

LANDLORD AND TENANT

HOUSE IN MULTIPLE OCCUPATION (HMO)



Elizabeth Dwomoh

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Introduction

Aim of seminar

1. With a shortage of affordable housing in the private rented sector, an increasing number of individuals are letting a room in a house in multiple occupation (HMO).
2. The aim of this seminar is to provide an overview of the law relating to an HMO. This seminar focuses on the law in England only.
3. The seminar will focus on the following four areas:
 - (a) What is an HMO?
 - (b) When is an HMO required to be licensed?
 - (c) Consequences of a breach of the HMO licensing requirements
 - (d) Housing standards for an HMO

What is an HMO?

4. The definition of an HMO is set out in sections 254 to 260 of the Housing Act 2004 ("the HA 2004").
5. Section 254 of the HA 2004 provides that a building or part of a building will be classified as an HMO if:
 - the conditions of the standard test are met
 - the conditions of the self-contained flat test are met
 - if the converted building test is met
 - An HMO declaration is in force
 - The building is a converted block of flats to which section 257 of the Housing Act 2004 ("the HA 2004") applies

The standard test

6. Section 254(2) of the HA 2004 provides that a building or part of a building will meet the conditions for an HMO under the standard test if:
 - (a) it consists of one or more units of living accommodation that is not a self-contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single

household. A single household can constitute the following persons:

- (i) a family (that can consist of a couple - whether cohabiting or married, parent, grandparent, brother, sister, child, grandchild, stepchild, cousin, niece, nephew, aunt and uncle;
 - (ii) an adult live in carer and the individual in receipt of care; and
 - (iii) an employee who lives with the employer or member of the employer's family and does not pay rent or any other consideration in respect of the property.
- (c) the living accommodation is occupied by persons who use it as their only or main residence or they are treated as so occupying it;
 - (d) the occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rent or other consideration is payable by at least one of the occupants for use of the building or part of the building as 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 such as a toilet, personal washing facilities or cooking facilities.

Self-contained flat test

- 7. Section 254(3) of the HA 2004 provides that a building or part of a building will meet the conditions for an HMO under the self-contained flat test if:
 - (i) it consists of a self-contained flat; and
 - (ii) sub-paragraphs 254(2)(b) to 254(2)(f) of the HA 2004 applies.
- 8. Under section 254(8) of the HA 2004 a self-contained flat is defined as a separate set of premises (whether on the same floor or not):

- (a) Which forms part of a building;
- (b) either the whole or a material part of which lies above or below some other part of the building; and
- (c) in which all three basic amenities are available for the exclusive use of its occupants.

Converted building test

9. Section 254(4) of the HA 2004 provides that a building or part of a building will meet the conditions for an HMO under the converted building test if:
- (a) the building is converted.
 - (b) it contains one or more units of living accommodation that does not contain any self-contained flat.
 - (c) sub-paragraphs (ii) to (v) of the standard test applies
10. Under section 254(8) of the HA 2004 a “converted building” is defined as a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed.

HMO declaration

11. A local housing authority has the power under section 255 of the HA 2004 to serve a notice declaring that a building or part of a building in their area is an HMO. This is known as an HMO declaration.
12. An HMO declaration can be made in respect of a building or a part of a building that meets either the standard test, self-contained flat test or the converted building test without the sole use condition. The persons who are occupying the accommodation must not form a single household and their use of that living accommodation or flat must constitute the most significant use of that accommodation or flat.

Converted block of flats to which section 257 of the HA 2004 applies

13. Section 257 of the HA 2004 designates some converted block of flats as HMOs. This designation will apply where the building, or part of the building has been converted into and consists of self-contained flats of which:
- (i) Less than two-thirds of the self-contained flats are owner occupied; and
 - (ii) The building work undertaken in connection with the conversion did not comply with the appropriate building standards for works completed before 1 June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768) and which would not have been exempt under those regulations.

When is an HMO required to be licensed?

14. Although a building or part of a building may be classed as an HMO, it does not necessarily require a licence unless one of the following licencing regimes is in place:
- Mandatory licensing
 - Additional licensing
 - Selective licensing

Mandatory licensing

15. Section 55(2) of the HA 2004 and article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (SI 2018/221) provide that mandatory licensing will apply to a property:
- occupied by five or more people
 - occupied by people living in two or more separate households; and
 - either the standard test, converted building test or self-contained flat test is met

Additional licensing

16. A local housing authority has a discretionary power under section 56(1) of the HA

2004 to designate HMOs within all or part of its district that are not caught by mandatory licensing as being subject to additional licensing.

17. The local housing authority when deciding whether to exercise its discretion must take into consideration whether a significant proportion of HMOs in the area are poorly managed so as to give rise to, or likely to give rise to, problems for the tenants or the general public.

Selective licensing

18. A local housing authority has a discretionary power under section 80(1) of the HA 2004 to subject other residential properties within all or part of its district that are not HMOs to selective licensing.
19. The local housing authority when deciding whether to exercise its discretion must take into consideration whether the area suffers from low housing demand and anti-social behaviour that is not being properly addressed by private landlords.

