

**Welcome to Landmark Chambers'**

**Property In Quarantine:**

**The Regulation of the Private Rented Sector in England**

**Part 2: Regulation of Landlords**

**The recording may be accessed [here](#).**

Your speakers today are...



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## Outline

- What buildings need a licence?
- How do you get a licence?
- Terms of a licence
- Consequences of failing to get a licence

## What buildings need a licence

- Part 2 Housing Act 2004 – Houses in Multiple Occupation (“**HMOs**”)
  - Mandatory licensing
  - Additional licensing
- Part 3 Housing Act 2003 – properties that are not HMOs
  - Selective licensing

## What buildings need a license?

- HMOs under Part 2:
  - HMO to which the Part relates (s. 55), and
    - HMO defined in s. 254-259
      - 5 tests: standard test, self-contained flat test, converted building test, HMO declaration, converted block of flats
    - “To which the Part applies” (s. 55(2)) i.e.
      - Falls within prescribed description of HMO (SI 2018/221)
      - Area is designated as area to which Additional Licensing applies under s. 56
  - They need a license under s. 61(1)
    - Temporary exemption notice in force under s. 62
    - Interim or final management order in force under Ch1 Part 4

## What buildings need a license?

- Houses under Part 3 (s 79(1)):
  - Houses to which the Part relates, and required to be licensed under s. 85.
  - Relates to houses in an area designated under s. 80 as subject to selective licensing, occupied by tenancies/licenses which are not exempt
    - ss. 80-84: designate area for 5 years for
      - (1) low housing demand
      - (2) antisocial behaviour or
      - (3) area contains high proportion of PRS properties occupied under ASTs and satisfaction of one condition relating to
        - » Housing conditions
        - » Migration
        - » Deprivation
        - » Crime (SI 2015/ 997)

## What buildings need a license?

- Part 3 houses (s 79(1)):
  - Of those houses, all are required to be licensed unless
    - HMO
    - Temporary exemption (s. 86)
    - Interim or final management order (Ch 1 or 2 of Part 4)

## What Buildings need a license

- Property Guardians?
  - ***Ludgate House Ltd v Ricketts (VO)*** [2019] UKUT 278 (LC), [48]
  - ***Oxley v Live in Guardians Ltd*** LON/OOBG/HMF/2019/0037, [50]
  - ***Colchester Council v Camelot Guardian Management Co Ltd***, Mags Ct conviction
- Asylum Accommodation? Temporary Workers?
  - Reg 5 Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006/373

## How do you get a license

Ss. 63 (HMOs), 87 (Selective)

- Apply to LHA in accordance with requirements and fees fixed by LA
- Appropriate national authority may make regulations for applications. SI 2006/373 requires
  - Declaration in prescribed form
  - Provision of information
- What can fees cover?
  - ***R (Gaskin) v Richmond LBC*** [2017] EWHC 3234 (Admin)
  - ***R (Gaskin) v Richmond LBC*** [2018] EWHC 996 (Admin)

## How do you get a license?

Grant or refusal (s. 64-66 (HMOs), s. 88 (Selective)):

- LHA must either grant refuse
- Deemed consent? Provision of Services Regulations 2009/2999, Reg. 19
  - (1) Authorisation procedures by a competent authority under an authorisation scheme must secure that applications for authorisation are processed, in any event, within a reasonable period
  - (5) Failure to process within a reasonable time will lead to deemed consent
- ***Gaskin*** [2018], [55]

## How do you get a license?

Grant or refusal (s. 64-66 (HMOs), s. 88 (Selective)):

- May grant a license if satisfied that:
  - Proposed license holder “fit and proper person” and most appropriate of potential license holders
  - No banning order against any person with interest in house
  - Manager has control of house or is agent who has person that does
  - Proposed manager “fit and proper person”
  - Proposed management arrangements “otherwise satisfactory”
  - (For HMOS) House reasonably suitable for occupation by no. of households in application, or other max. no LHA decides (see s. 65)
- Discretion to refuse even if all satisfied: ***Waltham Forest v Khan*** [2017] UKUT 153 (LC) [15]

## How do you get a license?

- Test for “fit and proper person” (ss. 66/88)
  - Have regard to evidence that P (or associate), committed offences concerning fraud, dishonesty, violence, drugs, sexual offences, unlawful discrimination in connection with carrying on business, contravened L&T or housing law, or acted not in accordance with s. 233 code of practice.
  - Or LHA thinks its relevant
  - ***Hussain v Waltham Forest LBC*** [2019] UKUT 0339 (LC)
  
- Test for “suitable management arrangements” (ss. 66/88)
  - Whether any person involved in management “sufficiently component” or “fit and proper”, and/or proposed management structures and funding “suitable”

## Terms of a licence

Ss. 67-69 (HMOs), 90-92 (Selective), Schedule 4 (both)

- May not relate to more than one house
- Non transferrable (*Taylor v Mina An Ltd* [2019] UKUT 249 (LC))
- 5 year limit
- May be varied by agreement or if change in circumstances
- May be revoked (ss. 70-70A, 93-93A)
  - By consent
  - Following serious breach of condition
  - If license holder or managers no longer fit and proper people
  - If it stops being an HMO, or (for selective) becomes an HMO or stops being Part 3

## Terms of a license

Imposition of conditions: ss. 67/90, Schedule 4

- May include conditions appropriate for regulating
  - Management, use and occupation of the house, and
  - (for HMOs only) Its condition and contents
- Must include conditions in Sched 4
- May not
  - impose conditions on person other than licence holder
  - Seek to alter terms of tenancy or license by which occupier occupies.
- Relationship with Part 1 Functions
- Limits? ***Nottingham CC v Parr*** [2018] UKSC 51, ***Brown v Hyndburn BC*** [2018] 1 WLR 4518, ***Berg v Burnley BC*** [2020] UKUT 91 (LC)

## Consequences of failure to licence

- No s. 21 claim notice (ss. 75-98)
- Rent Repayment Order (ss. 73/96)
- Criminal offence (ss. 72/95)
- Fixed Penalty Notice (s. 72/95, s. 249A)
  - May be imposed by LHA, instead of conviction, if satisfied beyond reasonable doubt, offence committed under ss. 72/95
  - Only one penalty can be imposed in respect of “same conduct”
  - Amount determined by LHA, max £30,000
  - Procedure in Sch. 13A
  - Appeal to FTT (Time limit for appeal is 28 days after decision notice - ***Pearson v Bradford MDC*** [2019] UKUT 291 (LC)). See ***Waltham Forest v Marshall*** [2020] UKUT 35 (LC) for approach to quantum on appeal

## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.**

# Thank you for listening

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