

Cabinet Agenda

Monday, 9 October 2017 at 6.00 pm

Muriel Matters House, Breeds Place, Hastings, East Sussex, TN34 3UY

For further information, please contact Michael Courts on 01424 451764 or email mcourts@hastings.gov.uk

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NOTICE OF DESIGNATION

HASTINGS BOROUGH COUNCIL

DESIGNATION OF AN AREA FOR ADDITIONAL LICENSING OF HOUSES IN MULTIPLE OCCUPATION (HMOs)

NOTICE IS HEREBY GIVEN in accordance with Section 59 Housing Act 2004 that the Hastings Borough Council acting as local housing authority in exercise of its powers under Section 56 of the Housing Act 2004 (“the Act”) has designated for additional licensing of Houses in Multiple Occupation (“HMOs”) the area described in paragraph 4.

CITATION, COMMENCEMENT AND DURATION

1. This designation may be cited as the Hastings Borough Council Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2017.
2. This designation is made on **10 October 2017** and shall come into force on **3rd May 2018**.
3. This designation shall cease to have effect on **2nd May 2023** or earlier if the Council revokes the scheme under section 60 of the Act.

AREA TO WHICH THE DESIGNATION APPLIES

4. The designation shall apply to the wards of Braybrooke, Central St. Leonards, Castle and Gensing in the Borough of Hastings.

APPLICATION OF THE DESIGNATION

5. This designation applies to all HMOs as defined by section 254 and 257 of the Housing Act 2004 that are occupied by 3 or more persons comprising 2 or more households, within the area described in paragraph 4 unless:
 - a the building is of a description specified in Annex A (Buildings that are not HMOs for the purpose of the Act- other than Part 1);
 - b the HMO is subject to an Interim or Final Management Order under Part 4 of the Act;
 - c the HMO is subject to a temporary exemption under section 62 of the Act; or
 - d the HMO is required to be licensed under section 55 (2) (a) of the Act (mandatory licensing)
 - e the HMO is of a description exempted by the local authority.

EFFECT OF THE DESIGNATION

6. Subject to sub paragraphs 5(a) to (e) above, every HMO of the description specified in that paragraph in the area specified in paragraph 4 shall be required to be licensed under section 61 of the Act.

The decision to make the designation was approved by the Cabinet of the Hastings Borough Council on the 10th October 2017. The designation falls within a description of designations in relation to which the Secretary of State has given a general approval under section 58 of the Housing Act 2004, namely The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential

Accommodation (England) General Approval 2015 which came into force on the 1 April 2015.

A person having control of or managing a prescribed HMO must apply to the Hastings Borough Council for a licence.

INSPECTION OF DOCUMENTS/APPLICATION FOR LICENCE

7. Any landlord, managing agent or other person managing a HMO or any tenant within the Borough may inspect the designation, apply for a licence or seek further information or advice as to whether their property is affected by the designation from:

Housing Renewal

Hastings Borough Council

Muriel Matters House, Breeds Place, Hastings TN34 3UY

Email: licensingrentedproperty@hastings.gov.uk

Tel.01424 451100

Opening Hours Monday – Thursday 9.00am to 4.45pm Friday 9.00am to 4.30pm

ENFORCEMENT

8. Upon the Designation coming into force on **3rd May 2018**
 - any person who fails to apply for a licence in the designated area shall be guilty of an offence under Section 72(1) of the Act, and shall be liable to prosecution and liable to an unlimited fine. The Local Housing Authority may alternatively impose a financial penalty of up to £30,000.
 - In addition, they may be required to repay up to 12 months' rent if the tenant or the Council, in the case of housing benefit payments, apply to the Residential Property Tribunal under the provisions of section 73 and section 74 of the Housing Act 2004 for a rent repayment order.
 - No Section 21 notice (Housing act 1988 (recovery of possession on termination of shorthold tenancy)) may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO.

