the HMO to which the licence relates as soon as reasonably practicable, or

(b) thereafter fails to keep that licence so displayed until the licence is terminated or revoked.

(2) A person guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding level 2 on the uniform scale.

(3) In proceedings for an offence under subsection (1) it is a defence for the defendant to prove, on the balance of probabilities, that the defendant had a reasonable excuse for the failure.

Codes of practice.

123. (1) The Committee may by order issue codes of practice laying down standards of conduct and practice to be followed with regard to the management of HMOs.

(2) The Committee may only issue a code of practice if satisfied that -

(a) the code has been published (whether by the Committee or by another person) in a manner that the Committee considers appropriate for the purpose of bringing the code to the attention of those likely to be affected by it, or

(b) arrangements have been made for the code to be so published.

(3) An order made under this section must be laid before the States as soon as reasonably practicable after being made and if at that meeting or the next subsequent meeting the States resolve that the order be annulled, the order ceases to have effect but without prejudice to anything done under the order or to the making of a new order.

(4) A failure to comply with a code of practice for the time being issued under this section does not of itself make a person liable to any civil or criminal proceedings.

(5) If, in any criminal or civil proceedings, a provision of such a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it is admissible and may be taken into account in determining that question.

PART VII

MANAGEMENT ORDERS FOR HMOS

Introduction

Management orders: introductory

124. In this Ordinance –

- (a) a "**management order**" means an interim management order or a final management order.
- (b) an "**interim management order**" is an order, expiring not more than 12 months after it is made, which is made for the purpose of securing that the following steps are taken in relation to an HMO –
 - (i) any immediate steps that an authorised officer considers necessary to protect the health, safety or welfare of persons occupying the HMO, or persons occupying or having an estate or interest in any premises in the vicinity of the HMO, and
 - (ii) any other steps that an authorised officer thinks appropriate with a view to the proper management of the HMO pending the making of a final management order in respect of it (or, if appropriate, the revocation of the interim management order), and
- (c) a "**final management order**" is an order, expiring not more than five years after it is made, which is made for the purpose of securing the proper management of an HMO on a long-term basis in accordance with a management scheme contained in the order.

Functions of authorised officers and Director under this Part.

125. (1) Notwithstanding section 2, the powers specified in subsection (2) may not be exercised by an authorised officer in respect of a particular matter

unless the Director has consented in writing that the power may be exercised in respect of that matter.

- (2) The powers referred to in subsection (1) are to –
- (a) make an interim management order under section 126,
 - (b) vary an interim management order under section 135,
 - (c) refuse to vary an interim management order under section 135,
 - (d) revoke an interim management order under section 136,
 - (e) refuse to revoke an interim management order under section 136,
 - (f) make a final management order under section 137,
 - (g) vary a final management order under section 147,
 - (h) refuse to vary a final management order under section 147,
 - (i) revoke a final management order under section 148,
 - (j) refuse to revoke a final management order under section 148, and
 - (k) a decision whether an amount by way of compensation should be paid to a person under section 154(1).

(3) Where the Committee is to be treated as a lessee or lessor by virtue of a provision of this Part all functions incidental to that (including the

collection or payment of rent) are, on the Committee's behalf, to be carried out by the Director and authorised officers in accordance with this Part.

Interim management orders

Making of interim management orders.

126. (1) An authorised officer may make an interim management order in respect of an HMO if –

- (a) that HMO is not licenced under Part VI of this Ordinance, and the authorised officer is satisfied that either –
 - (i) there is no reasonable prospect of that HMO being so licenced in the near future, or
 - (ii) the health and safety condition is satisfied (see section 127), or
- (b) that HMO is licenced under Part VI of this Ordinance, but –
 - (i) a decision has been taken to revoke the licence,
 - (ii) the revocation is not yet in force, and
 - (iii) the authorised officer is satisfied that on the revocation coming into force, either –
 - (A) there will be no reasonable prospect of the relevant HMO being so licensed in the near future, or

(B) the health and safety condition will be satisfied (see section 127).

(2) An authorised officer may make an interim management order in respect of an HMO if that HMO is being let in breach of a disqualification order imposed under section 170.

(3) An interim management order may be expressed not to apply to a part of the relevant HMO that is occupied by a person who has an estate or interest in the whole of the relevant HMO, in which case the reference in this section to the relevant HMO does not include that part so excluded, unless the context requires otherwise.

(4) Nothing in this section requires or authorises the making of an interim management order under subsection (1) in respect of an HMO if –

- (a) an interim management order has been previously made in respect of it, and
- (b) an authorised officer has not, at any time after the making of that previous interim management order,
 - (i) granted a licence under Part VI, or
 - (ii) made a final management order under section 137.

The health and safety condition.

127. (1) The health and safety condition is that the making of the interim management order is necessary for the purpose of protecting the health, safety or welfare of persons occupying the HMO, or persons occupying or having an estate or interest in any premises in the vicinity.

(2) Without prejudice to the generality of subsection (1), a threat to evict persons occupying an HMO to avoid it being classified as an HMO may constitute a threat to the welfare of those persons for the purpose of that subsection.

(3) The health and safety condition is not to be regarded as satisfied for the purposes of section 126(1)(a)(ii) or 126(1)(b)(iii)(B) where both of the conditions in subsections (4) and (5) are satisfied.

(4) The first condition is that an authorised officer either –

(a) in a case within section 126(1)(a)(ii), is required by section 17(1) to take a course of action within section 17(3) in relation to the relevant HMO, or

(b) in a case within section 126(1)(b)(iii)(B), will be required to take such a course of action on the revocation coming into force.

(5) The second condition is that an authorised officer considers that the health, safety and welfare of the persons in question will be adequately protected once the course of action mentioned in subsection (4) is taken.

Requirements following making of interim management order.

128. (1) As soon as practicable after an interim management order is made, an authorised officer must serve on the adult occupiers of the HMO to which it relates -

(a) a copy of the order, and

(b) a notice setting out –

(i) the reasons for making the order,

- (ii) the date on which it is made,
- (iii) the general effect of the order, and
- (iv) the date on which the order is to cease to have effect in accordance with section 129.

(2) The documents referred to in subsection (1) are to be regarded as having been served on the adult occupiers if they are fixed to a conspicuous part of the HMO.

(3) An authorised officer must also serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates –

- (a) a copy of the order, and
- (b) a notice setting out –
 - (i) the matters specified in subsection (1)(b),
 - (ii) the right of appeal against the order under section 158, and
 - (iii) the period within which an appeal may be made.

(4) The documents required to be served under subsection (3) must be served within the period of seven days beginning with the day on which the order is made.

Operation of interim management orders.

129. (1) An interim management order comes into force when it is made, unless it is made under section 126(1)(b), in which case it comes into force when the revocation of the HMO licence comes into force.

(2) An interim management order made under section 126(1)(a) ceases to have effect at the end of the period of 12 months beginning with the date on which it is made, unless the order provides that it is to cease to have effect on a date falling before the end of that period, in which case it ceases to have effect on that date instead.

(3) An interim management order made under section 126(1)(b) –

(a) must include a provision for determining the date on which it will cease to have effect, being no later than 12 months after the date on which the order comes into force, and

(b) ceases to have effect on the date so determined.

(4) An interim management order made under section 126(2) ceases to have effect (if it has not already ceased to have effect) when the disqualification order ceases to have effect.

(5) Subsections (6) to (8) apply where –

(a) a final management order has been made under section 137 so as to replace an interim management order, but

(b) the final management order has not come into force because of an appeal under section 158 against the making of the it.

- (6) If the date on which –
 - (a) a final management order,
 - (b) an HMO licence under Part VI, or
 - (c) another interim management order,

comes into force in relation to an HMO (or part of it) following the disposal of the appeal is later than the date on which the interim management order would cease to have effect apart from this subsection, the interim management order continues in force until that later date.

- (7) If –
 - (a) the interim management order was made under section 126(2), and
 - (b) the date on which the final management order or another interim management order comes into force in relation to the HMO (or part of it) following the disposal of the appeal is later than the date on which the interim management order would cease to have effect apart from this subsection,

the interim management order continues in force until that later date.

(8) If, on the application of the Director, the Magistrate's Court makes an order providing for the interim management order to continue in force, pending the disposal of the appeal, until a date later than that on which the interim management order would cease to have effect apart from this subsection, the interim management order accordingly continues in force until that later date.

(9) This section has effect subject to sections 135 and 136 (variation or revocation of interim management orders by an authorised officer) and to the power of revocation exercisable by the Magistrate's Court on appeal made under sections 158 or 160.

Duties in respect of interim management orders.

130. (1) Where an interim management order has been made and is in force, the following provisions must be complied with.

(2) An authorised officer must, as soon as practicable –

- (a) take any immediate steps that the authorised officer considers to be necessary for the purpose of protecting the health, safety or welfare of persons occupying the HMO, or persons occupying or having an estate or interest in any premises in the vicinity,
- (b) take such other steps as the authorised officer considers appropriate with a view to the proper management of the HMO pending the grant of an HMO licence or the making of a final management order in respect of an HMO, as mentioned in subsection (3).

(3) An authorised officer must, as soon as practicable, decide to take one of the following courses of action, after considering all the circumstances of the case –

- (a) grant an HMO licence under Part VI, or
- (b) make a final management order in respect of the HMO under section 137.

(4) For the avoidance of doubt, the duty under subsection (1) includes taking such steps as are necessary to ensure that, whilst the order is in force, reasonable provision is made for insurance of the HMO against destruction or damage by fire or other causes.

General effect of interim management orders.

131. (1) This section applies while an interim management order is in force in relation to an HMO.

(2) The rights and powers conferred by subsection (3) are exercisable by an authorised officer in performing the duties under section 130(2) in respect of the HMO.

(3) An authorised officer –

(a) has the right to possession of the HMO (subject to the rights of existing occupiers preserved by section 150(4)),

(b) has the right to do (and authorise a manager or other person to do) in relation to the HMO anything that a person having an estate or interest in the HMO would (but for the order) be entitled to do,

(c) subject to subsection (4), may create one or more of the following –

(i) an interest in the HMO which, as far as possible, has all the incidents of a leasehold, or

(ii) a right in the nature of a licence to occupy part of the HMO.

(4) An authorised officer may not under subsection (3)(c) create any interest or right in the nature of a lease or a licence unless consent in writing has been given by the person who (but for the order) would have power to create the lease or licence in question.

(5) The Committee –

- (a) does not under this section acquire any estate or interest in the HMO, and
- (b) accordingly this section does not entitle the Director or an authorised officer to sell, lease, charge or make any other disposition of any such estate or interest,

but, where the landlord of the HMO or part of it is a lessee under a lease of the HMO or part, the Committee is to be treated (subject to paragraph (a)) as if it was the lessee instead.

(6) Any enactment or rule of law relating to landlords and tenants or leases applies in relation to—

- (a) a lease in relation to which the Committee are to be treated as the lessee under subsection (5), or
- (b) a lease to which the Committee become a party under section 150(5),

as if the Committee were the legal owner of the premises.

(7) References in any enactment to housing accommodation provided or managed by the States of Guernsey do not include an HMO in relation to which an interim management order is in force.

General effect of interim management orders: rights created under section 131.

132. (1) This section applies in relation to any interest or right created under section 131(3)(c).

(2) For the purposes of any enactment or rule of law –

(a) any interest created under section 131(3)(c)(i) is to be treated as if it were a lease, and

(b) any right created under section 131(3)(c)(ii) is to be treated as if it were a licence to occupy granted by the legal owner of the HMO,

despite the fact that the Committee has no legal estate in the HMO (see section 131(5)(a)).

(3) Any enactment or rule of law relating to landlords and tenants or leases accordingly applies in relation to any interest created under section 131(3)(c)(i) as if the Committee was the legal owner of the HMO.

(4) References to leases and licences in this Part, and in any other enactment, accordingly include (where the context permits) interests and rights created under section 131(3)(c).

(5) In section 131(5)(b) the reference to leasing does not include the creation of interests under section 131(3)(c)(i).

Effect of interim management orders: landlords, mortgagees etc.

