



Ministry of Housing,
Communities &
Local Government

Private Rented Sector Enforcement


Knowledge Bank




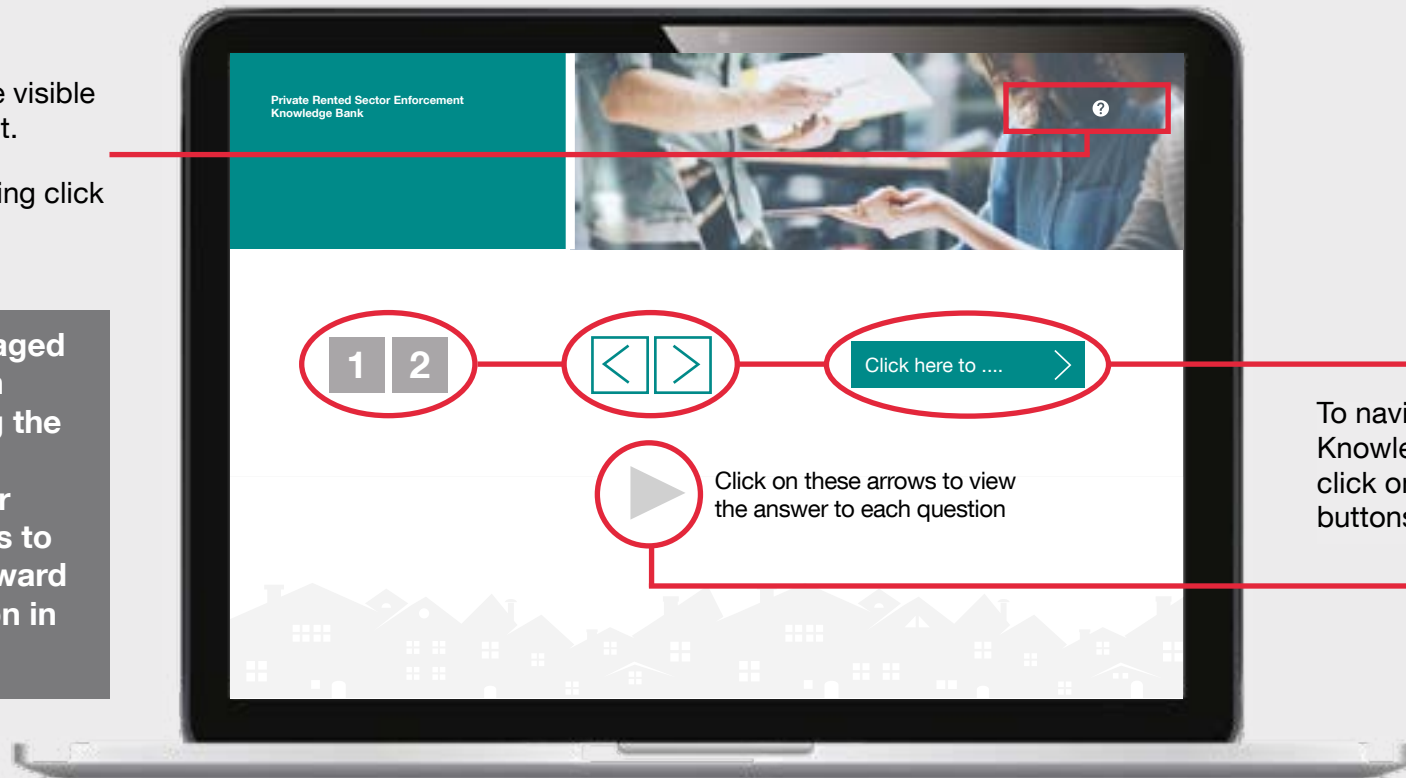
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To go back to the beginning click on the  button.

 You are encouraged to work through this document using the navigation buttons. Using your mouse or keyboard arrow keys to move forward/backward may cause disruption in the logical flow.



To navigate through the Knowledge Bank, please click on the interactive buttons shown here.

Welcome!