Consequences of a breach of the licensing requirements

20. A breach of the HMO licensing requirements under the HA 2004 can be sanctioned in the following ways:
 - (a) A fine on summary conviction
 - (b) A financial penalty
 - (c) Ban on serving a notice under section 21 of the HA 1988
 - (d) A rent repayment order

A fine on summary conviction

21. By virtue of section 72(1) of the HA 2004 a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under Part 2 of the HA 2004, but the HMO is not so licensed.
22. Pursuant section 72(2) of the HA 2004 a person commits an offence if he is a person having control of or managing an HMO that is licensed, but knowingly permits someone else to occupy the HMO and that person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

23. Under section 72(2) of the HA 2004 a person commits an offence if they are an HMO licence holder on who restrictions or obligations are placed and that person fails to comply with the conditions of the licence.
24. A landlord who commits an offence under sections 72(1), 72(2) and 72(3) of the HA 2004 will be subject to a summary conviction: section 72(6) and 72(7) of the HA 2004.

A financial penalty

25. Under section 249A of the HA 2004, the local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
26. The offences set out in section 72 of the HA 2004 fall within the definition of a "housing related offence" under section 249A of the HA 2004.
27. If a local housing authority has imposed a financial penalty under section 249A of the HA 2004, then the person in breach of a housing related offence under section 72 of the HA 2004 cannot also be fined on summary conviction: section 72(7B) of the HA 2004.

Prohibition on serving a section 21 Notice when an HMO or house is unlicensed

28. By virtue of section 75(1) and section 98(1) of the HA 2004 a landlord cannot serve a notice under section 21 of the HA 1988 to terminate a tenant's AST if the HMO the tenant occupies is subject to mandatory, additional or selective licensing and the HMO is unlicensed.
29. An HMO or house can be exempted from the requirement to be licensed if the person managing or in control of the house makes an application to the local authority and notifies the local housing authority of their intention to take particular steps with a view to securing that the HMO or house is no longer required to be licensed.
30. A landlord can overcome the prohibition on serving a Section 21 Notice in respect of an HMO that is required to be licensed if they have applied for a licence at the time

the notice is served.

Rent repayment order

31. A rent repayment order (RRO) is an order requiring the landlord under a tenancy, in England, who has committed a housing related offence under section 40(3) of the Housing and Planning Act 2016 (“the HPA 2016”) to repay to the tenant or licensee an amount of rent paid or repay a local housing authority an amount in respect of universal credit paid in respect of rent under the tenancy.¹
32. Pursuant to section 41 of the HPA 2016, a tenant or licensee² can apply to the First-tier Tribunal (“the FTT”) an RRO to be made against a person who has committed an offence under either section 72(1) or section 95(1) of the HA 2004.
33. The tenant or licensee can only apply for to the FTT for an RRO to be made if the following two conditions are satisfied:
 - (a) the offence relates to housing that, at the time of the offence, was let to the tenant or licensee; and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
34. In *Rakusen v Jepsen* [2023] UKSC 9, the Supreme Court has determined that an RRO can only be made against a tenant’s immediate landlord and not their superior landlord.

Housing standards

35. A LHA has the power to impose conditions as part of the grant of an HMO licence. The conditions imposed are to ensure that an HMO meets the required health and safety standards for the number of people in occupation, prevent overcrowding and anti-social behaviour.

¹ Section 40(2) of the HPA 2016

² Section 56 of the HPA 2016

Mandatory licence conditions

36. Pursuant to schedule 4 to the HA 2004 an HMO licence granted under part 2 to the HA 2004 must include the following licence conditions:
- If there is a supply of gas at the property, a valid gas safety certificate must be submitted annually to the relevant LHA
 - To keep electrical appliances and furniture provided to the occupiers safe condition
 - To provide the LHA on demand with a declaration that any electrical appliances and furniture provided in the HMO is safe
 - To ensure that smoke and carbon monoxide alarms are fitted on every storey of the building where there is living accommodation and that they are kept in proper working order and for a declaration of the positioning and conditioning of such alarms to be provided to a LHA on demand
 - To ensure electrical installations are kept in proper working order and kept safe for continued use
 - Each occupier must be provided with a written statement of the terms under which they occupy the HMO
 - Conditions requiring the licence holder—
 - (a) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres;
 - (b) to ensure that the floor area of any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 square metres;
 - (c) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres;
 - (d) to ensure that any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation.
 - Compliance with any scheme which is provided by the local housing authority to the licence holder and which relates to the storage and disposal of household waste at the HMO pending collection.

Discretionary HMO conditions

37. A relevant LHA has the power to impose discretionary conditions to an HMO licence.

The discretionary conditions imposed can include the following:

- Requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233 of the HA 2004
- Measures to reduce anti-social behaviour by persons occupying or visiting the HMO
- Requiring facilities and equipment to be in good working order and meet the standards set out in section 65 of the HA 2004 as to fire safety, heating and sanitation.

ELIZABETH DWOMOH

Lamb Chambers
Temple
London EC4Y 7AS
elizabethdwomoh@lambchambers.co.uk

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