133. (1) This section applies while an interim management order is in force in relation to an HMO and applies to –

(a) landlords, and

- (b) other persons with an estate or interest in the HMO.
- (2) A person who is a landlord of the HMO or a part of it –
 - (a) is not entitled to receive any rents or other payments from persons occupying the HMO or part that are payable to the Director under section 125(3) by virtue of
 - (i) section 150(5), or
 - (ii) any leases or licences granted under section 131(3)(c).
 - (b) may not exercise any rights or powers with respect to the management of the HMO or part, and
 - (c) may not create any of the following –
 - (i) any leasehold interest in the HMO or part (other than a lease of a reversion), or
 - (ii) any licence or other right to occupy it.
- (3) However (subject to subsection (2)(c)) nothing in section 131 or this section affects the ability of a person having an estate or interest in the HMO to make any disposition of that estate or interest.
- (4) Nothing in section 131 or this section affects –
 - (a) the validity of any mortgage relating to the HMO or any rights or remedies available to the mortgagee under such a mortgage, or

- (b) the validity of any lease of the HMO or part of it under which the landlord is a lessee, or any superior lease, or (subject to section 131(5)) any rights or remedies available to the lessor under such a lease,

except to the extent that any of those rights or remedies would prevent an authorised officer from exercising a power under section 131(3)(c).

(5) In proceedings for the enforcement of such rights or remedies the court may make such order as it thinks fit as regards the operation of the interim management order (including an order quashing it).

Financial arrangements while management order is in force.

134. (1) This section applies to relevant expenditure of the Director where an authorised officer has made an interim management order.

(2) In this section "**relevant expenditure**" means expenditure reasonably incurred by the Director in connection with the duties under section 130 in respect of an HMO, including any premiums paid for insurance of the premises.

(3) Rent or other payments that the Director has collected or recovered, by virtue of this Part, from persons occupying the HMO may be used by the Director to meet –

- (a) relevant expenditure, and
- (b) any amounts of compensation payable to a third party by virtue of a decision of an authorised officer under section 154.

(4) If the interim management order is not made under section 126(2), the Director must pay to the landlord or landlords, in such proportions as the Director considers appropriate –

- (a) any amount of rent or other payments collected or recovered as mentioned in subsection (3) that remains after deductions to meet relevant expenditure and any amounts of compensation payable as mentioned in that subsection, and
- (b) (where appropriate) interest on that amount at a reasonable rate,

and such payments are to be made at such intervals as the Director considers appropriate.

(5) The interim management order may provide for –

- (a) the rate of interest that is to apply for the purposes of subsection (4)(b), and
- (b) the intervals at which payments are to be made under that subsection.

(6) The Committee may by regulations make provision about how the Director must deal with any surplus in a case where the interim management order was made under section 126(2).

(7) In subsection (6) "**surplus**" means any amount of rent or other payments collected or recovered as mentioned in subsection (3) that remains after deductions to meet relevant expenditure and any amounts of compensation payable as mentioned in that subsection.

- (8) The Director must—
- (a) keep full accounts of the Director's income and expenditure in respect of the HMO, and
 - (b) afford to each landlord, and to any other person who has an estate or interest in the HMO, all reasonable facilities for inspecting, taking copies of and verifying those accounts.
- (9) A landlord may apply to the Magistrate's Court for an order—
- (a) declaring that an amount shown in the accounts as expenditure of the Director does not constitute expenditure reasonably incurred by the Director as mentioned in subsection (2),
 - (b) requiring the Director to make such financial adjustments (in the accounts and otherwise) as are necessary to reflect the Court's declaration.
- (10) In this section—
- (a) "**expenditure**" includes administrative costs,
 - (b) "**rent or other payments**" means rents or other payments payable under leases or licences or in respect of furniture within section 152(1).

Variation of interim management orders.

135. (1) An authorised officer may vary an interim management order if the authorised officer considers it appropriate to do so.

(2) A variation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under section 149.

(3) The power to vary an order under this section is exercisable by the authorised officer either –

- (a) on an application made by a controller, or
- (b) on the authorised officer's own initiative.

(4) Before varying an interim management order, an authorised officer must –

- (a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice stating that the authorised officer is proposing to make the variation and specifying –
 - (i) the effect of the variation,
 - (ii) the reasons for the variation, and
 - (iii) the end of the consultation period, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(5) The requirements of subsection (4) do not apply if –

- (a) the authorised officer considers that the variation is not material, or

- (b) a notice has already been served under that subsection in relation to a proposed variation and the authorised officer considers that the variation that is now being proposed is not materially different from the previous proposed variation.

(6) Where an authorised officer decides to vary an interim management order, the authorised officer must serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates—

- (a) a copy of the decision to vary the order, and
- (b) a notice setting out—
 - (i) the reasons for the decision and the date on which it was made,
 - (ii) the right of appeal against the decision under section 160, and
 - (iii) the period within which an appeal may be made (see section 160(2)).

(7) The documents required to be served under subsection (6) must be served within the period of seven days beginning with the day on which the decision is made.

(8) Before refusing to vary an interim management order, an authorised officer must—

- (a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which

the order relates a notice stating that the authorised officer is proposing to refuse to make the variation and setting out –

- (i) the reasons for the refusal, and
 - (ii) the end of the consultation period, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(9) Where an authorised officer refuses to vary an interim management order, the authorised officer must serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice setting out—

- (a) the decision not to vary the order,
- (b) the reasons for the decision and the date on which it was made,
- (c) the right of appeal against the decision under section 160, and
- (d) the period within which an appeal may be made (see section 160(2)).

(10) The notices required to be served under subsection (9) must be served within the period of seven days beginning with the day on which the decision is made.

(11) In this section "**the end of the consultation period**" means the last day for making representations in respect of the matter in question and must be a day that is at least 14 days after the date of service of the notice.

(12) In subsection (11) "**the date of service**" of a notice means, in a case where more than one notice is served, the date on which the last of the notices is served.

Revocation of interim management orders.

136. (1) An authorised officer may revoke an interim management order either on application by a controller, or on the authorised officer's own initiative.

(2) An authorised officer may revoke an interim management order in the following cases –

- (a) if the premises the subject of the order have ceased to be an HMO,
- (b) if an HMO licence granted under Part VI in respect of the HMO is due to come into force on the revocation of the order,
- (c) if a final management order has been made in respect of the HMO so as to replace the order, or
- (d) if in any other circumstances the authorised officer considers it appropriate to revoke the order.

(3) A revocation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under section 149.

(4) An interim management order may not be revoked under this section if—

- (a) the landlord is subject to a disqualification order under section 170,
- (b) there is in force an agreement which, under section 131, has effect as a lease or licence granted under that section, and
- (c) revoking the interim management order would cause the landlord to breach the disqualification order because of the effect of section 156(2)(b).

(5) Before revoking an interim management order, an authorised officer must—

- (a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice stating that the authorised officer is proposing to revoke the order and specifying—
 - (i) the reasons for the revocation, and
 - (ii) the end of the consultation period, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(6) Where an authorised officer decides to revoke an interim management order, the authorised officer must serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates—

- (a) a copy of the decision to revoke the order, and

- (b) a notice setting out—
 - (i) the reasons for the decision and the date on which it was made,
 - (ii) the right of appeal against the decision under section 160, and
 - (iii) the period within which an appeal may be made (see section 160(2)).

(7) The documents required to be served under subsection (6) must be served within the period of seven days beginning with the day on which the decision is made.

(8) Before refusing to revoke an interim management order, an authorised officer must—

- (a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice stating that the authorised officer is proposing to refuse to revoke the order and setting out—
 - (i) the reasons for the refusal, and
 - (ii) the end of the consultation period, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(9) Where an authorised officer refuses to revoke an interim management order, the authorised officer must serve on each person who, to the

knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice setting out—

- (a) the decision not to revoke the order,
- (b) the reasons for the decision and the date on which it was made,
- (c) the right of appeal against the decision under section 160, and
- (d) the period within which an appeal may be made (see section 160(2)).

(10) The notices required to be served under subsection (9) must be served within the period of seven days beginning with the day on which the decision is made.

(11) In this section "**the end of the consultation period**" means the last day for making representations in respect of the matter in question and must be a day that is at least 14 days after the date of service of the notice.

(12) In subsection (11) "**the date of service**" of a notice means, in a case where more than one notice is served, the date on which the last of the notices is served.

Final management orders

Making of final management orders.

137. (1) Where there is an interim management order in respect of an HMO under section 126(1) an authorised officer must make a final management order in respect of the HMO so as to replace the interim management order as from its expiry date if the authorised officer considers that the authorised officer is unable to grant a

licence under Part VI in respect of the HMO that would replace the interim management order as from that date.

(2) Where there is an interim management order in respect of an HMO under section 126(2), an authorised officer may make a final management order so as to replace the interim management order as from its expiry date if the authorised officer considers that making the final management order is necessary for the purpose of protecting, on a long-term basis, the health, safety or welfare of persons occupying the HMO, or persons occupying or having an estate or interest in any premises in the vicinity.

(3) Where the HMO is already subject to a final management order ("**the existing order**") an authorised officer must make a new final management order so as to replace the existing order as from its expiry date if the authorised officer is satisfied that on that date the authorised officer would be unable to grant a licence under Part VI in respect of the HMO that would replace the existing order as from that date.

(4) Where a final management order is made under subsection (2) or this subsection ("**the existing order**"), an authorised officer may make a new final management order so as to replace the existing order as from its expiry date if the authorised officer is satisfied that making the new order is necessary for the purpose of protecting, on a long-term basis, the health, safety or welfare of persons occupying the HMO, or persons occupying or having an estate or interest in any premises in the vicinity.

(5) A final management order may be expressed not to apply to a part of the HMO that is occupied by a person who has an estate or interest in the whole of the HMO, in which case a reference in this Part to "**the HMO**" does not include the part so excluded, unless the context requires otherwise.

(6) In this section "**expiry date**", in relation to an interim or final management order, means—

- (a) where the order is revoked, the date as from which it is revoked, and
- (b) otherwise the date on which the order ceases to have effect under section 129 or section 140.

(7) Nothing in this section applies in relation to an interim or final management order which has been revoked on an appeal under section 159 or 161.

Requirements prior to making of final management order.

138. (1) Before making a final management order, an authorised officer must –

- (a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates –
 - (i) a copy of the proposed order, and
 - (ii) a notice stating that the authorised officer is proposing to make a final management order and setting out—
 - (A) the reasons for making the order,
 - (B) the main terms of the proposed order (including those of the management scheme to be contained in it), and
 - (C) the end of the consultation period, and

- (b) consider any representations made in accordance with the notice and not withdrawn.

(2) Subsection (3) applies if, having considered representations made in accordance with a notice served under subsection (1) or (3), an authorised officer proposes to make a final management order with modifications.

(3) Where this subsection applies, and before making the order, an authorised officer must—

- (a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice setting out –
 - (i) the proposed modifications,
 - (ii) the reasons for them, and
 - (iii) the end of the consultation period, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(4) The requirements of subsections (1) and (3) do not apply if an authorised officer —

- (a) has already served a notice under subsection (1) but not subsection (3) in relation to the proposed final management order, and
- (b) considers that the modifications that are now being proposed are not material in any respect.

(5) The requirements of subsections (1) and (3) do not apply if an authorised officer—

- (a) has already served notices under subsections (1) and (3) in relation to the matter concerned, and
- (b) considers that the further modifications that are now being proposed do not differ in any material respect from the modifications in relation to which a notice was last served under subsection (3).

(6) In this section "**the end of the consultation period**" means the last day for making representations in respect of the matter in question, and must be—

- (a) in the case of a notice under subsection (1), a day that is at least 14 days after the date of service of the notice; and
- (b) in the case of a notice under subsection (3), a day that is at least 7 days after the date of service of the notice.

(7) In subsection (6) "**the date of service**" of a notice means, in a case where more than one notice is served, the date on which the last of the notices is served.

Requirements following making of final management order.

139. (1) As soon as practicable after a final management order is made, an authorised officer must serve on the adult occupiers of the HMO to which it relates—

- (a) a copy of the order, and
- (b) a notice setting out –

- (i) the reasons for making the order,
- (ii) the date on which it is made,
- (iii) the general effect of the order,
- (iv) the date on which the order is to cease to have effect in accordance with section 140, and
- (v) a general description of the way in which the HMO is to be managed in accordance with the management scheme contained in the order.

(2) The documents referred to in subsection (1) are to be regarded as having been served on the adult occupiers if they are fixed to a conspicuous part of the HMO.

(3) An authorised officer must also serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates –

- (a) a copy of the order, and
- (b) a notice setting out –
 - (i) the matters specified in subsection (1)(b),
 - (ii) the right of appeal against the order under section 158, and
 - (iii) the period within which any such appeal may be made (see section 158(6)).

(4) The documents required to be served under subsection (3) must be served within the period of seven days beginning with the day on which the order is made.

Operation of final management orders.

140. (1) A final management order does not come into force until the operative time calculated in accordance with subsections (2) to (4).

(2) If no appeal is made under section 158 before the end of the period of 28 days mentioned in section 158(6), "**the operative time**" for the purpose of subsection (1) is the end of that period.

