

LICENSING AND REGULATION OF RESIDENTIAL PROPERTY

General

There is no general requirement to register residential tenancies in England and Wales, as is the case in Ireland. In certain circumstances, an obligation to register will apply. Local Authorities have powers to require selective licensing in particular areas or in relation to particular properties.

An obligation to obtain a licence may apply in the case of a “house in multiple occupation”. A stand alone property, occupied by a single household, without sharing any facilities, will not generally be a house in multiple occupation. If however, it is in a converted block of flats where the building work does not comply with Building Regulation standards and less than two thirds of the self contained flats are owner occupied, it will be deemed to be a house in multiple occupation.

There are a number of categories of properties which require licensing. The first category comprises properties where more than one family share common basic amenities e.g. kitchen, washing facilities or toilet. The second category includes self contained flats where such facilities are shared. A third category applies to buildings converted into flats with separate units and accommodation which do not consist of self contained flats.

A further category is certain buildings with converted flats. This applies if the conversion works do not comply with modern building regulation standards, and less than two thirds of the flats are owner occupied. This is designed to prevent a landlord arguing that properties are self contained by carrying out sub-standard building works.

The Local Authority has discretion to declare properties to be “houses in multiple occupation” requiring licensing where there is some doubt as to whether it falls into one

of the categories. This may, for example, apply to a guest house offering short term Bed and Breakfast accommodation.

It is possible for a Local Authority to declare a property to be a house in multiple occupation, thereby requiring licensing. It is also possible for a Local Authority to require selective licensing. It may designate a particular area as a license area.

Licensing Requirements

Where licensing is required, it must be applied for and certain basic information must be furnished to the Local Authority. A licence fee is charged by the authority. The fee is set by the Local Authority. A licence may be granted if a house is suitable and the proposed management arrangements are satisfactory. Licences will generally be granted for periods of 5 years. They may be varied or revoked.

The suitability of the house is assessed by reference to prescribed standards. There are standards as to toilet and bathroom accommodation, food stores, cooking, laundry facilities and other facilities. The owner/manager must be a fit person. This is concerned principally with persons with criminal records. Management arrangements refer to whether the manager has an appropriate management structure and funding arrangements are suitable. If the house cannot be licensed, the Local Authority may take over the management on an interim or a long term basis.

Licence conditions can be imposed by the Local Authority. Mandatory conditions include maintaining annual gas safety certificates, keeping appliances and furniture in a safe condition, and ensuring smoke alarms are installed and work properly. In addition, the Local Authority can include restrictions on the use of the house, steps to reduce anti-social behaviour and requirements for maintaining facilities and equipment within the house. The licence holder can be obliged to attend a relevant training course. Licences last for 5 years and must be reviewed.

Where property should be licensed, but is not, the landlord may be required to repay the rent received during the licensed period up to a maximum of 1 month. Housing benefit

paid may be reclaimed from a landlord/owner. The right of recovery of the property is also limited.

It is an offence, punishable by a fine of up to £20,000 to fail to register a house in multiple occupation, where licensing is required. The tenancy is not enforceable while the property is unlicensed.

Selective Designation of Areas

The Local Authority has power designate certain areas selectively for special regulation and control. The types of area targeted are usually run down areas where low demand for property means that there are a number of empty houses. The licensing scheme is designed to turn these areas around by ensuring residential properties are properly maintained and managed.

An area may only be designated if the Council determines that it is an area of low housing demand and that the measures are necessary to contribute to the improvement of the social and economic condition of the area.

The Local Authority has powers to make management orders in respect of properties for periods up to twelve months. The management orders can only be made where there is no reasonable prospect of the property being licensed in the future, and it is necessary to protect the health, safety and welfare of the occupants of the house.

The Housing Act 2004 greatly enhanced the powers of Local Authorities to monitor the condition of residential properties in their areas. It gives local Councils wide powers where housing conditions are below an acceptable standard.

Local Authorities are obliged to monitor housing conditions and draw up priority lists in relation to possible hazards and risks of harm. The type of enforcement powers local authority use will depend on the category of risk. In the case of serious risk, local authority has a duty and obligation to take remedial action.

Local Authority Powers

The Local Authority has mandatory powers to serve “improvement notices” on the owner or manager of the property, specifying works which must be undertaken. The Local Authority may prohibit the use of property for residential purposes pending completion of works. Failure to comply with the notice is a criminal offence and the Local Authority is entitled to take steps to undertake the works concerned and charge the costs. In extreme cases, the Local Authority has powers to demolish the property where houses and defects cannot be remedied.

Local Authorities have the power to take over buildings on a long or short term basis where they are required to be licensed, but the owner refuses to act in accordance with the terms of the licence. Under a management order, the Local Authority has the right to take possession of the house. It does not become owner of the property. It can however exercise all the rights of the landlord including evicting tenants, carrying out repairs etc. The landlord is no longer entitled to exercise management functions in relation to the property. He may not receive rent or grant new leases. Where a Local Authority incurs expense managing the property the expenditure can be recovered from the owner.

A Local Authority has the power to apply for an “empty dwelling management” order. There are a number of categories of properties which may be made subject to an empty dwelling order. A property genuinely on the market for letting is exempted. The order may be granted where the property has been unoccupied for at least 6 months and there is no reasonable prospect of it becoming occupied.

The Local Authority can serve an overcrowding notice where there are too many people sleeping in one room or people are sleeping in rooms not suitable to be occupied as sleeping accommodation.

Other Legal Obligations of Landlords

There are certain obligations imposed by laws on all landlords in relation to the safety of gas fittings. Gas appliances and fittings must be checked before a property is let and at least every 12 months thereafter by an approved gas fitter. The landlord must be able to produce safety certificates. The certificates must be produced to the tenant within 28 days of each check or 28 days of the commencement of the tenancy. There is also an obligation on a landlord to ensure that a room used as a sleeping accommodation does not contain a gas fitting that is not room sealed or does not incorporate safety controls.

A landlord must make sure that any electrical appliances that he supplies for the tenant's use, such as cookers, washing machine etc are safe to use.

If a landlord supplies furniture, that furniture must meet the relevant fire safety requirements.

Landlords must give written notice to the tenant of an address at which notices (including notices in proceedings) may be served on him by the tenant. This is usually done in the tenancy agreement. Every written rent demand must specify the name and address of the landlord. If that address is not in England and Wales, the demand must specify an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

Where a property with a tenant in it changes hands, the new landlord must give the tenant written notice of the change and of his name and address (which can be his business address).

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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