

AnthonyGold

*Licensing and
Other Updates*

- Now in force
- If you commit an offence on the banning list
 - Its quite a long list!
 - Most property and honesty offences are there
- Local authority can seek a banning order through the FTT
 - If it's a company must seek an order against directors too
- Only for new matters after April 2018, not historical offences
- Not clear how the FTT will treat these
 - Likely to only be the most severe offences

Rogue landlord database

- Also in force from April 2018
- If you are prosecuted
 - Or have two civil penalties in 12 months
- Not publicly available
 - Unlike the London Mayor's database
 - But government is now apparently considering this
- Still a discretion to enter
 - But does not require FTT permission
 - Appeal is to FTT though
- Entry for at least 2 years
- No power to demand list of all properties owned/managed though

- A helpful change
- Previously landlords had to get a GSC every 12 months
 - If they got one early they lost that time as it was 12 months from the last check
- Changed to allow landlords to get a new GSC from 10 months onward
 - But still to have 12 months from when the previous check ends
- But if you are too early you lose out
 - So a check at 9 months does not benefit from the change

How to Rent guide

- Updated in January 2018
- Tenants must get the correct guide
 - At tenancy start
 - At renewal
 - If tenancy becomes statutory periodic
- A further new guide has been signed off by the minister
 - But is not yet in force
 - Will appear at some stage soon though

- Power to require landlord safety checks already in place
 - Just needs regulations
- This has been through an extensive process
 - Including a specialist working group
- It has recommended 5 yearly EICRs
 - With a new standard and body to oversee
- Government is consulting on those recommendations
 - This may be because they are seeking to reject them and want support



*Extending
Mandatory
Licensing*

What are the changes – in brief

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- Applies only to England
- Removes the current 3 storey requirement
- All HMOs that meet certain tests will fall within mandatory licensing regardless of the number of storeys
- Still needs to be occupied by 5 or more persons living in 2 or more households
- 4 person HMO will still fall outside definition



- 2018 Order revokes and replaces the 2006 Order and widens the ‘prescribed description of HMO’
- An HMO falls within the new prescribed description if it:
 - 1) Is occupied by 5 or more persons
 - 2) The persons live in 2 or more separate households; and
 - 3) Meets:
 - i. the standard test;
 - ii. the converted buildings test; or
 - iii. the self-contained flat test – but is not a purpose-built flat situated in a block comprising 3 or more self-contained flats;

Changes to houses in multiple occupation

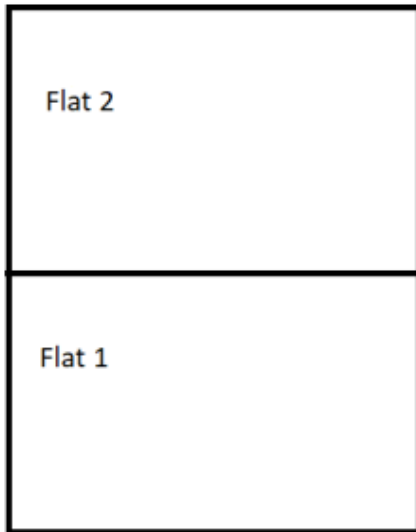
- Fairly straightforward
- Mandatory licensing will cover all houses with:
 - 5 or more occupiers
 - Living as 2 or more households
 - REGARDLESS of the number of storeys
- Will overlap with a number of local authority additional licensing schemes

Changes to flats in multiple occupation

- Mandatory licensing will cover all flats in multiple occupation with:
 - 5 or more occupiers
 - Living as 2 or more single households
- But not a purpose-built flat situated in a block comprising 3 or more self-contained flats
- Will apply to purpose-built flats in blocks where there are up to 2 flats in the block - whether or not there are also commercial premises in the block e.g. a shop
- Flats in purpose-built blocks therefore treated differently

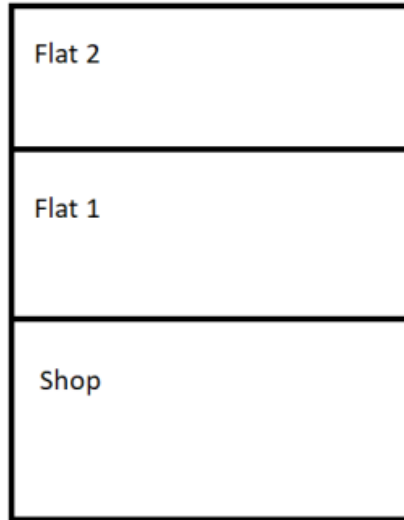
Purpose built flats examples – are they in scope?

