

Legal update — November 2016

## Residential private client HMO Reforms



**In furtherance of its commitment to raising standards in Houses of Multiple Occupation (HMOs), the Government has released a consultation paper (open until 13 December 2016) proposing changes during 2017 to increase the number of properties subject to mandatory licensing. The headline changes are outlined below.**

### Removal of the existing "three story rule"

The Government is proposing the removal of the existing "three storey" rule so that buildings which are occupied by five or more persons comprising two or more separate households (as defined in section 258 of the Housing Act 2004) will fall within the mandatory licensing regime regardless of the number of floors.

### Buildings Comprising Commercial or other Non-Residential Premises

The changes would extend the mandatory licensing regime to flats above and below business premises (regardless of the number of storeys) in the circumstances where the building:

Also comprises an HMO which is not a self-contained flat e.g. as bedsits or letting rooms (and regardless of whether the building is purpose built or converted); or

Is a converted building which includes one or more self-contained flats in multiple occupation; or

Is purpose built and includes one or two self-contained flats in multiple occupation.

The proposal changes do not apply where the flat:

- Is in a purpose built block comprising entirely of self-contained flats; or
- Is in a block which contains commercial premises but also comprises three or more purpose built flats.

In those cases, local authorities will retain their power to licence such flats under an 'additional licensing scheme'

if they consider that HMOs are being managed ineffectively.

It should be noted that each flat that is subject to mandatory licensing will require a separate license. Where a building comprises mixed accommodation (e.g. some bedsits with shared facilities and some self-contained flats) the building would require a licence and those flats in multiple occupations would require a separate licence. The Government is considering whether it is necessary to licence the common parts leading to the flats in multiple occupation. Assuming that the order is made on this basis, owners and funders of mixed use portfolios will need to check whether service charge provisions in existing leases capture landlord expenditure on HMO licencing compliance and (subject to statutory restrictions) provide for recovery in new leases.



Source: Fotolia

The consultation proposes that there will be a grace period of six months for landlords and others to familiarise themselves with the amended regime.

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### Minimum Room Size

It is proposed that HMO licences will include a mandatory condition about the size of rooms that can be occupied for sleeping; intended to ensure compliance with the Housing Act 1985's overcrowding standards. The prescribed standards are 6.52sq m for one person and 10.23sq m for two persons. The condition would exclude any floor space other than useable floor area of a room. Breach of the condition would constitute a breach of the licence and a criminal offence. On conviction, a landlord would be liable to an unlimited fine or a financial penalty of up to £30,000.

This mandatory condition would not be retrospectively applied in all HMO licences issued for applications received after the implementation of the amended regime. The consultation does not address the basis of measurement which will be used giving rise to concerns that approaches to measurement may be inconsistent. Will it, for example, follow the International Property Measurement Standards: Residential Buildings introduced in September 2016? Nor does it address the planning restrictions which landlords may face in ensuring that accommodation meets the minimum standards whilst not losing the number of HMO units.

### "Fit and Proper person" requirement

The Housing and Planning Act 2016 already provides that HMO licence applications must be accompanied by specified evidence as to the criminal record status of the landlord and any person who will manage the property. The Government has found that the approach of local authorities on obtaining this evidence is not consistent and is therefore proposing that application must be accompanied by a certificate from the Disclosure and Barring Service.

### Refuse Disposal

It is proposed that HMO licences will include a mandatory condition that the landlord provides adequate receptacles for the storage and disposal of normal household waste. The facilities must be suitable for the number of person or households permitted to occupy under the licence and must be stored in a suitable accessible place within the curtilage of the property. The consultation does not, however, address how landlords will deal with any planning requirements from local authorities or (where they hold under leases) how they will secure any additional rights in relation to the creation of this suitable accessible place.

The Government recognises in the consultation paper that these changes would have a cost and time implication for landlords but states that it is committed to the private rented sector, wanting to see it "thrive and offer quality well managed accommodation". Many smaller landlords may, however, see this as a further regulatory burden whilst purchasers and funders of

mixed use occupied buildings will have additional due diligence checks to carry out to ensure that they do not fall foul of the licensing regime.

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