Thank you for accessing the **Knowledge Bank**.

Local authorities play a vital role in ensuring that tenants in the private rented sector have access to safe and good quality housing. This Knowledge Bank has been created to help them play this role as effectively as possible, providing them with a set of questions and corresponding answers to technical issues raised by local authority enforcement officers.



Welcome!



How was this document created?

The questions in this Knowledge Bank have come directly from local authority enforcement officers as well as The Ministry of Housing, Communities and Local Government (MHCLG), Chartered Institute of Housing (CIH), Chartered Institute of Environmental Health (CIEH) and Local Government Association (LGA). Enforcement officers from all local authorities across England were invited to submit their questions via email or in person during PRS Enforcement Workshops in February and March 2019. The MHCLG, LGA, CIH and CIEH were also invited to forward relevant questions for inclusion. All the answers in this document have been authored by subject matter experts, including representatives from MHCLG, LGA, CIH and CIEH.

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Introduction



You are currently accessing the **‘Knowledge Bank’**. It is part of a suite of documents which aim to support local authorities with PRS Enforcement.



Knowledge Bank

A learning resource which contains questions and corresponding answers raised by local authority enforcement officers in relation to PRS Enforcement.



Learning

Interactive learning which allows you to check your knowledge of enforcement powers and tools and helps you strengthen your approach to enforcement. To be published in due course.



Guidance

All you need to know about enforcement powers and tools with references to the latest legislation and links to specialist guidance.

The guidance can be found [here](#).



How can we help you today?

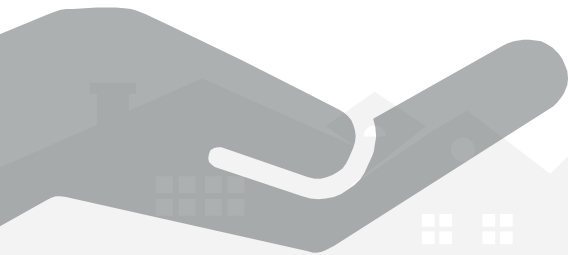


Please select the topic you'd like to explore

Environmental

Regulatory

Landlord and Tenant
behaviour



Environmental

Housing Health and Safety Rating System (HHSRS)



What approach should officers take when dwellings are found without adequate fire detection?

Can HHSRS related enforcement powers be used where there are hazards in a property that doesn't have the necessary planning permission to be used as a residential dwelling, but where the property is being used in this way?

Should enforcement against the risk of excess cold take into account the affordability of the heating?



Environmental Housing Health and Safety Rating System (HHSRS)



What approach should officers take when dwellings are found without adequate fire detection?

The HHSRS provides that threats from accidental uncontrolled fire and associated smoke may constitute a category 1 hazard. The failure to have detectors/smoke alarms properly designed, sited, maintained and regularly tested increases the risks arising from the occurrence of fire and the potential severity of harm. When conducting a hazard assessment, the relevant considerations include:

- i. likelihood of a fire starting;
- ii. the chances of its detection and its speed of spreading; and
- iii. ease and means of escape.

Where the inadequate fire detection equipment constitutes a category 1 hazard, the local authority must serve an improvement notice. The improvement notice will set out the steps the landlord needs to take to remedy the category 1 hazard. Local authorities should not hesitate in serving an improvement notice where, on assessment, the local authority is satisfied that the installed fire detection system by the landlord constitutes a category 1 hazard. Inadequate fire fighting equipment can also be a breach of the management regulations under Part 4 of the 2004 Act. Although the local authority has a duty to take enforcement action when a category 1 hazard is identified, an improvement notice is only one of the possible range of enforcement actions that may be appropriate (section 5 Housing Act 2004).

Environmental Housing Health and Safety Rating System (HHSRS)



▼ **Can HHSRS related enforcement powers be used where there are hazards in a property that doesn't have the necessary planning permission to be used as a residential dwelling, but where the property is being used in this way?**

The breach of planning permission does not prevent the local authority from enforcing its powers under the Housing 2004 Act or breaches of housing standards as the property is still a dwelling. Another example is the position of property guardians who occupy commercial premises to prevent the commercial premises being squatted. Part 1 of the Housing Act 2004 applies as the property guardians occupy the commercial premises as a dwelling.