(3) If an appeal is made under section 158 before the end of that period, and a decision is given on the appeal which confirms the order, "**the operative time**" for the purpose of subsection (1) is as follows—

(a) if the period within which a further appeal to the Royal Court may be brought expires without such an appeal having been brought, "**the operative time**" is the end of that period,

(b) if a further appeal to the Royal Court is brought, "**the operative time**" is the time when a decision is given on the appeal that confirms the order.

(4) For the purposes of subsection (3) —

(a) the withdrawal of an appeal has the same effect as a decision that confirms the order, and

(b) references to a decision that confirms the order are to a decision that confirms it with or without variation.

(5) A final management order ceases to have effect at the end of the period of 5 years beginning with the date on which it comes into force unless it ceases to have effect at some other time in accordance with the remainder of this section.

(6) If the order provides that it is to cease to have effect on a date falling before the end of the period referred to in subsection (5), it accordingly ceases to have effect on that date.

(7) An order under section 137(2) or 137(4) ceases to have effect (if it has not already ceased to have effect) when the disqualification order ceases to have effect.

(8) Subsections (9) to (11) apply where -

(a) a new final management order ("**the new order**") has been made so as to replace the order ("**the existing order**"), but

(b) the new order has not come into force because of an appeal to the Magistrate's Court under section 158 against the making of the new order.

(9) If the date on which—

(a) the new order, or

(b) any licence under Part VI,

comes into force in relation to the HMO (or part of it) following the disposal of the appeal is later than the date on which the existing order would cease to have effect apart from this subsection, the existing order continues in force until that later date.

(10) If —

- (a) the existing order was made under section 137(2) or 137(4), and
- (b) the date on which the new order comes into force in relation to the HMO (or part of it) following the disposal of the appeal is later than the date on which the existing order would cease to have effect apart from this subsection,

the existing order continues in force until that later date.

(11) If, on the application of the Director, the Magistrate's Court makes an order providing for the existing order to continue in force, pending the disposal of the appeal, until a date later than that on which the existing order would cease to have effect apart from this subsection, the existing order accordingly continues in force until that later date.

(12) This section has effect subject to sections 147 and 148 (variation or revocation of final management orders) and to the power of revocation exercisable by the Magistrate's Court on an appeal made under section 158 or 160.

Duties in respect of final management orders.

141. (1) Where a final management order has been made and is in force, the following provisions must be complied with.

(2) An authorised officer must take such steps as the authorised officer considers appropriate with a view to the proper management of the HMO in accordance with the management scheme contained in the order (see section 145).

(3) An authorised officer must from time-to-time review –

- (a) the operation of the order and in particular the management scheme contained in it, and
- (b) whether keeping the order in force in relation to the HMO (with or without making any variations under section 147) is the best option available.

(4) If on a review an authorised officer considers that any variations should be made under section 147, the authorised officer must proceed to make those variations.

(5) If on a review an authorised officer considers that either—

- (a) granting a licence under Part VI in respect of the HMO,
or
- (b) revoking the order under section 148 and taking no further action,

is the best option available, an authorised officer must grant such a licence or revoke the order (as the case may be).

(6) For the avoidance of doubt, the duty under subsection (2) includes taking such steps as are necessary to ensure that, while the order is in force, reasonable provision is made for insurance of the HMO against destruction or damage by fire or other causes.

General effect of final management orders.

142. (1) This section applies while a final management order is in force in relation to an HMO.

(2) The rights and powers conferred by subsection (3) are exercisable by an authorised officer in performing the duty under section 141(2) in respect of the HMO.

(3) An authorised officer—

- (a) has the right to possession of the HMO (subject to the rights of existing and other occupiers preserved by section 150(4) and 150(7)),
- (b) has the right to do (and authorise a manager or other person to do) in relation to the HMO anything that a person having an estate or interest in the HMO would (but for the order) be entitled to do,
- (c) subject to subsection (4), may create one or more of the following—
 - (i) an interest in the HMO which, as far as possible, has all the incidents of a leasehold, or
 - (ii) a right in the nature of a licence to occupy part of the HMO.

(4) The power under subsection (3)(c) does not extend to the creation of any interest or right in the nature of a lease or licence—

- (a) which is for a fixed term expiring after the date on which the order is due to expire, or
- (b) which is terminable by notice to quit, or an equivalent notice, of more than 4 weeks,

unless consent in writing has been given by the person who would (but for the order) have power to create the lease or licence in question,

- (5) The Committee—
 - (a) does not under this section acquire any estate or interest in the HMO, and
 - (b) accordingly this section does not entitle the Director or an authorised officer to sell, lease, charge or make any other disposition of any such estate or interest,

but, where the landlord of the HMO or part of it is a lessee under a lease of the HMO or part, the Committee is to be treated (subject to paragraph (a)) as if it was the lessee instead.

- (6) Any enactment or rule of law relating to landlords and tenants or leases applies in relation to—
 - (a) a lease in relation to which the Committee are to be treated as the lessee under subsection (5), or
 - (b) a lease to which the Committee become a party under section 150(5),

as if the Committee were the legal owner of the premises.

- (7) References in any enactment to housing accommodation provided or managed by the States of Guernsey do not include an HMO in relation to which a final management order is in force.

General effect of final management orders: rights created under section 142.

143. (1) This section applies in relation to any interest or right created under section 142(3)(c).

(2) For the purposes of any enactment or rule of law—

(a) any interest created under section 142(3)(c)(i) is to be treated as if it were a lease, and

(b) any right created under section 142(3)(c)(ii) is to be treated as if it were a licence to occupy granted by the legal owner of the HMO,

despite the fact that the Committee has no legal estate in the HMO (see section 142(5)(a)).

(3) Any enactment or rule of law relating to landlords and tenants or leases accordingly applies in relation to any interest created under section 142(3)(c)(i) as if the Committee was the legal owner of the HMO.

(4) References to leases and licences in this Part, and in any other enactment, accordingly include (where the context permits) interests and rights created under section 142(3)(c).

(5) In section 142(5)(b) the reference to leasing does not include the creation of interests under section 142(3)(c)(i).

General effect of final management orders: landlords, mortgagees etc.

144. (1) This section applies while a final management order is in force in relation to an HMO and applies to—

(a) landlords, and

(b) other persons with an estate or interest in the HMO.

(2) A person who is a landlord of the HMO or a part of it—

(a) is not entitled to receive any rents or other payments from persons occupying the HMO or part that are payable to the Director under section 125(3) by virtue of—

(i) section 150(5), or

(ii) any leases or licences granted under section 131(3)(c) or 142(3)(c),

(b) may not exercise any rights or powers with respect to the management of the HMO or part, and

(c) may not create any of the following -

(i) any leasehold interest in the HMO or part (other than a lease of a reversion), or

(ii) any licence or other right to occupy it.

(3) However (subject to subsection (2)(c)) nothing in section 142 or this section affects the ability of a person having an estate or interest in the HMO to make any disposition of that estate or interest.

(4) Nothing in section 142 or this section affects—

(a) the validity of any mortgage relating to the HMO or any rights or remedies available to the mortgagee under such a mortgage, or

- (b) the validity of any lease of the HMO or part of it under which the landlord is a lessee, or any superior lease, or (subject to section 142(5)) any rights or remedies available to the lessor under such a lease,

except to the extent that any of those rights or remedies would prevent an authorised officer from exercising a power under section 142(3)(c).

(5) In proceedings for the enforcement of such rights or remedies the court may make such order as it thinks fit as regards the operation of the final management order (including an order quashing it).

Management schemes and accounts.

145. (1) A final management order must contain a management scheme.

(2) A "**management scheme**" is a scheme setting out how an authorised officer is to carry out the duty under section 141(2) as respects the management of the HMO.

(3) A management scheme is to be divided into two parts.

(4) Part one of the scheme is to contain a plan giving details of the way in which it is proposed that the HMO will be managed, which must (in particular) include—

- (a) details of any works that are intended to be carried out in connection with the HMO,
- (b) an estimate of the capital and other expenditure to be incurred by the Director in respect of the HMO while the order is in force,

- (c) the amount of rent or other payments that the Director will seek to obtain having regard to the condition or expected condition of the HMO at any time while the order is in force,
- (d) the amount of any compensation that is payable to a third party by virtue of a decision of the authorised officer under section 154 in respect of any interference in consequence of the final management order with the rights of that person,
- (e) provision as to the payment of any such compensation,
- (f) provision as to the payment by the Director to a landlord, from time to time, of amounts of rent or other payments that remain after the deduction of—
 - (i) relevant expenditure, and
 - (ii) any amounts of compensation payable as mentioned in paragraph (d),
- (g) provision as to the manner in which the Director is to pay to a landlord, on the termination of the final management order, any amounts of rent or other payments that remain after the deduction of—
 - (i) relevant expenditure, and
 - (ii) any amounts of compensation payable as mentioned in paragraph (d),

(h) provision as to the manner in which the Director is to pay, on the termination of the final management order, any outstanding balance of compensation payable to a third party.

(5) Subsections (4)(f) and (4)(g) do not apply in a case where the final management order was made under section 137(2) or 137(4).

(6) The Committee may by regulations make provision about how the Director must deal with any surplus in a case where the final management order was made under section 137(2) or 137(4).

(7) In subsection (6) "**surplus**" means any amount of rent or other payments that the Director has collected or recovered, by virtue of this Part, that remains after deductions to meet relevant expenditure and any amounts of compensation payable as mentioned in subsection (4)(d).

(8) Part one of the scheme may also state—

(a) the Director's intentions as regards the use of rent or other payments to meet relevant expenditure,

(b) the Director's intentions as regards the payment to a landlord (where appropriate) of interest on amounts within subsection (4)(f) and (g),

(c) that section 155(2) or 155(4) is not to apply in relation to an interim or (as the case may be) final management order that immediately preceded the final management order, and that instead the Director intends to use any balance or amount such as is mentioned in that subsection to meet—

- (i) relevant expenditure incurred during the currency of the final management order, and
 - (ii) any compensation that may become payable to a third party,
- (d) that section 155(3) or 155(5) is not to apply in relation to an interim or (as the case may be) final management order that immediately preceded the final management order ("**the order**"), and that instead the Director intends to use rent or other payments collected during the currency of the order to reimburse the Director in respect of any deficit or amount such as is mentioned in that subsection,
- (e) the Director's intentions as regards the recovery from a landlord, with or without interest, of any amount of relevant expenditure that cannot be reimbursed out of the total amount of rent or other payments.

(9) Part two of the scheme is to describe in general terms how an authorised officer intends to address the matters which caused the authorised officer to make the final management order and may, for example, include—

- (a) descriptions of any steps that the authorised officer intends to take to require persons occupying the HMO to comply with their obligations under any lease or licence or under the general law,
- (b) descriptions of any repairs that are needed to the property and an explanation as to why those repairs are necessary.

- (10) The Director must—
- (a) keep full accounts of the Director's income and expenditure in respect of the HMO, and
 - (b) afford to each landlord, and to any other person who has an estate or interest in the HMO, all reasonable facilities for inspecting, taking copies of and verifying those accounts.

- (11) In this section—
- (a) "**relevant expenditure**" means expenditure reasonably incurred by the Director in connection with the performance of duties under section 141(2) in respect of the HMO, including any reasonable administrative costs and any premiums paid for insurance of the premises,
 - (b) "**rent or other payments**" means rent or other payments—
 - (i) which are payable under leases or licences or in respect of furniture within section 152(1), and
 - (ii) which the Director has collected or recovered by virtue of this Part.

(12) In the provisions of this Part relating to varying, revoking or appealing against decisions relating to a final management order, any reference to such an order includes (where the context permits) a reference to the management scheme contained in it.

Enforcement of management scheme by landlord.

146. (1) An affected person may apply to the Magistrate's Court for an order requiring the Director to manage the whole or part of an HMO in accordance with the management scheme contained in a final management order made in respect of the HMO.

(2) On such an application the Magistrate's Court may, if it considers it appropriate to do so, make an order—

- (a) requiring the Director to manage the whole or part of the HMO in accordance with the management scheme,
or
- (b) revoking the final management order as from a date specified in the court's order.

(3) An order under subsection (2) may—

- (a) specify the steps which the Director is to take to manage the whole or part of the HMO in accordance with the management scheme,
- (b) include provision varying the final management order,
- (c) require the payment of money to an affected person by way of damages.

(4) In this section "**affected person**" means—

- (a) a landlord, and

- (b) any third party to whom compensation is payable by virtue of a decision of an authorised officer under section 154.

Variation of final management orders.

147. (1) An authorised officer may vary a final management order if the authorised officer considers it appropriate to do so.

(2) A variation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under section 149.

(3) The power to vary an order under this section is exercisable by an authorised officer either—

- (a) on an application made by a controller, or
- (b) on the authorised officer's own initiative.