Annex A: Buildings that are not HMOs for the purpose of the Act- other than Part 1⁴

Buildings controlled or managed by public sector bodies etc⁵

1. A building where the person managing or having control of it is⁶.

- (a) a local housing authority
 - (aa) a non-profit registered provider of social housing
- (b) a police and crime commissioner under section 1 of the Police Reform and Social Responsibility Act 2011 or the Mayor's Office for Policing and Crime under section 3 of the same Act.
- (c) a fire and rescue authority under the Fire and Rescue Services Act 2004
- (d) a health service body within the meaning of section 9 of the National Health Service Act 2006
- (e) a body which is registered as a social landlord under Part 1 of the Housing Act 1996.
- (f) a profit-making registered provider of social housing where it is social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008⁷

Buildings controlled or managed by a co-operative society⁸

2. A building where:

- (a) the person managing or having control of it is a co-operative society whose rules are such as to secure that each of the conditions set out below is met, and
- (b) no person who occupies premises in the building does so by virtue of an assured tenancy, a secure tenancy or a protected tenancy⁹

The conditions are:

- (a) that membership of the society is restricted to persons who are occupiers or prospective occupiers of buildings managed or controlled by the society,
- (b) that all management decisions of the society are made by the members (or a specified quorum of members) at a general meeting which all members are entitled to, and invited to, attend,
- (c) that each member has equal voting rights at such a meeting, and
- (d) that, if a person occupies premises in the building and is not a member, that person is an occupier of the premises only as a result of sharing occupation of them with a member at the member's invitation.

For these purposes "co-operative society" means a body that:

- (a) is registered as a co-operative society under the 2014 Act or is a pre-commencement society (within the meaning of that Act) that meets the condition in section¹⁰ 2(2)(a)(i) of that Act, and is neither:
 - (i) a non-profit registered provider of social housing, nor
 - (ii) registered as a social landlord under Part 1 of the Housing Act 1996.

⁴ Schedule 14 of the Act and SI 2006/373

⁵ Paragraph 2 of schedule 14.

⁶ For the definition of "person managing" and "person having control" see section 263 of the Act.

⁷ Paragraph 2A of Schedule 14.

⁸ Paragraph 2B of Schedule 14.

⁹ "assured tenancy" has the same meaning as in Part 1 of the Housing Act 1988; "protected tenancy" has the same meaning as in the Rent Act 1977; "secure tenancy" has the same meaning as in Part 4 of the Housing Act 1985.

¹⁰ the 2014 Act" means the Co-operative and Community Benefit Societies Act 2014.

Buildings regulated by other enactments¹¹

3. A tenancy, licence or occupation of a house which is regulated under the following enactments:
- (a) sections 87 to 87D of the Children Act 1989
 - (b) section 43 (4) of the Prison Act 1952
 - (c) section 34 of the Nationality, Immigration and Asylum Act 2002
 - (d) The Secure Training Centre Rules 1998¹²
 - (e) The Prison Rules 1999¹³
 - (f) The Young Offender Institute Rules 2000¹⁴
 - (g) The Detention Centre Rules 2001¹⁵
 - (h) The Criminal Justice and Court Service Act 2000 (Approved Premises) Regulations 2001¹⁶
 - (i) The Care Homes Regulations 2001¹⁷
 - (j) The Children's Homes (England) Regulations 2015¹⁸
 - (k) The Residential Family Centres Regulations 2002¹⁹

Certain student lettings etc²⁰

4. A building —
- (i) which is managed or controlled by a specified educational establishment or is of a specified description of such establishments and
 - (ii) the occupiers of the house or dwelling are undertaking a full time course of further or higher education at the specified establishment²¹ and
 - (iii) the house or dwelling is being managed in conformity with an Approved Code of Practice for the management of excepted accommodation under section 233 of the Act.²²

Religious communities²³

5. A building which is occupied principally for the purpose of a religious community whose principal occupation is prayer, contemplation, education or the relief of suffering except if the building is a converted block of flats to which section 257 of the Act applies.

Buildings occupied by owners²⁴

6. A building which is only occupied by:
- (i) one or more persons who hold the freehold or a leasehold interest granted for a term of more than 21 years of the whole, or any part of, the building
 - (ii) and/or any member of the household²⁵ of that person or persons but this exemption does not apply to a converted block of flats to which section 257 of the Act applies, except for ascertaining the status of any flat within the block.

¹¹ Paragraph 3 of Schedule 14.

¹² SI1998/472 as amended by 2003/3005

¹³ SI1999/728 as amended by SI 2000/1794, SI 2000/2641, SI 2001/1149, SI 2002/2116, SI 2002/3135, SI 2003/3301 and 2005/869

¹⁴ SI2000/3371 as amended by SI 2002/2117, SI 2002/3135 and 2005/897

¹⁵ SI 2001/238 NB Section 66(4) of the Nationality, Immigration and Asylum Act 2002 provides that the reference to a detention centre is to be construed as a reference to a removal centre as defined in Part VIII of the Immigration and Asylum Act 1999.