Environmental Housing Health and Safety Rating System (HHSRS)



▼ **Should enforcement against the risk of excess cold take into account the affordability of the heating?**

If excess cold constitutes a category 1 hazard then the local authority must take enforcement action. Affordability will not be a defence to the enforcement action. The exception could arise where, for example, the property is below the Energy Performance Certificate (EPC) E rating and to which the high cost exemption applies. Under the Minimum Energy Efficiency Regulations if the cost of making even the cheapest recommended improvement would exceed £3,500 including VAT the domestic property can be let even though its EPC rating is below E and sub-standard. This could be a relevant factor when recommending improvements in respect of excess cold.



Environmental Non-dwellings



How can local authorities prohibit a non-dwelling, such as a garage or (unconverted) barn?



Environmental Non-dwellings



▼ How can local authorities prohibit a non-dwelling, such as a garage or unconverted barn?

Under the Housing Act 2004 prohibition orders apply to 'residential premises'. Section 1(4) of the 2004 Act defines residential premises as:

- a. a dwelling;
- b. an HMO;
- c. unoccupied HMO accommodation; and
- d. any common parts of a building containing one or more flats.

Section 1(5) of the 2004 Act defines a 'dwelling' as a building or part of a building occupied or intended to be occupied as a separate dwelling. Section 1(6) of the 2004 Act provides that a dwelling includes any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with the dwelling. This means that, whether the garage or barn is the outbuilding of a dwelling or is itself occupied as a dwelling, if category 1 or 2 hazards are found in the garage or barn an order prohibiting the use of the dwelling or the part comprising the garage or barn could be made.

Environmental Overcrowding



When room sizes fall short of the statutory minimum, the local authority must ensure that the landlord rectifies the situation within 18 months. In cases where tenant(s) have lived in a licensable HMO room or self-contained flat for a considerable period, the shortfall is relatively small (about 0.5m or less) and the tenant protests strongly against the local authority enforcing their removal from that room, what would be an acceptable approach to take?

When measuring room sizes and looking at minimum requirements can we take into account floor space for fitted wardrobes or an en-suite?



Environmental Overcrowding



▼ **When room sizes fall short of the statutory minimum, the local authority must ensure that the landlord rectifies the situation within 18 months. In cases where tenant(s) have lived in a licensable HMO room or self-contained flat for a considerable period, the shortfall is relatively small (about 0.5m or less) and the tenant protests strongly against the local authority enforcing their removal from that room, what would be an acceptable approach to take?**

The rogue landlord enforcement guidance for local authorities sets out the routes to enforcement, namely that they should be:

- i. proportionate and escalating;
- ii. transparent;
- iii. evidence based; and
- iv. repeat offenders.

The approach should be one that is reasonable and proportionate. The guidance states that three things should inform the approach, whether the response required should be the:

- i. most rapid;
- ii. most effective; or
- iii. result in the most deterrent value.

If the shortfall is small then the local authority may consider an approach that is one of engagement and communication with both landlord and tenant in order to find ways of alleviating the overcrowding.

Environmental Overcrowding



▼ **When measuring room sizes and looking at minimum requirements can we take into account floor space for fitted wardrobes or an en-suite?**

The only stipulation made in the Regulations regarding calculation of room size is that any area of the room in which the ceiling height is less than 1.5m cannot be counted towards the minimum room size. The mandatory room size conditions are the statutory minimum and are not intended to be the optimal room size. Local housing authorities will continue to have discretion to set their own higher standards within licence conditions, but must not set lower standards.

Please refer to the guidance for further information on this section.





Regulatory Airbnb

Can Part 1 of the Housing Act 2004 be applied if a complaint is received about an Airbnb nightly let?

What legislation applies to Airbnb and who enforces it?