(4) Before varying a final management order, an authorised officer must—

- (a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice stating that the authorised officer is proposing to make the variation and specifying—
 - (i) the effect of the variation,
 - (ii) the reasons for the variation, and
 - (iii) the end of the consultation period, and

(b) consider any representations made in accordance with the notice and not withdrawn.

(5) The requirements of subsection (4) do not apply if –

(a) the authorised officer considers that the variation is not material, or

(b) a notice has already been served under that subsection in relation to a proposed variation and the authorised officer considers that the variation that is now being proposed is not materially different from the previous proposed variation.

(6) Where an authorised officer decides to vary a final management order, the authorised officer must serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates –

(a) a copy of the decision to vary the order, and

(b) a notice setting out –

(i) the reasons for the decision and the date on which it was made,

(ii) the right of appeal against the decision under section 160, and

(iii) the period within which an appeal may be made (see section 160(2)).

(7) The documents required to be served under subsection (6) must be served within the period of seven days beginning with the day on which the decision is made.

(8) Before refusing to vary a final management order, an authorised officer must—

(a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice stating that the authorised officer is proposing to refuse to make the variation and setting out –

(i) the reasons for the refusal, and

(ii) the end of the consultation period, and

(b) consider any representations made in accordance with the notice and not withdrawn.

(9) Where an authorised officer refuses to vary a final management order, the authorised officer must serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice setting out—

(a) the decision not to vary the order,

(b) the reasons for the decision and the date on which it was made,

(c) the right of appeal against the decision under section 160, and

(d) the period within which an appeal may be made (see section 160(2)).

(10) The notices required to be served under subsection (9) must be served within the period of seven days beginning with the day on which the decision is made.

(11) In this section "**the end of the consultation period**" means the last day for making representations in respect of the matter in question and must be a day that is at least 14 days after the date of service of the notice.

(12) In subsection (11) "**the date of service**" of a notice means, in a case where more than one notice is served, the date on which the last of the notices is served.

Revocation of final management orders.

148. (1) An authorised officer may revoke a final management order either on application by a controller, or on the authorised officer's own initiative.

(2) An authorised officer may revoke a final management order in the following cases —

- (a) if the premises the subject of the order have ceased to be an HMO,
- (b) if the order was made under section 137(1) or 137(3) and a licence granted under Part VI in respect of the HMO is due to come into force on the revocation of the order,
- (c) if a further final management order has been made in respect of the HMO so as to replace the order,

(d) if in any other circumstances the authorised officer considers it appropriate to revoke the order.

(3) A revocation does not come into force until such time, if any, as is the operative time for the purposes of this subsection under section 149.

(4) A final management order may not be revoked under this section if—

(a) the landlord is subject to a disqualification order under section 170,

(b) there is in force an agreement which, under section 142, has effect as a lease or licence granted under that section, and

(c) revoking the final management order would cause the landlord to breach the disqualification order because of the effect of section 156(2)(b).

(5) Before revoking a final management order, an authorised officer must—

(a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice stating that the authorised officer is proposing to revoke the order and specifying –

(i) the reasons for the revocation, and

(ii) the end of the consultation period, and

- (b) consider any representations made in accordance with the notice and not withdrawn.

(6) Where an authorised officer decides to revoke a final management order, the authorised officer must serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates—

- (a) a copy of the decision to revoke the order, and
- (b) a notice setting out—
 - (i) the reasons for the decision and the date on which it was made,
 - (ii) the right of appeal against the decision under section 160, and
 - (iii) the period within which an appeal may be made (see section 160(2)).

(7) The documents required to be served under subsection (6) must be served within the period of seven days beginning with the day on which the decision is made.

(8) Before refusing to revoke a final management order, an authorised officer must—

- (a) serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice stating that the authorised officer is proposing to refuse to revoke the order and setting out—

- (i) the reasons for the refusal, and
 - (ii) the end of the consultation period, and
- (b) consider any representations made in accordance with the notice and not withdrawn.

(9) Where an authorised officer refuses to revoke a final management order, an authorised officer must serve on each person who, to the knowledge of the authorised officer, is a controller of the HMO to which the order relates a notice setting out—

- (a) the decision not to revoke the order,
- (b) the reasons for the decision and the date on which it was made,
- (c) the right of appeal against the decision under section 160, and
- (d) the period within which an appeal may be made.

(10) The notices required to be served under subsection (9) must be served within the period of seven days beginning with the day on which the decision is made.

(11) In this section "**the end of the consultation period**" means the last day for making representations in respect of the matter in question and must be a day that is at least 14 days after the date of service of the notice.

(12) In subsection (11) "**the date of service**" of a notice means, in a case where more than one notice is served, the date on which the last of the notices is served.

Further provisions applicable to both interim and final management orders

Operative time for the variation and revocation of management orders.

149. (1) This section defines "**the operative time**" for the purposes of—

- (a) section 135(2) or 136(3) (variation or revocation of interim management order), or
- (b) section 147(2) or 148(3) (variation or revocation of final management order).

(2) If no appeal is made under section 160 before the end of the period of 28 days mentioned in section 160(2), "**the operative time**" is the end of that period.

(3) If an appeal is made under section 160 within that period, and a decision is given on the appeal which confirms the variation or revocation, "**the operative time**" is as follows—

- (a) if the period within which an appeal to the Royal Court may be brought expires without such an appeal having been brought, "the operative time" is the end of that period, and
- (b) if an appeal to the Royal Court is brought, "**the operative time**" is the time when a decision is given on the appeal which confirms the variation or revocation.

(4) For the purposes of subsection (3)—

- (a) the withdrawal of an appeal has the same effect as a decision that confirms the variation or revocation appealed against, and

- (b) references to a decision that confirms a variation are to a decision that confirms it with or without variation.

Effect of management orders: occupiers.

150. (1) This section makes provision for existing and new occupiers of an HMO in relation to which an interim or final management order is in force.

(2) In this section "**existing occupier**" means a person who, at the time when the order comes into force –

- (a) is occupying part of the HMO,
- (b) does not have an estate or interest in the whole of the HMO, and
- (c) is not a new occupier within subsection (7).

(3) In this section "**new occupier**" means a person who, at a time when the order is in force, is occupying the whole or part of the HMO under a lease or licence granted under section 131(3)(c) or 142(3)(c).

(4) Sections 131 and 142 do not affect the rights or liabilities of an existing occupier under a lease or licence (whether in writing or not) under which that person is occupying the whole or part of the HMO at the commencement date.

(5) Where the lessor or licensor under such a lease or licence –

- (a) has an estate or interest in the HMO, and
- (b) is not an existing occupier,

the lease or licence has effect while the order is in force as if the Committee were substituted in it for the lessor or licensor.

(6) Such a lease continues to have effect, as far as possible, as a lease despite the fact that the rights of the Committee, as substituted for the lessor, do not amount to an estate in law in the premises.

(7) Section 142 does not affect the rights or liabilities of a new occupier who, in the case of a final management order, is occupying the whole or part of the HMO at the time when the order comes into force.

(8) In this section "**the commencement date**" means the date on which the order came into force (or, if that order was preceded by one or more orders under this Part, the date when the first order came into force).

Effect of management orders: agreements and legal proceedings.

151. (1) An agreement or instrument within subsection (2) has effect, while an interim or final management order is in force, as if any rights or liabilities of the landlord under the agreement or instrument were instead rights or liabilities of the Committee.

- (2) An agreement or instrument is within this subsection if—
- (a) it is effective on the commencement date,
 - (b) one of the parties to it is a person who is the landlord of the HMO or a part of the HMO ("**the relevant premises**"),
 - (c) it relates to the HMO, whether in connection with—
 - (i) any management activities with respect to the relevant premises, or
 - (ii) the provision of any services or facilities for persons occupying those premises,

or otherwise,

(d) it is specified for the purposes of this subsection in the order or falls within a description of agreements or instruments so specified, and

(e) an authorised officer serves a notice in writing on all the parties to it stating that subsection (1) is to apply to it.

(3) An agreement or instrument is not within subsection (2) if—

(a) it is a lease within section 131(5) or 142(5), or

(b) it relates to any disposition by the landlord which is not precluded by section 133(2) or 144(2), or

(c) it is within section 150(5).

(4) Proceedings in respect of any cause of action within subsection (5) may, while an interim or final management order is in force, be instituted or continued by or against the Committee instead of by or against the landlord.

(5) A cause of action is within this subsection if—

(a) it is a cause of action (of any nature) which accrued to or against the landlord of the HMO or a part of the HMO before the commencement date,

(b) it relates to the HMO as mentioned in subsection (2)(c),

(c) it is specified for the purposes of this subsection in the order or falls within a description of causes of action so specified, and

(d) an authorised officer serves a notice in writing on all interested parties stating that subsection (4) is to apply to it.

(6) If, by virtue of this section, the Committee become subject to any liability to pay damages in respect of anything done (or omitted to be done) before the commencement date by or on behalf of the landlord of the HMO or a part of it, the landlord is liable to reimburse to the Committee an amount equal to the amount of the damages paid by the Committee.

(7) In this section—

(a) "**agreement**" includes arrangement,

(b) "**the commencement date**" means the date on which the order comes into force (or, if that order was preceded by one or more orders under this Part, the date when the first order came into force),

(c) "**management activities**" includes repair, maintenance, improvement and insurance.

Effect of management orders: furniture.

152. (1) Subsection (2) applies where, on the date on which an interim or final management order comes into force, there is furniture in the HMO that a person occupying the HMO has the right to use in consideration of periodical payments to a person who is a landlord of the HMO or a part of it (whether the payments are included in the rent payable by the occupier or not).

(2) The right to possession of the furniture against all persons other than the occupier vests in the Committee on that date and remains vested in the Committee while the order is in force.

(3) An authorised officer may, on behalf of the Committee, renounce the Committee's right to possession of the furniture conferred by subsection (2) if—

(a) an application in writing has been made to the Director for that purpose by the person owning the furniture, and

(b) an authorised officer renounces that right by notice in writing served on that person not less than two weeks before the notice takes effect.

(4) If the Committee's right to possession of furniture conferred by subsection (2) is a right exercisable against more than one person interested in the furniture, any of those persons may apply to Magistrate's Court for an adjustment of their respective rights and liabilities as regards the furniture.

(5) On an application under subsection (4) the Magistrate's Court may make an order for such an adjustment of rights and liabilities, either unconditionally or subject to such terms and conditions, as it considers appropriate.

(6) The terms and conditions may, in particular, include terms and conditions about the payment of money by a party to the proceedings to another party to the proceedings by way of compensation, damages or otherwise.

Management orders: power to supply furniture.

153. (1) An authorised officer may supply an HMO to which an interim or final management order relates with such furniture as the authorised officer considers to be required.

(2) For the purposes of section 134 or a management scheme under section 145, any expenditure incurred by the Director under this section constitutes

expenditure incurred in connection with an authorised officer performing the duty under section 130(2)(b) or 141(2).

Compensation payable to third parties.

154. (1) If a third party submits a request for such compensation to the Director at any time, an authorised officer must consider whether an amount by way of compensation should be paid to that person in respect of any interference with that person's rights in consequence of an interim or final management order.

(2) An authorised officer must notify the third party of this decision as soon as practicable.

(3) Where an authorised officer decides under subsection (1) that compensation ought to be paid to a third party in consequence of a final management order, the authorised officer must vary the management scheme contained in the order so as to specify the amount of the compensation to be paid and to make provision as to its payment.

Termination of management orders: financial arrangements.

155. (1) This section applies where an interim or final management order ceases to have effect for any reason.

(2) If, on the termination date for an interim management order that is not made under section 126(2), the total amount of rent or other payments collected or recovered as mentioned in section 134(3) exceeds the total amount of—

- (a) the Director's relevant expenditure, and
- (b) any amounts of compensation payable to third parties by virtue of decisions of an authorised officer under section 154,

the Director must, as soon as practicable after the termination date, pay the balance to such landlord or landlords in such proportions, as the Director considers appropriate.

(3) If, on the termination date for an interim management order, the total amount of rent or other payments collected or recovered as mentioned in section 134(3) is less than the total amount of—

- (a) the Director's relevant expenditure, and
- (b) any amounts of compensation payable as mentioned in subsection (2)(b),

the difference is recoverable by the Director from such landlord or landlords in such proportions, as the Director considers appropriate.

(4) If, on the termination date for a final management order, any amount is payable to—

- (a) a third party, or
- (b) any landlord in accordance with the management scheme under section 145,

that amount must be paid to that person by the Director in the manner provided by the scheme.