¹⁶ SI2001/850

¹⁷ 2001/3965 as amended by SI 2002/865, SI 2003/534, SI 2003/1590, SI 2003/1703, SI 2003/1845, s2004/664, SI 2004/696, 2004/1770, 2004/2071 and 2004/3168

¹⁸ SI 2015/541

¹⁹ sa 2002/3213 as amended by S12004/664, 2004/865 and 2004/3168

Buildings occupied by resident landlord²⁶

7. A building which is occupied by a person or persons to whom paragraph 6 applies (subject to the proviso therein) and no more than two²⁷ other persons, not forming part of the owner's household.

Buildings occupied by two persons²⁸

8. Any building which is occupied by two persons (forming two households)

Meaning of "building"

9. in this annex a "building" includes a part of a building

²⁶ Paragraph 6 of schedule 14 and SI 2006/373

²⁷ Paragraph 6(2) of SI 2006/373

²⁸ Paragraph 7 of Schedule 14

²⁹ Paragraph 1 of Schedule 14

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The Hastings Borough Council Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2017.

The Hastings Borough Council in exercise of their powers under section 56 of the Housing Act 2004 (“the Act”) hereby designates for additional licensing of Houses in Multiple Occupation (“HMOs”) the area described in paragraph 4.

CITATION, COMMENCEMENT AND DURATION

1. This designation may be cited as the Hastings Borough Council Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2017.
2. This designation is made on 10th October 2017 and shall come into force on 3rd May 2018. The designation falls within description of designations for which the Secretary of State has issued a General Approval dated 26th March 2015.
3. This designation shall cease to have effect on 2nd May 2023 or earlier if the Council revokes the scheme under section 60 of the Act.

AREA TO WHICH THE DESIGNATION APPLIES

4. This designation shall apply to the wards of Braybrooke, Gensing, Castle and Central St Leonards as delineated and edged red on the map at annex a.

APPLICATION OF THE DESIGNATION

5. This designation applies to ***the HMOs of the description specified in annex b*** within the area described in paragraph 4 unless -
 - (a) the building is of a description specified in annex c (Buildings that are not HMOs for the purpose of the Act- other than Part 1);
 - (b) the HMO is subject to an Interim or Final Management Order under Part 4 of the Act;
 - (c) the HMO is subject to a temporary exemption under section 62 of the Act; or
 - (d) the HMO is required to be licensed under section 55 (2) (a) of the Act (mandatory licensing).¹
 - (e) the HMO is specifically excluded from the scheme Annex b Para 6

¹ For the application of mandatory licensing see SI 371/2006 – The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006

EFFECT OF THE DESIGNATION

6. Subject to sub paragraphs 5(a) to (d) every HMO of the description specified in that paragraph in the area specified in paragraph 4 shall be required to be licensed under section 61 of the Act.²
7. The Hastings Borough Council will comply with the notification requirements contained in section 59 of the Act and shall maintain a register of all houses registered under this designation, as required under section 232 of the Act.³
8. Landlords, persons managing or a tenant within the designated area should seek advice from the Local Housing Authority by contacting them as specified in Paragraphs 14, 15, and 16 to ascertain whether their property is affected by this designation.

CONSEQUENCES OF FAILING TO LICENCE AN HMO

9. Failure to license a property, which requires licensing by virtue of this designation or allowing a licensed property to be occupied by more households or persons other than as authorised by a license, is liable to prosecution and upon summary conviction is liable to an unlimited fine (section 72 of the Housing Act 2004). The Local Housing Authority may, as an alternative to prosecution, impose a financial penalty of up to £30,000 (section 249a of the Housing Act 2004).
10. A person who breaches a condition of a license is liable upon summary conviction to an unlimited fine (section 72 of the Housing Act 2004). The Local Housing Authority may, as an alternative to prosecution, impose a financial penalty of up to £30,000 (section 249a of the Housing Act 2004).
11. The tenant(s) and/or the Local Housing Authority may apply to the First-Tier Tribunal (Residential Tribunal) under the provisions of section 41 the Housing and Planning Act 2016, for a rent repayment order.
12. No section 21 notice (Housing Act 1988 (recovery of possession on termination of shorthold tenancy)) may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO.

INSPECTION OF THE DESIGNATION

13. The Hastings Borough Council is the Local Housing Authority, which made the designation. The designation may be inspected at the address as outlined in Paragraph 14 below.

