

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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