Regulatory

Airbnb



Can Part 1 of the Housing Act 2004 be applied if a complaint is received about an Airbnb nightly let?

Part 1 of the 2004 Act applies to all residential premises and includes:

- i. a dwelling;
- ii. HMO;
- iii. unoccupied HMO accommodation; and
- iv. any common parts of a building containing one or more flats.

An Airbnb nightly let constitutes a dwelling to which Part 1 of the 2004 Act applies. As long as the premises are occupied as a dwelling or as an HMO it does not matter that the occupation is a nightly let or long term accommodation, Part 1 will apply.

Regulatory

Airbnb



▼ What legislation applies to Airbnb and who enforces it?

A number of pieces of legislation apply with regards to Airbnb:

- i. Section 44 of the Deregulation Act 2015 amends the Greater London Council (General Powers) Act 1973. Where residential accommodation is situated in Greater London and is provided as temporary sleeping accommodation, such as an Airbnb, the number of nights in the same calendar year exceeds ninety and the person providing the sleeping accommodation is liable to pay council tax, constitutes a material change of use for which planning permission is required.
- ii. If Airbnb accommodation meets the test for an HMO then failure to license the HMO is enforceable by the local authority.
- iii. Where the management regulations apply the local authority can enforce breaches of the management regulations under the 2004 Act.
- iv. Where the accommodation does not meet housing standards under the HHSRS then the environmental department of the local authority can exercise any of its powers under Part 1 of the 2004 Act.
- v. If as a result of the numbers of persons occupying the Airbnb the property is overcrowded then the local authority can enforce against the owner under the Housing Act 1985 and the Housing Act 2004.

Regulatory

Houses in Multiple Occupation (HMO)



When does a property require an HMO licence?

Where hotel staff are sharing rooms as accommodation, does the Housing Act allow this to be defined as a licensable HMO due to the number of staff and amenities present?

Where the room size is adequate and the staff agree to share the accommodation, does this impact how room sharing is viewed?

At what point do you serve an HMO declaration?

If a local authority becomes aware of an unlicensed HMO, what action can they take?

On what date will an HMO be deemed to be licensed?

What level of proof is required to determine that a property is an HMO?

What role should building control play in dealing with section 257 HMOs?

What information must be recorded on the HMO register?

Can the address for the HMO register be a different address from that on the licence application?

Is a building categorised as a section 257 HMO if the only area of non-compliance is that it lacks a completion certificate?

Regulatory

Houses in Multiple Occupation (HMO)



Is confirmation from a building surveyor that a property is not compliant with relevant building regulations required to prove it is a section 257 HMO?

How can a building be identified and proven as a section 257 HMO if the age of conversion is unknown?

Do properties require an HMO licence if they are occupied by property guardians?

Does a self-contained flat with five or more occupants, two or more households, situated in a purpose built block comprising of no more than two self-contained flats (whether or not there is a commercial premises in the block) classify as a licensable HMO?

Does a self-contained flat with five or more occupants, two or more households, situated within a converted block (but not a section 257 conversion since it meets building regulations and fails occupancy criteria to be a section 257), classify as a licensable HMO, regardless of the number of flats in the block?

Would the following property classify as a licensable HMO?

A self-contained flat with less than five occupants, situated in a purpose-built block comprising of no more than two self-contained flats (whether or not there is a commercial premises in the block), when the total number of occupants between the two flats is five or more (and two or more households).

Would the following classify as a licensable HMO?

A house that has been converted into self-contained flats and is deemed to be a section 257 HMO.

Would the following classify as a licensable HMO?

A self-contained flat with five or more occupants, two or more households, situated within a section 257 converted block of flats (whether or not there is a commercial premises within the building, and regardless of the number of flats in the block).

If a local authority suspects short-term nightly letting in a licensable HMO, are they obliged to serve an HMO declaration before taking any measures as it does not meet the sole use definition?

Regulatory

Houses in Multiple Occupation (HMO)



What is a purpose-built block of flats?

Is a property which used to be a family house now converted into four flats purpose-built? Is an office block which is now converted into flats purpose-built?