(5) If, on the termination date for a final management order, any amount is payable to the Director in accordance with the management scheme, that amount is recoverable by the Director from such landlord or landlords in such proportions as is provided by the scheme.

(6) The provisions of any of subsections (2) to (5) do not, however, apply in relation to the order if —

- (a) the order is followed by a final management order, and
- (b) the management scheme contained in that final management order provides for that subsection not to apply in relation to the order (see sections 145(8)(c) and 145(8)(d)).

(7) If the order is to be followed by a licence granted under Part VI in respect of the HMO, the conditions contained in the licence may include a condition requiring the licence holder—

- (a) to repay to the Director any amount recoverable by the Director under subsection (3) or (5), and
- (b) to do so in such instalments as are specified in the licence.

(8) In this section—

- (a) "**relevant expenditure**" has the same meaning as in section 134,
- (b) "**rent or other payments**" means rents or other payments payable under leases or licences or in respect of furniture within section 152(1), and
- (c) "**the termination date**" means the date on which the order ceases to have effect.

Termination of management orders: leases, agreements and proceedings.

156. (1) This section applies where —

- (a) an interim or final management order ceases to have effect for any reason, and
- (b) the order is not immediately followed by a further order under this Part.

(2) As from the termination date—

- (a) a lease or licence in which the Committee was substituted for another party by virtue of section 150(5) has effect with the substitution of the original party, or that party's successor in title, for the Committee, and
- (b) an agreement which (in accordance with section 132 or 143) has effect as a lease or licence granted under section 131 or 142 has effect with the substitution of the landlord for the Committee.

(3) If the landlord is a lessee, nothing in a superior lease imposes liability on that landlord or any superior lessee in respect of anything done before the termination date in pursuance of the terms of an agreement to which subsection (2)(b) applies.

(4) If the condition in subsection (5) is met, any other agreement entered into in the performance of duties under section 130 or 141(2) in respect of the HMO has effect, as from the termination date, with the substitution of the landlord for the Committee.

(5) The condition is that an authorised officer serves a notice on the other party or parties to the agreement stating that subsection (4) applies to the agreement.

- (6) If the condition in subsection (7) is met—
- (a) any rights or liabilities that were rights or liabilities of the Committee immediately before the termination date by virtue of any provision of this Part or under any agreement to which subsection (4) applies are rights or liabilities of the landlord instead, and
 - (b) any proceedings instituted or continued by or against the Committee by virtue of any such provision or agreement may be continued by or against the landlord instead,

as from the termination date.

(7) The condition is that an authorised officer serves a notice on all interested parties stating that subsection (6) applies to the rights or liabilities or (as the case may be) the proceedings.

(8) If by virtue of this section a landlord becomes subject to any liability to pay damages in respect of anything done (or omitted to be done) before the termination date by or on behalf of the Committee, the Committee is liable to reimburse to the landlord an amount equal to the amount of the damages paid by the landlord.

(9) Where two or more persons are landlords in relation to different parts of the HMO, any reference in this section to "**the landlord**" is to be taken to refer to such one or more of them as is determined by agreement between them or (in default of agreement) by the Magistrate's Court on an application made by any of them.

(10) This section applies to instruments as it applies to agreements.

- (11) In this section—
- (a) "**agreement**" includes arrangement;
 - (b) "**the termination date**" means the date on which the order ceases to have effect.

Management orders: power of entry to carry out work.

157. (1) The right mentioned in subsection (2) is exercisable by an authorised officer, or any person authorised in writing by them, at any time when an interim or final management order is in force.

(2) That right is the right at all reasonable times to enter any part of the HMO for the purpose of carrying out works and is exercisable as against any person having an estate or interest in the HMO.

(3) Where part of an HMO is excluded from the provisions of an interim or final management order under section 126(3) or 137(5), the right conferred by subsection (1) is exercisable as respects that part so far as is reasonably required for the purpose of carrying out works in the part of the HMO that is subject to the order.

(4) If, after receiving reasonable notice of the intended action, any occupier of the whole or part of the HMO prevents an authorised officer, or any agent or contractor employed by an authorised officer, from carrying out work in the HMO, the Magistrate's Court may order that occupier to permit to be done on the premises anything that an authorised officer considers to be necessary.

(5) A person who fails to comply with an order of the court under subsection (4) commits an offence.

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

Appeals relating to management orders

Right of appeal against decisions relating to management orders.

158. (1) A controller may appeal to the Magistrate's Court against —

- (a) a decision of an authorised officer to make an interim or final management order, or
- (b) the terms of such an order (including, if it is a final management order, those of the management scheme contained in it).

(2) Except to the extent that an appeal may be made in accordance with subsections (3) and (4), subsection (1) does not apply to an interim management order made in accordance with a direction given under section 159(6).

(3) An appeal may be made under subsection (1)(b) on the grounds that the terms of an interim management order do not provide for one or both of the matters mentioned in sections 134(5)(a) and 134(5)(b) (which relate to payments of surplus rent etc.).

(4) Where an appeal is made under subsection (1)(b) only on those grounds —

- (a) the appeal may be brought at any time while the order is in force (with the result that nothing in subsections (5) to (7) applies in relation to the appeal); and
- (b) the powers of the Magistrate's Court under section 159 are limited to determining whether the order should be varied by the Magistrate's Court so as to include a term

providing for the matter or matters in question, and (if so) what provision should be made by the term.

(5) If no appeal is brought against an interim or final management order under this section within the time allowed by subsection (6) and (7) for making such an appeal, the order is final and conclusive as to the matters which could have been raised on appeal.

(6) An appeal under this section must be made within the period of 28 days beginning with the date specified in the notice under section 128(3)(b) or 139(3)(b) (as the case may be) as the date on which the order was made.

(7) The Magistrate's Court may allow an appeal to be made to it after the end of the period mentioned in subsection (6) if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of that period, and
- (b) any delay since then in applying for permission to appeal out of time.

Power of Magistrate's Court on appeal under section 158.

159. (1) An appeal under section 158 –

- (a) is to be by way of a re-hearing, and
- (b) may be determined having regard to matters of which the authorised officer was unaware.

(2) The Magistrate's Court may confirm or vary the order or revoke it –

- (a) in the case of an interim management order, as from a date specified in the court's order, or
 - (b) in the case of a final management order, as from the date of the court's order.
- (3) If the court –
- (a) revokes an interim or final management order, and
 - (b) does not give a direction under subsection (6),

the court must direct the Director to grant such an HMO licence to such person and on such terms as the court may direct.

(4) An interim management order may not be revoked under this paragraph if—

- (a) the landlord is subject to a disqualification order under section 170,
- (b) there is in force an agreement which, under section 132, has effect as a lease or licence granted by the Committee, and
- (c) revoking the interim management order specified in the order would cause the landlord to breach the disqualification order because of the effect of section 156(2)(b).

(5) In a case where subsection (4) would otherwise prevent the court from revoking the order with effect from a particular date, the court may require

the Director to exercise any power the Director has to bring an agreement mentioned in that subsection to an end.

(6) If the court revokes a final management order, the court may direct the Director to make an interim management order in respect of the HMO or part of it on such terms as the court may direct, and this is despite section 126(4).

(7) In addition to the powers stipulated in this section, the Magistrate's Court may also make such further order as is necessary to give effect to its decision.

(8) The revocation of an interim management order by the court does not affect the validity of anything previously done in pursuance of the order.

Appeal against decision or refusal to vary or revoke interim management order.

160. (1) A controller may appeal to the Magistrate's Court against –

- (a) a decision of an authorised officer to vary or revoke an interim or final management order, or
- (b) a refusal of an authorised officer to vary or revoke an interim or final management order.

(2) An appeal under subsection (1) must be made before the end of the period of 28 days beginning with the date specified in the notice under section 135(6), 135(9), 136(6), 136(9), 147(6), 147(9), 148(6) or 148(9) (as the case may be) as the date on which the decision concerned was made.

(3) The Magistrate's Court may allow an appeal to be made to it after the end of the period mentioned in subsection (2) if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of that period, and

- (b) any delay since then in applying for permission to appeal out of time.

Power of Magistrate's Court on appeal under section 160.

161. (1) An appeal under section 160 –

- (a) is to be by way of a re-hearing, and
- (b) may be determined having regard to matters of which the authorised officer was unaware.

(2) The Magistrate's Court may confirm, reverse or vary the decision of the authorised officer.

(3) If the appeal is against a decision of an authorised officer to refuse to revoke the order, the Magistrate's Court may make an order revoking the order as from a date specified in its order.

(4) In a case where section 136(4) or 148(4) would otherwise prevent the Magistrate's Court from revoking the order with effect from a particular date, the court may require the Director to exercise any power the Director has to bring an agreement mentioned in that subsection to an end.

(5) In addition to the powers stipulated in this section, the Magistrate's Court may also make such further order as is necessary to give effect to its decision.

Appeal against decision in respect of compensation payable to third parties.

162. (1) This section applies where an authorised officer has made a decision under section 154 as to whether compensation should be paid to a third party in respect of any interference with that third party's rights in consequence of an interim or final management order.

(2) The third party may appeal to the Magistrate's Court against—

- (a) a decision by the authorised officer not to pay compensation to that third party, or
- (b) a decision of the authorised officer so far as relating to the amount of compensation that should be paid.

(3) An appeal under subsection (2) must be made within the period of 28 days beginning with the date the authorised officer notifies the third party under section 154(2).

(4) The Magistrate's Court may allow an appeal to be made to it after the end of the period mentioned in subsection (3) if it is satisfied that there is good reason for -

- (a) the failure to appeal before the end of that period, and
- (b) any delay since then in applying for permission to appeal out of time.

Power of Magistrate's Court on appeal under section 162.

163. (1) An appeal under section 162 –

- (a) is to be by way of re-hearing, but
- (b) may be determined having regard to matters of which the authorised officer was unaware.

(2) The Magistrate's Court may confirm, reverse or vary the decision of the authorised officer.

(3) Where the Magistrate's Court reverses or varies a decision of the authorised officer in respect of a final management order, it must make an order

varying the management scheme contained in the final management order accordingly.

(4) In addition to the powers stipulated in this section, the Magistrate's Court may also make such further order as is necessary to give effect to its decision.

Appeals to Royal Court.

164. (1) An appellant or the Director may further appeal to the Royal Court against a decision of the Magistrate's Court under section 159, 161, or 163.

(2) An appeal under this section may only be on a question of law (meaning it is before a single judge presiding alone).

(3) An appeal under subsection (1) must be made before the end of the period of 28 days beginning with the date of the decision being appealed.

(4) The Royal Court may allow an appeal to be made to it after the end of the period mentioned in subsection (3) if it is satisfied that there is a good reason for –

- (a) the failure to appeal before the end of that period, and
- (b) any delay since then in applying for permission to appeal out of time.

(5) In disposing of the matter, and subject to subsection (2), the Royal Court has the same powers that the Magistrate's Court had when it was disposing of the previous appeal.

Power to make regulations under this Part

Power to make regulations under this Part.

165. (1) The Committee may by regulations make such provision as it considers appropriate for supplementing the provisions of this Part in relation to cases where the Committee is to be treated as the lessee under a lease under section 131(5) or 142(5).

(2) Regulations under this section may, in particular, make provision—

- (a) as respects rights and liabilities in such cases of—
 - (i) the Committee,
 - (ii) the person who (apart from the relevant provision mentioned in subsection (1)) is the lessee under the lease, or
 - (iii) other persons having an estate or interest in the premises demised under the lease,
- (b) requiring the Director or an authorised officer to give copies to the person mentioned in paragraph (a)(ii) of notices and other documents served on that person in connection with the lease, and
- (c) for treating things done the Director or an authorised officer as being done by that person, or vice versa.

PART VIII
SUPPLEMENTARY PROVISIONS

Additional provisions concerning the courts

Additional powers of the courts.

166. (1) Any court exercising any jurisdiction conferred by or under this Ordinance has a general power to give such directions as the court considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.

(2) When exercising jurisdiction under this Ordinance, the directions that may be given by the court under that general power include (where appropriate)—

- (a) directions requiring a licence to be granted under Part VI of this Ordinance,
- (b) directions requiring any licence so granted to contain such terms as are specified in the directions,
- (c) directions requiring any order made under Part VII of this Ordinance to contain such terms as are so specified,
- (d) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise.

(3) The provisions of this section are without prejudice to any other power that the court may have, whether under this enactment, any other enactment or the customary law.

Decisions on appeal to the Royal Court to be final.

167. (1) A decision of the Royal Court on an appeal under this Ordinance is final.

(2) For the avoidance of doubt, subsection (1) has no effect on criminal proceedings.

Land charges relating to enforcement notices or orders.

168. (1) The Royal Court may authorise the Director to create a charge over land by registering the relevant notice or order and the Act of Court under this section in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe against the owner of the land.