IN SCOPE



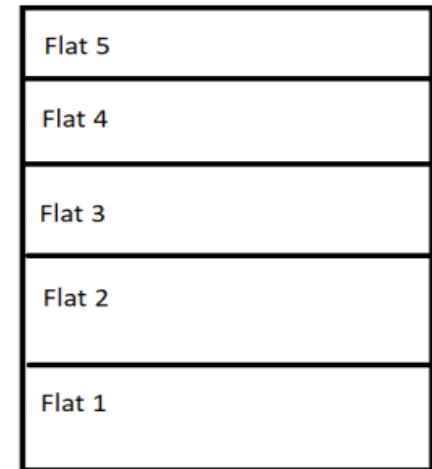
Up to 2 flats in block

IN SCOPE



Up to 2 flats in block above commercial premises

NOT IN SCOPE



Larger purpose built flat blocks with 3 or more flats

Implementation

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- Government paper suggested there would be a phased implementation with a 6 month grace period
- No reference to this in the Order
- Landlords will need to make application before 1 October 2018 when Order comes into force



Landlords who already have a licence under additional licensing

- These licences should be passported into mandatory licensing scheme automatically
- Licences granted under mandatory and additional licensing schemes are both HMO licences granted under Part 2 of the Housing Act 2004
- Same test for granting licence

Landlords who already have a licence under selective licensing

- Some smaller HMOs are licensed under local authority selective licensing schemes
- Selective licences are granted under Part 3 Housing Act 2004
- 2018 Order contains transitional provisions that state:
 - A licence issued under Part 3 has effect as if issued under Part 2 in cases where the HMO is:
 - Licensed under selective licensing before 1 October 2018
 - Is required to be licensed under mandatory licensing after this date

- Part 2 and Part 3 licensing schemes are different...
- For example, Part 2 licences require local authority to be satisfied that house is reasonably suitable for occupation by particular number of households or persons
- No such requirement when issuing a Part 3 selective licence
- Means some landlords will effectively have a HMO licence without satisfying test of whether property is reasonably suitable for multiple occupation



*National Minimum
Room Size*

Current position on bedroom size in HMOs

- Since the Housing Act 2004 was enacted there have been:
 - No mandatory licence conditions relating to room size
 - No prescribed standards relating to bedroom size
- Local authorities have their own recommended room size standards
- Existing space standards relating to overcrowding don't apply to HMO licensing – *Clark v Manchester CC*

Introducing National Minimum Room Size for HMOs

- Government announced that it would introduce measures to clarify that the minimum room size does apply to licensable HMOs
- Draft regulations have been published: The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences)(England) Regulations 2018
- Expected to come into force on 1 October 2018

Prescribed minimum size

Occupation	Room Size
One person aged over 10 years	Not less than 6.51 sqm
Two persons aged over 10 years	Not less than 10.22 sqm
One person aged under 10 years	Not less than 4.64 sqm



Prescribed minimum size

- Any room of less than 4.64 sqm cannot be used as sleeping accommodation
- Now uses floor area as the descriptor
 - Not useable floor area
- Any part of the room where height of ceiling is less than 1.5m is not to be taken into account in determining floor area
- Temporary visitors excluded

Mandatory licence condition

- Mandatory licence conditions inserted into all new HMO licences
- Licence will explicitly state maximum number of persons who may occupy each room as sleeping accommodation
- Landlord will be required to:
 - Comply with minimum room size standards
 - Not exceed the maximum number of occupants permitted to use each room
 - Notify LA of any room in HMO with a floor area of less than 4.64sqm

- Licence must also contain conditions requiring licence holder to rectify any breach within a specified period if:
 - Room size conditions have been breached
 - Licence holder has not knowingly permitted the breach; and
 - Local authority has notified licence holder of the breach
- Specified period is at discretion of local authority but can't be more than 18 months from date of notification
- Licence holder must not have caused or permitted the breach.

What licences will it apply to?