When and how do exemptions under schedule 14 of the Housing Act 2004 apply:

- If the developer is registered with the code are all of its properties exempt?
- If the organisation managing the property is different to the developer. Does this matter?

And:

- Does each individual building have to be registered?
- How do we check what is exempt?

Regulatory

Houses in Multiple Occupation (HMO)



▼ When does a property require an HMO licence?

An HMO licence is only required where the statutory definition of an HMO is satisfied. There must be five or more persons who together do not form a single household. Persons are only regarded as forming a single household if they are all members of the same family.



Regulatory

Houses in Multiple Occupation (HMO)



▼ **Where hotel staff are sharing rooms as accommodation, does the Housing Act allow this to be defined as a licensable HMO due to the number of staff and amenities present?**

Where the room size is adequate and the staff agree to share the accommodation, does this impact how room sharing is viewed?

Accommodation for employees is included within the definition of an HMO and to which the 2004 Act applies. “The relevant consideration is the number of staff occupying the accommodation and whether the accommodation is occupied by the hotel staff as their only or main residence or if the hotel staff are migrant or seasonal workers whose occupation of rooms is made partly in consideration of his employment within the United Kingdom” (see reg 5(1)(a) of SI 2006/373). The presence of amenities is a consideration if the staff sharing comprise two or more households sharing one or more basic amenities.

Although the room satisfies the space standard it will contravene the room standard if the staff sharing a room are two people of the opposite sex sleeping in the same room. The exception to this rule are cohabiting or married couples or children under the age of ten.

Regulatory

Houses in Multiple Occupation (HMO)



▼ At what point do you serve an HMO declaration?

An HMO declaration may be served where the local authority is satisfied that the significant use of a property is as a person's only or main residence but the accommodation is not used solely for living accommodation. For example, in *Herefordshire Council v Rohde* the property was a 1960s semi-detached house. There was a lack of evidence of anyone living in the property. The local authority made a declaration of HMO on the basis of evidence from an inspection by two police officers and two environmental health officers that there were at least three bedrooms, each with a separate lock, which were occupied by three men. The local authority did not consider that the HMO declaration would be valid if the significant use test was met, their decision was based upon a spot check inspection. The test for an HMO declaration is significant use and not sole use and under section 260 there is a presumption that the significant use test is met (it would be for the HMO owner to prove that it was not).

Regulatory

Houses in Multiple Occupation (HMO)



▼ **If a local authority becomes aware of an unlicensed HMO, what action can they take?**

There are numerous enforcement powers available to local authorities in respect of HMOs that require a licence. These are set out at section 3.7 of the rogue landlord enforcement guidance for local authorities (April 2019).



Regulatory

Houses in Multiple Occupation (HMO)



▼ On what date will an HMO be deemed to be licensed?

The licence becomes effective from the date that it is granted or the date specified in the licence. Section 68 of the Housing Act 2004 provides that:

1. A licence may not relate to more than one HMO.
2. A licence may be granted before the time when it is required by virtue of this Part but, if so, the licence cannot come into force until that time.
3. A licence:
 - a. comes into force at the time that is specified in or determined under the licence for this purpose, and
 - b. unless previously terminated by subsection (7) or revoked under [section 70 or 70A], continues in force for the period that is so specified or determined.
4. That period must not end more than 5 years after:
 - a. the date on which the licence was granted, or
 - b. if the licence was granted as mentioned in subsection (2), the date when the licence comes into force.
5. Subsection (3)(b) applies even if, at any time during that period, the HMO concerned subsequently ceases to be one to which this Part applies.
6. A licence may not be transferred to another person.
7. If the holder of the licence dies while the licence is in force, the licence ceases to be in force upon their death.

Regulatory Houses in Multiple Occupation (HMO)



▼ What level of proof is required to determine that a property is an HMO?

The level of proof required depends on the particular facts. The standard of proof would be on the balance of probabilities. If it is unclear as to how many people are living in a property, there are a number of different ways of ascertaining this. These include: the electoral register; an inspection of the property; and, the effective use of statutory powers such as the Local Government (Miscellaneous Provisions) Act 1976 to obtain particulars of persons interested in land.