(2) In this section "**the relevant notice or order**" means –

(a) an improvement notice in which the land to be the subject of the charge under this section is stipulated as the specified premises (within the meaning of section 22 or 24, as the case may be),

(b) an emergency remedial action notice in which the land to be the subject of the charge under this section is stipulated as the specified premises (within the meaning of section 62(3)), or

(c) a management order –

(i) where the land to be the subject of the charge under this section is the HMO in respect of which the management order was made, and

- (ii) under which an amount is recoverable by the Director under section 155(3) or 155(5).

(3) An application for such authorisation is deemed for the purposes of section 6(2)(a) of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950^f to be a matter of procedure.

(4) Where, after such authorisation is given by the Royal Court, the Director creates a charge over land in accordance with subsection (1), any expenses recoverable by the Director under section 39, 65, 155(3) or 155(5) (as the case may be) are –

- (a) a charge on the land in relation to which the relevant notice or order is registered under this section, and
- (b) recoverable by the Director in priority to any amount secured by any rente, hypothèque, bond, Act of Court or obligation registered in the said Livre in respect of that land on or after the date of registration of the relevant notice or order.

(5) Subsection (4) is without prejudice to section 10 of the Real Property (Reform) (Guernsey) Law, 1987^g.

(6) The references in this section to an improvement notice mean either –

- (a) an operative improvement notice, or

^f Ordres en Conseil Vol. XIV, p. 388; this enactment has been amended.

^g Ordres en Conseil Vol. XXX, p.100; this enactment has been amended.

(b) an improvement notice suspended under section 29, provided either –

(i) the period for appealing against it has expired without an appeal having been brought, or

(ii) an appeal has been brought against it and, were it not suspended, the notice would have become operative.

(7) Any charge over land created under this section must be vacated by the Director –

(a) if the relevant notice or order was an improvement notice –

(i) when the notice concerned has been fully complied with otherwise than by an authorised officer under section 37 or 38, or

(ii) when an authorised officer has taken measures required by the notice under section 37 or 38 and the Director has recovered all expenses recoverable by the Director under section 39,

(b) if the relevant notice or order was an emergency remedial action notice, when an authorised officer has taken the action required under section 62 and the Director has recovered all expenses recoverable by the Director's under section 65,

- (c) if the relevant notice or order was a management order, when the Director has recovered the amount due under section 155(3) or 155(5) (as the case may be),
- (d) when the relevant notice or order is quashed on an appeal, or
- (e) the Royal Court so orders under subsection (8).

(8) The Royal Court must order the vacation of a charge created under this section if it is satisfied, on the application of any person, that –

- (a) all measures required by the relevant notice or order have been taken, and
- (b) all expenses recoverable by the Director in respect of the relevant notice or order have been recovered by the Director.

Power of sentencing court to make disqualification order

Meaning of disqualification order.

169. (1) A "**disqualification order**" is an order, made by a sentencing court, disqualifying a person from rental activities.

- (2) In this Ordinance "**rental activities**" means –
 - (a) letting housing in the Island of Guernsey,
 - (b) engaging in letting agency work,
 - (c) engaging in property management work, or
 - (d) doing two or more of those things.

(3) Subject to subsection (4) "**letting agency work**" means something done by a person in the course of a business in response to instructions received from—

(a) a person ("**a prospective landlord**") seeking to find another person to whom to let housing in the Island of Guernsey, or

(b) a person ("**a prospective tenant**") seeking to find housing in the Island of Guernsey to rent.

(4) "**Letting agency work**" does not include any of the following things when done by a person who does nothing else within subsection (2)—

(a) publishing advertisements or disseminating information,

(b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord,

(c) providing a means by which a prospective landlord and a prospective tenant may communicate directly with each other.

(5) "**Property management work**" means something done by a person in the course of a business in response to instructions received from another person ("**the client**") where—

- (a) the client wishes the person to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the client's behalf, and
- (b) the premises consist of housing in the Island of Guernsey let under a tenancy.

Disqualification orders made at sentencing.

170. (1) Subject to section 171, a sentencing court may, in addition to any other sentence, impose a disqualification order when sentencing the offender for an offence under –

- (a) section 36(1) (failing to comply with an improvement notice),
- (b) section 36(11) (failing to comply with an order to remedy deficiencies identified by an improvement notice),
- (c) section 58(1) (failing to comply with a prohibition order or emergency prohibition order),
- (d) section 58(3) (controller failing to ensure, so far as reasonably practicable, that others do not contravene a prohibition notice),
- (e) section 63(11) (obstructing someone acting under the authority of a warrant to enter property to take emergency remedial action),

- (f) section 81(1) (controller causing or permitting overcrowding),
- (g) section 90(1) (contravention of the duty of a landlord to register as a landlord and register a rented dwelling),
- (h) section 91(6) (contravention of the duty of a representative to register as a representative),
- (i) section 119(1) (being a controller of an unlicensed HMO),
- (j) section 120(1) (permitting an unauthorised number of persons to occupy an HMO),
- (k) section 121(1) (failing to comply with conditions of an HMO licence),
- (l) section 121(3) (failing to comply with a restriction or obligation imposed in respect of an HMO licence),
- (m) section 173 (breach of a disqualification order),
- (n) section 184 (provision of false or misleading information etc.), or
- (o) section 13 of the Fire Services (Guernsey) Law, 1989^h provided that –

^h Ordres en Conseil Vol. XXXI, p. 432; this enactment has been amended.

- (i) the offence was committed in respect of a rented dwelling, and
- (ii) the offender was carrying out rental activities in respect of that rented dwelling at the time of the offence.

(2) A disqualification order may also disqualify the offender from being involved in any body corporate that carries out an activity that the offender is disqualified from carrying out, and for this purpose a person is involved in a body corporate if the person acts as an officer of the body corporate or directly or indirectly takes part in or is concerned in the management of the body corporate.

(3) If it decides to impose a disqualification order, the court must specify –

- (a) the rental activities the offender is disqualified from doing, and
- (b) the length of the disqualification, which must be for a minimum of 12 months.

(4) A disqualification order may contain exceptions to its application to some or all of the period to which the disqualification relates and may, for example, contain exceptions –

- (a) to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or
- (b) to allow letting agents to wind down current business.

(5) Exceptions under subsection (4) may be subject to conditions specified in the disqualification order.

(6) A disqualification order is treated as part of the sentence for the purpose of any appeal and, notwithstanding any limitations on the right of appeal against sentence expressed in any other enactment, there is a right of appeal against a disqualification order.

Considerations of sentencing court before making disqualification order.

171. (1) Before imposing a disqualification order, the court must consider –

- (a) the nature, circumstances and severity of the offence,
- (b) the role the offender played in respect of that offence,
- (c) any previous convictions that appear to the court to be relevant,
- (d) the other sentences that the court is intending to impose in respect of the offence or offences to be sentenced and the totality principle,
- (e) any representations from the prosecution, who may notify the court of the Director's views on such a disqualification order,
- (f) any representations from the offender in a plea in mitigation, which may include the likely impact that such a disqualification order would have on the offender and anyone else who may be affected by such an order, and

(g) any information provided pursuant to a requirement imposed under section 177.

(2) If the court is considering the exercise of its powers under this section, but the offender has not in a plea in mitigation made the representations referred to at subsection (1)(f), the court must warn the offender that it is so considering and ask whether the offender wishes to make such representations.

(3) The court may adjourn sentencing if the offender requests further time to prepare representations under subsection (1)(f) and the court considers it in the interests of justice to grant that request.

Power to vary disqualification order.

172. (1) At any time that a disqualification order remains in force, a person against whom the order was made ("**the applicant**") may apply to the court that made the order to vary (but not revoke) the order.

(2) The court may only vary the disqualification order if it is in the interests of justice and –

- (a) there has been a change in circumstances since the sentencing hearing,
- (b) previous conditions or exceptions contained in the disqualification order have proven to be unworkable or impractical,
- (c) further information, not previously disclosed to the court at the sentencing hearing, has since been discovered by the applicant, or

(d) there are other exceptional reasons why the order should be varied.

(3) The power of the court to require information under section 177 also applies, with any necessary modification, where the court is considering whether to grant an application under this section.

(4) If the Magistrate's Court declines to vary the order in the manner requested by the applicant under subsection (1), the applicant may appeal to the Royal Court, and –

(a) the matter is determined in the Royal Court by a single judge presiding alone, and

(b) the decision of the Royal Court is final.

(5) If the Royal Court declines to vary the order in the manner requested by the applicant under subsection (1), the applicant may appeal to the Court of Appeal.

(6) Subject to subsection (7), a person wishing to appeal under subsection (4) or (5) must file a notice of appeal within the period of 14 days beginning with the date of the court's decision being appealed against.

(7) The appeal court may allow an appeal to be made to it after the end of the period specified in subsection (6) if it is satisfied that there is a good reason for –

(a) the failure to appeal before the end of the applicable period, and

(b) any delay since then in applying for permission to appeal out of time.

(8) An appeal under subsection (4) or (5) will be decided by way of a rehearing.

Offence of breaching disqualification order.

173. (1) A person who contravenes a disqualification order commits an offence, liable on conviction to imprisonment for a period not exceeding 12 months or to a fine or to both.

(2) In setting the amount of any fine imposed under subsection (1), the Court must consider any financial benefit which appears to it to have accrued or to be likely to accrue, in consequence of the offence, to the defendant or any other person.

Savings for illegal contracts.

174. A contravention of a disqualification order does not affect the validity or enforceability of any provision of a tenancy or other contract entered into by a person despite any rule of law relating to the validity or enforceability of contracts in circumstances involving illegality.

Prohibition on certain disposals.

175. (1) A person ("**the transferor**") who is subject to a disqualification order that includes a disqualification from letting may not make an unauthorised transfer of an estate in land to a prohibited person.

(2) A disposal in breach of the prohibition imposed by subsection (1) is void.

(3) A transfer is "**unauthorised**" for the purposes of subsection (1) unless it is authorised by the Magistrate's Court on an application by the person who is subject to the disqualification order.

(4) In subsection (1) "**prohibited person**" means—

- (a) a person associated with the transferor,
- (b) a business partner of the transferor,
- (c) a person associated with a business partner of the transferor,
- (d) a business partner of a person associated with the transferor,
- (e) a body corporate of which the transferor or a person mentioned in paragraph (a) to (d) is an officer,
- (f) a body corporate in which the transferor has a shareholding or other financial interest (including an indirect financial interest), or
- (g) in a case where the transferor is a body corporate, any body corporate that has an officer in common with the transferor.

(5) In subsection (4) a person is "**associated**" with another person

if –

- (a) they are or have been married to each other,
- (b) they are or have been civil partners of each other,
- (c) they are cohabitants or former cohabitants,
- (d) they live or have lived in the same household,
- (e) they are relatives,

- (f) they have agreed to marry one another (whether or not that agreement has been terminated),
 - (g) they have agreed to enter into a civil partnership together (whether or not that agreement has been terminated), or
 - (h) in relation to a child, each of them is a parent of the child or has, or has had, parental responsibility for the child.
- (6) In this section—
- (a) "**child**" means a person under the age of 18 years,
 - (b) "**cohabitants**" means two people who, although not married to, or civil partners of, each other, are living together as if they were a married couple or civil partners and "former cohabitants" is to be construed accordingly,
 - (c) "**parental responsibility**" has the same meaning as in section 5 of the Children (Guernsey and Alderney) Law, 2008 ,
 - (d) "**relative**", in relation to a person, means—
 - (i) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse, civil

partner, former spouse or former civil partner,
or

- (ii) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person's spouse, civil partner, former spouse or former civil partner,

and includes, in relation to a person who is living or has lived with another person as if they were a married couple or civil partners, a person who would fall within paragraph (i) or (ii) if the parties were married to, or civil partners of, each other,

(e) "**business partner**" means a person who is—

- (i) a director, secretary or other officer of a company of which the transferor is also a director, secretary or other officer,
- (ii) a director, secretary or other officer of a company in which the transferor has a shareholding or other financial interest,
- (iii) a person who has a shareholding or other financial interest in a company of which the transferor is a director, secretary or other officer,
- (iv) an employee of the transferor,

- (v) a person by whom the transferor is employed,
or
- (vi) a partner of a partnership of which the transferor is also a partner.

Termination of lease or licence following disqualification order.

176. (1) Subject to subsection (2), an occupier may terminate, with immediate effect, a lease or a licence in respect of a rented dwelling on the grounds that a disqualification order has been made against the landlord of that rented dwelling.