- Only applies to HMO licences under Part 2
- Does not apply to licences granted before 1 October 2018
- Will apply to all HMO licences granted after 1 October 2018 including renewals of existing licences
- But the regulations provide for a grace period



- Applies to first licence granted on or after 1 October 2018 including renewals
- At the time the licence is granted, if LA considers that licence-holder is not complying with room size condition
- LA must provide licence holder with notification specifying:
 - The condition or conditions; and
 - The period within which the licence holder is required to comply with the condition(s)
- Period must not be more than 18 months - to be determined by local authority

Correct test for suitability

- Test is whether a property is reasonably suitable for the proposed number of occupiers.
- Local authority must consider suitability of the property as whole
- Need for a holistic assessment has not changed
- The difference now is that there will be an absolute minimum prescribed by regulations below which a room cannot be used for sleeping accommodation.



*Waste Storage and
Disposal*

New mandatory condition

- Included in the same regulations as the new room size conditions – draft only
- Again applies only to England & licences granted or renewed on or after 1 October 2018
- HMO licence must include conditions requiring the licence holder to comply with any scheme which is provided by the local housing authority and which relates to the storage and disposal of household waste at the HMO pending collection
- Tenants still responsible for disposing of their waste – focus is on landlords providing adequate bins and storage facilities



*Minimum
Energy
Efficiency
Standards*

Robin Stewart

25 April 2018

- Came into force on 1 April 2018
- Applies to new ‘relevant tenancies’
- Domestic and non-domestic PRS affected
- 1 April 2020 applies to every domestic ‘relevant tenancy’
- Must not let an F or G rated property unless an exemption applies and has been registered
- Consultation on amending the Regulations




*Which tenancies
are covered?*

Which properties are affected?

- F and G rated properties
- Assured tenancies and ASTs
- Regulated tenancies (Rent Act 1977)
- Domestic agricultural tenancies
- Only where an EPC required





*When is an EPC
not required?*

EPC is required



An EPC is required:

- On sale letting or construction of a property
- For some modifications of properties

EPC required: bedsits and rooms in HMOs?

The view of BEIS is that:

- Individual rooms do not require an EPC
- The building as a whole might already have an EPC
- If the building has an EPC, MEES applies to the letting of non-self contained units.

When are EPCs not required?

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- Listed buildings
- Places of worship
- Temporary buildings
- Furnished holiday accommodation
- Transactions which do not qualify as a sale or letting

Periodic Tenancies

A statutory periodic tenancy:

- A new tenancy (Spencer v Taylor) so MEES applies
- One tenancy, not a series of back to back tenancies
- Not a transaction which would itself require an EPC
- Usually MEES applies, but there is an exemption available (for six months)

Contractual periodic tenancy

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Contractual Periodic tenancy:

- Not a new tenancy if follows a fixed terms by operation of contract
- One tenancy, not a series of back to back tenancies
- Not a new tenancy – but MEES will apply from 1 April 2020

Registering an Exemption

- <https://prsregister.beis.gov.uk>
- Landlord or Agent can create account and register exemption
- Information retained indefinitely
- Information shared with Local Authority and BEIS Statistical Unit and by third parties for research
- Exemptions and penalties are published:
 - the address of the exempt property,
 - the name of the landlord (where the landlord is not an individual),
 - the exemption category,
 - the energy performance certificate for the property,
 - the date on which the exemption was registered.

Registering an Exemption

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The screenshot shows the 'PRS exemptions register' page on the GOV.UK website. At the top, there is a black header with the GOV.UK logo and the text 'PRS exemptions register' along with links for 'Account details' and 'Log out'. Below the header is a blue banner with a 'BETA' label and a message: 'This is a new service - your feedback will help us to improve it.' The main heading is 'Your exemption registrations', followed by the text 'Your account holds all the exemptions that you have registered.' and a grey box containing the instruction: 'You should have all the information and evidence ready before you start to register a new exemption.' Below this, there are two columns: 'Current exemptions' and 'Expired exemptions', both showing a large '0'. A dropdown menu is open under 'View my exemptions', with 'Current exemptions' selected and highlighted in yellow. Below the dropdown, it says 'You do not have any current exemptions'. At the bottom of the page, there is a green button that says 'Register a new exemption'.

- Enforcement locally by EHOs and/or Trading Standards Officers.
- Penalties to be issued by local authorities:
 - a) Landlord let in breach for less than 3 months: up to £2,000
 - b) Landlord let in breach for 3 months or more: up to £4,000
 - c) Landlord registered false or misleading Exemption: up to £1,000
 - d) Landlord failed to comply with compliance notice: up to £5,000

Max fine of £5,000 per property and per breach of the Regulations.

Consultations and Activity on

- CMP for agents
- Redress schemes
- Agent regulation
- Tenant fee ban
- Fitness for human habitation bill



That's all Folks!
Any Question?