² Section 62 of the Act provides for certain temporary exemption. As to suitability see section 64. Note, if the house is not suitable to be licensed the Council must make an Interim Management Order-see section 10

³ Section 232 of the Act and paragraph 11 of SI 373/2006

14. Applications for HMO additional licences and general advice about HMO licensing should be made at the Council's office at the following address:

Hastings Borough Council, Muriel Matters House, Breeds Place, Hastings East Sussex. TN34 3UY

Telephone contact number 01424 451100 (9.00am to 4.45 pm Mondays to Thursday, 9.00am to 4.30pm Fridays)

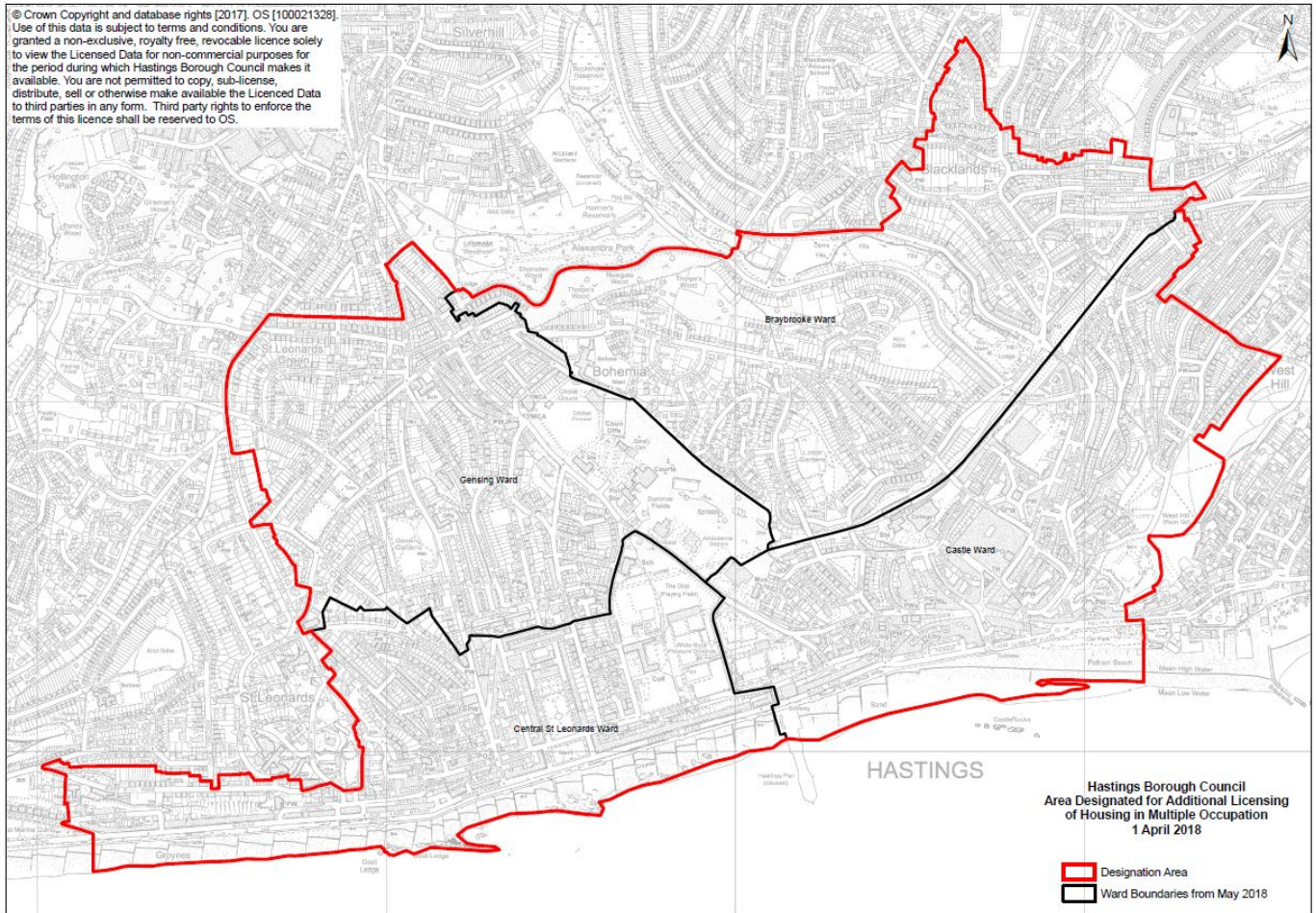
Email: licensingrentedproperty@hastings.gov.uk

10th October 2017

Signed: Simon Hubbard, Director of Regeneration, an officer authorised by

Hastings Borough Council

Annexe a Map of Designated Area



Annex b –HMOs subject to the designation

For the purpose of this designation and subject to the following eight paragraphs an HMO is a building or part of a building, which is occupied by three or more persons in two or more households.