- (2) An occupier's right under subsection (1) may be exercised –
 - (a) on the expiry of a period of 14 days commencing on the date on which the disqualification order was made, provided that the landlord has not given a notice of appeal stating that the landlord appeals against either –
 - (i) the conviction that resulted in the disqualification order, or
 - (ii) the making of the disqualification order, or
 - (b) if the landlord gives such a notice of appeal either –
 - (i) the disqualification order is upheld on appeal, and any further right of appeal has been exhausted, or
 - (ii) the appeal is abandoned.

(3) A provision in a lease or licence is void and without effect insofar as it—

(a) purports to disapply, or to impose a penalty for exercising, an occupier's right to terminate a lease or licence under this section, or

(b) requires notice of termination to be given where this section applies.

Power of court to require information for sentencing.

177. (1) A sentencing court may require a person convicted of an offence under this Ordinance ("**the offender**") to provide such information as the court may specify for the purpose of enabling the court to decide whether to impose a disqualification order under section 170.

(2) If an offender fails to comply with a requirement under subsection (1), the offender does not commit contempt of court, but the court may draw such adverse inferences as appear to it to be proper when deciding how to sentence the offender.

(3) In subsection (2) "**fails to comply**" includes omitting to submit any information or omitting to submit sufficient information.

(4) For the avoidance of doubt, nothing in this section prevents the offender from being charged with a separate criminal offence in respect of the submission of false or misleading information.

Evidential presumption relating to documents

Evidential presumption relating to documents.

178. A document purporting to be issued by, and signed on behalf of, the Director an authorised officer or any other officer of the Committee may be received in evidence in any proceedings under this Ordinance and must be presumed to be the document which it purports to be, and to be signed by the person by whom it purports to be signed, unless the contrary is proved.

Savings for rights

Savings for rights.

179. (1) Nothing in this Ordinance affects any remedy of a controller for breach of contract entered into by an occupier in connection with any premises which are specified premises under an improvement notice, prohibition order or emergency prohibition order.

(2) If a controller is obliged to take possession of any premises in order to comply with an improvement notice, prohibition order or emergency prohibition order, the taking of possession does not affect the controller's right to take advantage of any such breach that occurred before the controller took possession.

(3) No action taken under Part II affects any remedy available to an occupier of any premises against the landlord of those premises (whether under contract, customary law or otherwise).

Protection from eviction

Protection of tenants from eviction.

180. (1) This section applies where there is (or has been) an investigation under this Ordinance by an authorised officer in respect of a rented dwelling, and

regardless of whether or not that investigation results (or resulted) in enforcement action.

(2) Where this section applies, and subject to subsection (3), eviction proceedings must not be commenced by a landlord in respect of such a rented dwelling within 12 months of the commencement of that investigation.

(3) Subsection (2) does not apply if the court dealing with eviction proceedings is satisfied that those proceedings are founded upon matters wholly independent of any knowledge, belief or suspicion on the part of the landlord applicant that the tenant respondent made disclosures in connection with, or in anticipation of, that investigation.

Service of documents

Regulations concerning the right to request information from the Director.

181. (1) The Committee may by regulations make such provision as it considers appropriate for enabling a particular class of persons, or a person of a particular description (for example a prospective purchaser) to request from the Director confirmation whether or not enforcement action under this Ordinance is being, or has been, taken in respect of a dwelling.

(2) Without prejudice to the generality of subsection (1), such Regulations may specify –

- (a) the manner in which such requests are to be made,
- (b) the circumstances in which such a request will be granted, including whether the consent of a controller of the relevant dwelling is required, and
- (c) fees that are payable in respect of such a request.

Service of documents by authorised officers.

182. (1) This section applies where a person (in this section "**the relevant person**") is to be served by an authorised officer with a document or a copy of a document under this Ordinance.

(2) If the relevant person indicates that they will accept service by email, the email address given to the Director by that person will be deemed to be at the address for service.

(3) If service is via an email in accordance with subsection (2), and if that email is sent on a business day before 17:00, the document is deemed to be served on that day, otherwise it is deemed to be served on the next business day after the day on which it was sent.

(4) Where the relevant person does not agree to be served with a document or a copy of a document under this Ordinance via email, the document may be served on—

- (a) an individual, by being delivered to the individual, or by being left at, or sent by post to, the individual's usual or last known place of abode,
- (b) a legal person with a registered office in the Island of Guernsey, by being left at, or sent by post to, that office,
- (c) a legal person without a registered office in the Island of Guernsey, by being left at, or sent by post to, its principal or last known principal place of business in the Island of Guernsey or, if there is no such place, its office or principal or last known principal place of business elsewhere,

- (d) an unincorporated body –
 - (i) by being served on any partner, member, manager, director or other similar officer thereof in accordance with paragraph (a), or
 - (ii) by being left at, or sent by post to, the body's principal or last known principal place of business in the Island of Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere.

(5) Where the provisions of this Ordinance authorise or require a document to be served on a person who is a minor or a person under legal disability, the document may be served on –

- (a) in the case of a minor, the minor's parent or guardian, and
- (b) in the case of a person under legal disability, that person's guardian,

and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of those provisions.

(6) If service of a notice or document cannot, after reasonable enquiry, be effected in accordance with subsections (1) to (5), the notice or document may be served by being –

- (a) delivered to some responsible person in the dwelling (if any) to which the notice or document relates or, if

there is no such person, by being affixed to a conspicuous part of the dwelling; or

(b) published on two occasions in La Gazette Officielle.

(7) Subsections (1) to (6) are without prejudice to any other lawful method of service.

(8) Where a document is sent by post it is, unless the contrary is shown, deemed for the purposes of the provisions of this Ordinance to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting, excluding in each case any non-business day.

(9) For the purposes of the provisions of this Ordinance, service of any document sent by post is proved by showing the date of posting, the address thereon and the fact of prepayment.

(10) In this section–

(a) "**by post**" means by registered post, recorded delivery service or ordinary letter post,

(b) "**document**" includes a notification or notice, and

(c) "**served**" includes given and submitted.

Service of documents on Director.

183. (1) Any notice or document to be served on the Director under or for the purposes of the provisions of this Ordinance may be left at, sent by post, or transmitted via email to the Director's or the Committee's offices.

(2) Notwithstanding any rule of law in relation to the service of documents, no document to be served on the Director under or for the purposes of the provisions of this Ordinance is deemed to have been served until it is received.

Further provisions relating to criminal offences

Offence of providing false or misleading information.

184. (1) A person commits an offence if, in purported compliance with any provision of this Ordinance, the person –

(a) makes a statement, or provides any information or document, to an authorised officer that the person knows to be false or misleading in a material particular, or

(b) recklessly makes a statement, or recklessly provides any information or document, that is false or misleading in a material particular.

(2) A person commits an offence if the person –

(a) supplies any information or any document to another person that is false or misleading,

(b) knows that the information or document (as the case may be) is false or misleading, or is reckless as to whether it is false or misleading, and

(c) knows that the information is to be used for the purpose of supplying information to the Director or an authorised officer in connection with any of that officer's functions under this Ordinance.

(3) A person guilty of an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding level 5 on the uniform scale.

(4) In this section "**false or misleading**" means false or misleading in any material respect.

Criminal liability of directors etc.

185. (1) Where an offence under this Ordinance is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a body corporate, any director, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in any capacity described in paragraphs (a) to (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

(3) In this section –

"foundation" means –

- (a) a foundation created under the Foundations (Guernsey) Law, 2012ⁱ, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (however named),

"foundation official" means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a) of this definition, and

"general partner" means –

ⁱ Order in Council No. I of 2013; this enactment has been amended.

- (a) in relation to a limited partnership falling within paragraph (a) of the definition in this section of "**limited partnership**", a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995^j, and
 - (b) in relation to a limited partnership falling within paragraph (b) of the definition in this section of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition.
- (4) In this section and in section 186 "**limited partnership**" means -
- (a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or
 - (b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which-
 - (i) one or more of them is, or are jointly and severally, liable without limitation for all debts

^j Order in Council No. XII of 1995; this enactment has been amended.

and obligations to third parties incurred pursuant to the arrangement, and

- (ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

Criminal proceedings against unincorporated bodies.

186. (1) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership (not being a partnership with legal personality or a limited liability partnership), any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its partners or members.

(3) A fine imposed on an unincorporated body on its conviction of for an offence under this Ordinance must be paid from the funds of the body.

(4) In this section "**limited liability partnership**" means -

- (a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey) Law, 2013^k, or
- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a limited liability partnership described in paragraph (a).

Letting advertisements: prohibition relating to children.

187. (1) Subject to subsections (2) and (3), a person ("**the lessor**") wishing to let a dwelling may not advertise the letting in a way that states, whether expressly

^k Order in Council; No. VI of 2014.

or by implication, that if a request from a person to occupy the property would result in a child or children residing in the dwelling, the lessor will –

- (a) refuse that request, or
- (b) treat that request less favourably than the lessor otherwise would.

(2) Subsection (1) does not apply where the dwelling –

- (a) is a care facility,
- (b) is a residential home,
- (c) is a dwelling that is part of a development intended to be retirement housing for persons over a certain age,
- (d) is an HMO, or
- (e) is subject to a restrictive covenant or a planning condition or some other operation of law that prevents the person from permitting a child or children to reside in the dwelling.

(3) Subsection (1) does not apply where the lessor's conduct goes no further than is required to ensure compliance with Part III of this Ordinance (overcrowding).

(4) A person who contravenes subsection (1) is guilty of an offence and liable to a fine not exceeding level 4 on the uniform scale.

Impact on planning legislation

Impact on planning legislation.

188. For the avoidance of doubt, no obligation, requirement, prohibition or restriction imposed by this Ordinance, or by any regulation or notice under it, relieves any person of any obligation, requirement, prohibition or restriction imposed from time to time by or under the Land Planning and Development (Guernsey) Law, 2005^l or any subordinate legislation made under that Law.

Provisions relating to the States of Guernsey

Extent of States' liability.

189. (1) Subject to subsection (2), no liability in law is incurred by the States of Guernsey (including any member, officer, employee or authorised officer) in respect of anything done or omitted to be done in the discharge or purported discharge of any function under this Ordinance, including the giving of advice, unless the thing is done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^m.

General application of Ordinance to States.

190. In the application of this Ordinance to the States of Guernsey and to premises owned or occupied by the States of Guernsey, the States of Guernsey may act by and through its individual departments or committees, notwithstanding that those departments or committees are not legal persons; and accordingly anything

^l Order in Council No. XVI of 2005; this enactment has been amended.

^m Order in Council No. XIV of 2000; this enactment has been amended.

which may be done under or for the purposes of this Ordinance by a legal person may, in relation to the States when acting by and through an individual department or committee, be done by that department or committee.

Subordinate legislation etc

Regulations.

191. Where a provision of this Ordinance permits the Committee to make Regulations, such Regulations –

- (a) may be amended or repealed by subsequent regulations,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Committee to be necessary or expedient, and
- (c) must be laid before a meeting of the States as soon as possible and must, if at that or at the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Codes of practice.

192. (1) The Committee may, after consultation with such persons or bodies as appear to the Committee to be representative of the interests concerned –

- (a) prepare and issue codes of practice for the purpose of providing practical guidance in respect of any provision of this Ordinance or any subordinate legislation made under this Ordinance, and

- (b) revise any such code by revoking, varying, amending or adding to the provisions of the code.

(2) The Committee must cause any code prepared under this section to be published on the States of Guernsey website.

(3) A failure on the part of any person to follow any guidance contained in a code issued under this section does not of itself render that person liable to proceedings of any kind, but if any provision of the code appears to the court conducting any proceedings (whether civil or criminal) to be relevant to any question arising in those proceedings, it is admissible and may be taken into account in determining that question.

Rules of court.

193. (1) The Royal Court sitting as a Full Court may by Order make rules dealing with any other procedural or incidental matter arising in respect of court proceedings under this Ordinance.

(2) Without prejudice to the generality of subsection (1), such rules may make provision for –

- (a) the forms to be used for appeals under this Ordinance, and
- (b) orders as to the costs of proceedings under this Ordinance.

Interpretation

Interpretation.

