

LEGAL UPDATES

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I Lied!

- Housing and Planning Act is yet to be published
 - So the final form is hard to work out
- Oddly some parts appear to come into force immediately
 - Even though the regulations to make them work don't exist!
- Expected implementation timeline is April 2017
- Lots of regulations before then
 - Act is notably regulation heavy
 - Likely to be elements of consultation in this
- Guidance is likely too
- Planning and preparation should start now



Other HMO Matters

Technical Discussion

- HMO technical discussion document has disappeared
 - So unclear where this is going
- Further consultation on more complete ideas was suggested
 - But has not appeared yet
- Original ideas
 - Change in scope of mandatory licensing
 - Minimum room size
 - Shorter application forms
- Not all local authorities want more licensing
 - Against the risk assessment and local provision aspects of the Act
 - However the current level has problems
- Shorter application forms would be very welcome

Room Size

- Minimum room size prompted by case of *Clark v Manchester CC*
 - Upheld by FTT in *Crompton v Oxford CC* and permission to appeal refused
- Local standards are not standards
 - They are guidance
- LHAs must consider suitability of the property as a whole
 - Refusal for not meeting elements of local guidance is unlawful
 - Local guidance must be flexibly applied
- A lot of room size issues prompted by misunderstanding of HA 1985
 - HA 1985 does not set a minimum room size!
- IMHO a statutory minimum would fix that level
 - Reducing LHA discretion and flexibility

A hand holding a pen over a document, with a blue background and a large white number 5. The text "Other Legislation" is written in white on the blue background.

Other Legislation

Agency Fees

- Consumer Rights Act requires agent fees to be published
 - In office and on website
- Still being widely ignored
- Allows for local authority to enforce by direct fine
 - LA can keep fines obtained and use for any purpose
- Also need to publish CMP and Redress memberships
- Fine of up to £5,000
 - Intent notice within 6 months
 - 28 days to make representations
 - Final decision notice
 - Appeals to FTT
 - Recovery of penalty as if it was a court order

Smoke and CO Alarms

- All rental property must have
 - One smoke alarm per storey
 - CO alarm where solid fuel heating
- Enforced by local authority
- Breach notice on detection
- 28 days to remedy
- Failure to remedy requires LA to fit alarms at own expense
- Can then serve financial penalty
- Representations
- Final decision notice
- Appeal to FTT

Heat Networks

- Heat providers have new obligations
 - Means any provider of energy
 - Not just heat
- Potentially covers all HMOs
- Based on a European directive
 - Confusing as it uses words such as Apartment which does not translate well in practice
- NMRO are enforcing body here and have published guidance
 - Upshot is it only applies to bedsit type HMOs with no shared facilities
 - Where landlord is providing energy and tenants pay landlord for it- including where it is in the rent
- If it applies to you
 - Must provide a bill showing usage
 - Must fit control and measurement devices where reasonable to do so

Immigration Act 2016

- Also has Royal Assent
- Ramps up penalties for failure to do Right to Rent checks
 - Now 5 years in prison
 - These are additional to and separate from the civil fines already in existence
- Totally new powers to evict
 - New ground for possession under s8
 - Power to evict without court order at all
- New powers triggered by notice from SoS that some or all time-limited occupiers are in fact illegal immigrants
 - If some then new s8 ground
 - If all then 28 days notice and can then evict without court order



New Cases

Address Notification

- *Levett-Dunn & Ors v NHS Property Services*
- Landlord had given tenant his address in tenancy agreement
- Tenant served notice at that address to terminate agreement
 - Notice also emailed so landlord was aware of it
- Landlord had moved and had no connection with the address
- Landlord sought to hold that notice was invalid as not properly served
- Held:
 - Landlord was bound by the address given in the agreement
 - He could have given notice of a new address but had not done so
- Make sure the tenant has the right address!

Deposit PI

- *Bali v Manauel Company Limited*
 - County court case only so not binding
- Deals with PI signed by a an agent as a company
- Agents can sign
 - However companies can only be bound by one director with a witness or 2 directors
 - In this case PI signed by an employee was found not to be effective
- Court may be wrong here
 - PI is a certification
 - But may not be covered by Companies Act
- Best advice
 - Director signature with witness if possible
 - Make sure there is a clear board resolution authorising specific people to sign PI for the company
 - Or the landlord can sign on their own behalf!

High Court Enforcement

- HCEOs sometimes used in preference to slower County Court bailiff
- In some case over-used
- New guidance issued which makes clear that permission is required by County Court judge
 - Except for squatters or mortgage eviction
- And by High Court judge
- Permission should not be given unless it is clear tenant is aware of action
 - So hard to use HCEO where tenant did not turn up

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