1. A building or a part of a building is an HMO if: -
 - a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - b) the living accommodation is occupied by persons who do not form a single household (see Section 258 of the Housing Act 2004 and Paragraph 4 below);
 - c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
 - d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
 - f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
2. A self-contained flat is an HMO if paragraphs 1(b) to 1(f) apply.
3. A converted building or a part of a converted building is an HMO if:-
 - a) it is a converted building;
 - b) it contains one or more units of living accommodation that do not consist of a self-contained, flat or flats (whether or not it also contains any such flat or flats); or
 - c) the living accommodation is occupied by persons who do not form a single household;
 - d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it ;
 - e) their occupation of the living accommodation constitutes the only use of that accommodation; and
 - f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

4. It is a converted block of flats to which section 257 of the Housing Act 2004 applies
5. An HMO declaration is in force in respect of it under section 255 of the Housing Act 2004
6. **The Council specifically excludes the following categories of HMO from the Hastings scheme:-**

- **Section 257 HMOs consisting solely of two flats where neither of the flats is situated above or below commercial premises.**
- **Section 257 HMOs which share no internal or external common parts.**
- **Smaller Section 254 HMOs (shared facilities) with less than 5 occupiers where the building containing the HMO does not extend over two storeys.**

7. Persons are to be regarded as not forming a single household unless:-

- a) they are all members of the same family, or
- b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

8. A person is a member of the same family as another person if:-

- a) those persons are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex);
- b) one of them is a relative of the other; or
- c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

9. For those purposes:-

- a) a "couple" means two persons who are married to each other or otherwise fall within 5(a);
- b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
- c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
- d) the stepchild of a person shall be treated as his child.

10. A person is to be treated as occupying a building or part of a building as their only or main residence if it is occupied by the person:-

a) as the person's residence for the purpose of undertaking a full-time course of further or higher education;

b) as a refuge, or

c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

11. "refuge" means a building or part of a building managed by a voluntary organisation and used wholly or mainly for the temporary accommodation of persons who have left their homes as a result of:-

a) physical violence or mental abuse, or

b) threats of such violence or abuse, from persons to whom they are or were married or with whom they are or were co-habiting.

Annex c: Buildings that are not HMOs for the purpose of the Act- other than Part 1⁴

Buildings controlled or managed by public sector bodies etc⁵

1. A building where the person managing or having control of it is⁶.
 - (a) a local housing authority
 - (aa) a non-profit registered provider of social housing
 - (b) a police and crime commissioner under section 1 of the Police Reform and Social Responsibility Act 2011 or the Mayor's Office for Policing and Crime under section 3 of the same Act.
 - (c) a fire and rescue authority under the Fire and Rescue Services Act 2004
 - (d) a health service body within the meaning of section 9 of the National Health Service Act 2006
 - (e) a body which is registered as a social landlord under Part 1 of the Housing Act 1996.
 - (f) a profit-making registered provider of social housing where it is social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008⁷

Buildings controlled or managed by a co-operative society⁸

2. A building where:
 - (a) the person managing or having control of it is a co-operative society whose rules are such as to secure that each of the conditions set out below is met, and
 - (b) no person who occupies premises in the building does so by virtue of an assured tenancy, a secure tenancy or a protected tenancy⁹

The conditions are:

- (a) that membership of the society is restricted to persons who are occupiers or prospective occupiers of buildings managed or controlled by the society,
- (b) that all management decisions of the society are made by the members (or a specified quorum of members) at a general meeting which all members are entitled to, and invited to, attend,
- (c) that each member has equal voting rights at such a meeting, and
- (d) that, if a person occupies premises in the building and is not a member, that person is an occupier of the premises only as a result of sharing occupation of them with a member at the member's invitation.

For these purposes "co-operative society" means a body that:

- (a) is registered as a co-operative society under the 2014 Act or is a pre-commencement society (within the meaning of that Act) that meets the condition in section¹⁰ 2(2)(a)(i) of that Act, and is neither:
 - (i) a non-profit registered provider of social housing, nor
 - (ii) registered as a social landlord under Part 1 of the Housing Act 1996.

⁴ Schedule 14 of the Act and SI 2006/373

⁵ Paragraph 2 of schedule 14.