194. (1) In this Ordinance –

"adult occupier" means –

- (a) an occupier over the age of 18 years, or
- (b) an occupier aged 16 or 17 who does not reside in the same household with a person aged over 18 years,

"affected dwelling" –

- (a) in relation to a hazard awareness notice: see section 60(1), and
- (b) in relation to emergency remedial action: see section 62(2),

"authorised officer" has the meaning given in section 2,

"building" includes part of a building,

"category 1 hazard" has the meaning given in section 3(1)(a),

"category 2 hazard" has the meaning given in section 3(1)(b),

"Chief Fire Officer" has the same meaning as in the Fire Services (Guernsey) Law, 1989,

"civil partner" means a person who has registered as the civil partner of the other person under the Civil Partnership Act 2004ⁿ, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose

ⁿ An Act of Parliament, c. 33.

civil partnership, or registered overseas relationship, has not been dissolved or annulled, and "**civil partnership**" is to be construed accordingly,

"**the Committee**" means the States Committee for the Environment & Infrastructure,

"**common parts**", in relation to a building containing one or more flats, includes—

- (a) the structure and exterior of the building, and
- (b) common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats,

"**controller**" means –

- (a) registered controller if the premises in question are registered under Part V, and
- (b) unregistered controller in any other case,

"**the Director**" has the meaning given in section 1(1),

"**document**" includes information recorded otherwise than in legible form, and in relation to information so recorded, any reference to the production of a document is a reference to the production of a copy of the information in legible form,

"**dwelling**" –

- (a) means, subject to subsection (b), any building or other structure, whether temporary or permanent, or any part thereof, or any vessel or vehicle, used or capable

of being used as living accommodation by one or more persons, together with –

- (i) any yard, garden, outhouses and appurtenances belonging to or usually enjoyed with that accommodation,
- (ii) in the case of a building or structure in multiple occupation, any part or facilities used or enjoyed by the occupiers jointly or in common, and

see also section 89(5) in respect of buildings containing multiple dwellings, but

(b) does not mean the following, even if it meets the criteria in paragraph (a) –

(i) an institution (whether described as a hospital, home, school or other similar establishment) that is used as living accommodation for, or for the treatment, care or maintenance of, persons who sleep on the premises and–

(A) who are disabled due to illness or other physical or mental incapacity,

(B) require care because of advanced age, or

(C) who are under the age of five years,

where such persons sleep on the premises,

- (ii) any part of any land or building that is a prison within the meaning of section 1 of the Prison (Enabling Provisions) (Guernsey) Law, 2010^o,
- (iii) an establishment with a boarding permit from the States of Guernsey Committee for Economic Development and classified by that Committee under section 13 of the Tourist Law, 1948^P as a guest house or hotel,
- (iv) secure accommodation within the meaning of Part IX of the Children (Guernsey and Alderney) Law, 2008,

"**external common parts**" in relation to a building containing one or more flats, means common parts of the building which are outside the building,

"**family**" in sections 78, 79 and 84 carries the same meaning as in subsections (4) and (5) of section 108,

"**final management order**" has the meaning given in section 124(c),

"**flat**" means a separate set of premises (whether or not on the same floor)—

- (a) which forms part of a building,

^o Order in Council No. XIII of 2012; this enactment has been amended.

^P Ordres en Conseil Vol. XIII, p. 329; this enactment has been amended.

- (b) which is constructed or adapted for use for the purposes of a dwelling, and
- (c) either the whole or a material part of which lies above or below some other part of the building,

"**furniture**" includes fittings and other articles,

"**harm**" includes temporary harm,

"**hazard**" means any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise),

"**hazard awareness notice**" has the meaning given in section 59(2),

"**health**" includes mental health,

"**HMO**" has the meaning given in section 108,

"**HMO licence**" means a licence under Part VI,

"**housing standards enactments**" means –

- (a) this Ordinance, and
- (b) any subordinate legislation made under it.

"**improvement notice**" –

- (a) in respect of prescribed hazards, has the meaning given in section 21(1), and

- (b) in respect of minimum standards, has the meaning given in section 23(1),

"interim management order" has the meaning given in section 124(b),

"the Island of Guernsey", with the exception of section 196, also includes the islands of Herm and Jethou,

"landlord" means –

- (a) a person for the time being beneficially entitled to receive rent from any occupier of a rented dwelling, whether that rent is collected by the landlord or via a representative, and see also subsection (3), or
- (b) where a management order is in force, a person who would fall within paragraph (a) were it not for that order.

"lease" has the meaning given in subsection (2).

"lessee" has the meaning given in subsection (3).

"letting agency work" has the meaning given in sections 169(3) and 169(4),

"licence" in the context of a licence to occupy premises –

- (a) includes a licence which is not granted for a consideration,
- (b) may have an extended meaning in accordance with sections 132 and 143, when those sections apply, and

- (c) excludes a licence granted as a temporary expedient to a person who entered the premises as a trespasser (whether or not, before the grant of the licence, another licence to occupy those or other premises had been granted to that person),

and related expressions are to be construed accordingly,

"licence holder" has the meaning given in section 109(4),

"management order" has the meaning given in section 124(a),

"management scheme" has the meaning given in section 145(2),

"minimum standards" has the meaning given in section 4(2),

"mortgage" means an interest in real property secured by an entry in the Livre des Hypothèques, Actes de Cour et Obligations, and **"mortgagee"** is to be read accordingly,

"occupier", in relation to premises, means a person who—

- (a) occupies the premises as a residence, and
- (b) (subject to the context) so occupies them whether as a tenant or other person having an estate or interest in the premises or as a licensee; and related expressions are to be construed accordingly,

"owner", in relation to premises (or any part of any premises), means—

- (a) where the building, premises or part is the subject of saisie proceedings that have resulted in the making of

an interim vesting order, the person in whose favour that order has been made,

(b) where the building, premises or part is not the subject of such saisie proceedings but is the subject of a right of usufruct, the usufructuary,

(c) where the building, premises or part is not the subject of such saisie proceedings or vested right of usufruct –

(i) where the building, premises or part is held in trust, the trustees and any person entitled to a beneficial interest under the trust,

(ii) otherwise, the person in whom there is vested, solely or jointly, an estate of inheritance, and

(d) in any of the above examples, includes also a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds three years (but, for the avoidance of doubt, a periodic tenancy does not fall within this description),

and references to ownership, howsoever expressed, are to be construed accordingly,

"permitted number" has the meaning given in section 76(3),

"premises" means premises of any description,

"prescribed form" means a form prescribed by regulations made by the Committee,

"prescribed hazard" means a category 1 hazard or a category 2 hazard,

"prohibition order" –

- (a) in relation to prescribed hazards, is as described in section 42(1), and
- (b) in relation to minimum standards, is as described in section 44(1),

"property management work" has the meaning given in section 169(5),

"public office" means any office, authority or body, however created, to which functions of a public nature are specifically assigned by an enactment,

"the Register" has the meaning given in section 87,

"registered controller" means, in respect of premises registered under Part V –

- (a) the registered landlord, and
- (b) if one is registered, that landlord's representative,

"registered landlord" means a landlord registered in accordance with section 89,

"registered rented dwelling" means a dwelling registered in accordance with section 89,

"registered representative" means a person who is –

- (a) a representative of a registered landlord, and
- (b) registered in accordance with section 91,

"relevant interest" means –

- (a) an interest as –
 - (i) the owner,
 - (ii) a mortgagee, or
 - (iii) a lessee,
- (b) in respect of common parts of a building, an interest in the building or part of the building concerned, or
- (c) in respect of external common parts, an interest in the particular premises in which the common parts are comprised,

"remedial action" means action (whether in the form of carrying out works or otherwise) that, in the opinion of an authorised officer –

- (a) in relation to a prescribed hazard, will either remove or reduce the hazard, or
- (b) in relation to a non-compliance with minimum standards, will result in a compliance with minimum standards,

"rental activities" has the meaning given in section 169(2),

"rented dwelling" means a dwelling occupied by a person who is not the owner as living accommodation –

- (a) for any period exceeding 30 days (which need not be continuous) in any calendar year, and

- (b) in return for any reward (which need not be in money) or in connection with any employment (whether the employment is permanent or temporary, whether or not under a contract, and whether or not the employment is with the controller),

"**representative**" has the meaning given in section 91(1),

"**resident in the island of Guernsey**" means -

- (a) in the case of an individual, the individual occupies a dwelling in the Island of Guernsey as the individual's only or principal residence, and
- (b) in the case of a legal person, the legal person has -
 - (i) a registered office or established place of business in the Island of Guernsey, and
 - (ii) a key officer who is an individual and a resident in the Island of Guernsey within the meaning of paragraph (a),

"**stepchild**" in relation to a person, includes the issue of the first degree and the adopted child of that person's spouse or partner, and two people are partners for the purpose of this definition if they live in the same household in a subsisting relationship that is akin to a marriage or civil partnership,

"**tenancy**" has the meaning given in subsection (2),

"**tenant**" has the meaning given in subsection (3),

"**third party**" in relation to an HMO, means any person who has an estate or interest in the HMO (other than a landlord and any person who is a tenant under a lease granted under section 131(3)(c) or 142(3)(c)),

"**unregistered controller**" means, in respect of premises not registered under Part V -

- (a) an owner,
- (b) a landlord, and
- (c) any person employed by either the owner or the landlord to carry out property management work.

(2) In this Ordinance "**lease**" and "**tenancy**" have the same meaning and both expressions include—

- (a) a sub-lease or sub-tenancy (to whatever degree), and
- (b) an agreement for a lease or tenancy (or sub-lease or sub-tenancy),

and see also sections 132 and 143, which extend the meaning of references to leases.

(3) The expressions "**lessor**", "**lessee**", "**landlord**" and "**tenant**" and references to letting, to the grant of a lease or to covenants or terms, are to be construed having regard to subsection (2).

Amendment

Amendment to the Public Health Ordinance, 1936.

195. In section 3 of Article V of the Public Health Ordinance, 1936⁹, immediately after every reference to "dwelling-house", insert the words "in the island of Alderney".

Extent, citation and commencement

Extent.

196. This Ordinance has effect in the Islands of Guernsey, Herm and Jethou, and in the territorial waters of those islands.

Citation.

197. This Ordinance may be cited as the Housing (Standards, Landlord Registration and HMO Licensing) (Guernsey) Ordinance, 2025.

Commencement.

198. This Ordinance comes into force on the day appointed by Regulations of the Committee; and different dates may be appointed for different provisions and for different purposes.

⁹ Recueil d'Ordonnances Tome VIII, p. 316; this enactment has been amended.

SCHEDULE

Sections 87, 97 and 102

CONTENTS OF THE REGISTER

Entries in respect of landlord.

1. An entry in the Register concerning a landlord must record the following in respect of that landlord –

- (a) the landlord's name,
- (b) the landlord's address for correspondence,
- (c) the landlord's email address (if any),
- (d) the landlord's telephone number (if any),
- (e) if the landlord is an individual, the landlord's principal residential address,
- (f) if the landlord is a legal entity or association –
 - (i) the address of its registered or principal office and (if different) its established place of business in the Island of Guernsey, and
 - (ii) the names of its directors or members (where its affairs are managed by its members) and key officers,
- (g) whether the landlord will accept the service via email of any document required to be served under this Ordinance,

- (h) the date on which the landlord was initially added to the Register,
- (i) the date of each renewal of the landlord's registration on the Register,
- (j) where the landlord's registration has expired, the date of expiry,
- (k) the landlord's registration number, and
- (l) a list of the rented dwellings of which the landlord is the registered landlord.

Entries in respect of rented dwellings.

2. A landlord's entry in the Register must record the following in respect of each rented dwelling of which the landlord is the registered landlord –

- (a) the address of the rented dwelling,
- (b) a description of the building of which the rented dwelling forms the whole or a part,
- (c) the number of bedrooms in the rented dwelling,
- (d) the names of any other persons who have a relevant interest in the rented dwelling, and the nature of that interest,
- (e) whether a representative has been nominated to represent the landlord in respect of the rented dwelling and, if so, the details stipulated in paragraph 3 of this Schedule,

- (f) the date on which the rented dwelling was initially added to the Register by the registered landlord,
- (g) the date of each renewal of the registration of the rented dwelling by the registered landlord, if applicable,
- (h) where registration has expired, the date of expiry, and
- (i) whether the rented dwelling is licensed under Part VI (relating to HMOs).

Entries in respect of landlord's representative.

3. Where a representative has been nominated under section 91, the entry in the Register in respect of the rented dwelling to which the nomination relates must, in addition to the matters listed in paragraph 2 of this Schedule, record the following in respect of that representative –

- (a) the representative's name,
- (b) the representative's address for correspondence,
- (c) the representative's email address (if any),
- (d) the representative's telephone number (if any),
- (e) if the representative is an individual, the representative's principal residential address,
- (f) if the representative is a legal entity or association -
 - (i) the address of its registered or principal office and (if different) its established place of business in the Island of Guernsey, and

- (ii) the names of its directors or members (where its affairs are managed by its members) and key officers, and
- (g) whether the representative will accept the service via email of any document required to be served under this Ordinance,
- (h) the date on which the representative was initially registered on the Register as a representative in respect of that rented dwelling,
- (i) where the representative's registration has expired, the date of expiry, and
- (j) the representative's registration number.