⁶ For the definition of "person managing" and "person having control" see section 263 of the Act.

⁷ Paragraph 2A of Schedule 14.

⁸ Paragraph 2B of Schedule 14.

⁹ "assured tenancy" has the same meaning as in Part 1 of the Housing Act 1988; "protected tenancy" has the same meaning as in the Rent Act 1977; "secure tenancy" has the same meaning as in Part 4 of the Housing Act 1985.

¹⁰ the 2014 Act" means the Co-operative and Community Benefit Societies Act 2014.

Buildings regulated by other enactments¹¹

3. A tenancy, licence or occupation of a house which is regulated under the following enactments:
- (a) sections 87 to 87D of the Children Act 1989
 - (b) section 43 (4) of the Prison Act 1952
 - (c) section 34 of the Nationality, Immigration and Asylum Act 2002
 - (d) The Secure Training Centre Rules 1998¹²
 - (e) The Prison Rules 1999¹³
 - (f) The Young Offender Institute Rules 2000¹⁴
 - (g) The Detention Centre Rules 2001¹⁵
 - (h) The Criminal Justice and Court Service Act 2000 (Approved Premises) Regulations 2001¹⁶
 - (i) The Care Homes Regulations 2001¹⁷
 - (j) The Children's Homes (England) Regulations 2015¹⁸
 - (k) The Residential Family Centres Regulations 2002¹⁹

Certain student lettings etc²⁰

4. A building —
- (i) which is managed or controlled by a specified educational establishment or is of a specified description of such establishments and
 - (ii) the occupiers of the house or dwelling are undertaking a full time course of further or higher education at the specified establishment²¹ and
 - (iii) the house or dwelling is being managed in conformity with an Approved Code of Practice for the management of excepted accommodation under section 233 of the Act.²²

Religious communities²³

5. A building which is occupied principally for the purpose of a religious community whose principal occupation is prayer, contemplation, education or the relief of suffering except if the building is a converted block of flats to which section 257 of the Act applies.

Buildings occupied by owners²⁴

6. A building which is only occupied by:
- (i) one or more persons who hold the freehold or a leasehold interest granted for a term of more than 21 years of the whole, or any part of, the building
 - (ii) and/or any member of the household²⁵ of that person or persons but this exemption does not apply to a converted block of flats to which section 257 of the Act applies, except for ascertaining the status of any flat within the block.

¹¹ Paragraph 3 of Schedule 14.

¹² SI1998/472 as amended by 2003/3005

¹³ SI1999/728 as amended by SI 2000/1794, SI 2000/2641, SI 2001/1149, SI 2002/2116, SI 2002/3135, SI 2003/3301 and 2005/869

¹⁴ SI2000/3371 as amended by SI 2002/2117, SI 2002/3135 and 2005/897

¹⁵ SI 2001/238 NB Section 66(4) of the Nationality, Immigration and Asylum Act 2002 provides that the reference to a detention centre is to be construed as a reference to a removal centre as defined in Part VIII of the Immigration and Asylum Act 1999.

¹⁶ SI2001/850

¹⁷ 2001/3965 as amended by SI 2002/865, SI 2003/534, SI 2003/1590, SI 2003/1703, SI 2003/1845, s2004/664, SI 2004/696, 2004/1770, 2004/2071 and 2004/3168

¹⁸ SI 2015/541

¹⁹ sa 2002/3213 as amended by S12004/664, 2004/865 and 2004/3168

20 Paragraph 4 of Schedule 14

21 Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2013/1601

22 Housing (Codes of Management Practice) (Student Accommodation) (England) Order 2010/2615

23 Paragraph 5 of Schedule 14

24 Paragraph 6 of Schedule 14

25 For the definition of "household" see section 258 (2) and paragraphs 3 and 4 of SI 373/2006 Paragraph 6 of Schedule 14

Buildings occupied by resident landlord²⁶

7. A building which is occupied by a person or persons to whom paragraph 6 applies (subject to the proviso therein) and no more than two²⁷ other persons, not forming part of the owner's household.

Buildings occupied by two persons²⁸

8. Any building which is occupied by two persons (forming two households)

Meaning of "building"

9. in this annex a "building" includes a part of a building

²⁶ Paragraph 6 of schedule 14 and SI 2006/373

²⁷ Paragraph 6(2) of SI 2006/373

²⁸ Paragraph 7 of Schedule 14

²⁹ Paragraph 1 of Schedule 14