Regulatory

Houses in Multiple Occupation (HMO)



▼ What role should building control play in dealing with section 257 HMOs?

Building control inspectors can assist in determining whether building work undertaken in connection with the conversion presently complies with the appropriate building standards.



Regulatory

Houses in Multiple Occupation (HMO)



What information must be recorded on the HMO register?

Regulation 11 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006/373 (“the Regulations”) provides that the following information must be included on the HMO register:

- a. the name and address of the licence holder;
- b. the name and address of the person managing the licensed HMO or house;
- c. the address of the licensed HMO or house;
- d. a short description of the licensed HMO or house;
- e. a summary of the conditions of the licence;
- f. the commencement date and duration of the licence;
- g. summary information of any matter concerning the licensing of the HMO or house that has been referred to [the First-tier Tribunal] or to the [Upper Tribunal]; and
- h. summary information of any decision of the tribunals referred to in (g) above that relate to the licensed HMO or house, together with the reference number allocated to the case by the tribunal.

In addition under section 232(1)(a) of the Act in respect of a licence granted under Part 2 of the Act:

- a. the number of storeys comprising the licensed HMO;
- b. the number of rooms in the licensed HMO providing:
 - i. sleeping accommodation; and
 - ii. living accommodation;
- c. in the case of a licensed HMO consisting of flats:
 - i. the number of flats that are self-contained; and
 - ii. the number of flats that are not self-contained;
- d. a description of shared amenities including the numbers of each amenity; and
- e. the maximum number of persons or households permitted to occupy the licensed HMO under the conditions of the licence.

(b), (c)(ii), (d) and (e) do not apply to s.257 HMOs.

Regulatory Houses in Multiple Occupation (HMO)



Regulation 7(2)(b) of the Regulations provide that an application which is not a renewal application must contain the information mentioned in paragraph 2(1)(a) to (g) of Schedule 2 of the Regulations. The information mentioned includes:

- a. the name, address, telephone number and e-mail address of:
 - i. the applicant;
 - ii. the proposed licence holder;
 - iii. the person managing the HMO or house;
 - iv. the person having control of the HMO or house; and
 - v. any person who has agreed to be bound by a condition contained in the licence;
- b. the address of the HMO or house for which the application is being made;
- c. the approximate age of the original construction of the HMO or house (using the categories before 1919, 1919–45, 1945–64, 1965–80 and after 1980);
- d. the type of HMO or house for which the application is being made, by reference to one of the following categories:
 - i. house in single occupation;
 - ii. house in multiple occupation;
 - iii. flat in single occupation;
 - iv. flat in multiple occupation;
 - v. a house converted into and comprising only of self-contained flats;
 - vi. a purpose-built block of flats; or
 - vii. other;
- e. details of other HMOs or houses that are licensed under Part 2 or 3 of the Act in respect of which the proposed licence holder is the licence holder, whether in the area of the local housing authority to which the application is made or in the area of any other local housing authority;
- f. the following information about the HMO or house for which the application is being made [except in respect of an application in respect of a section 257 HMO]:
 - i. the number of storeys comprising the HMO or house and the levels on which those storeys are situated;
 - ii. the number of separate letting units;
 - iii. the number of habitable rooms (excluding kitchens);
 - iv. the number of bathrooms and shower rooms;
 - v. the number of toilets and wash basins;
 - vi. the number of kitchens;
 - vii. the number of sinks;
 - viii. the number of households occupying the HMO or house;
 - ix. the number of people occupying the HMO or house;
 - x. details of fire precautions equipment, including the number and location of smoke alarms;
 - xi. details of fire escape routes and other fire safety [information] provided to occupiers;
 - xii. a declaration that the furniture in the HMO or house that is provided under the terms of any tenancy or licence meets any safety requirements contained in any enactment; and
 - xiii. a declaration that any gas appliances in the HMO or house meet any safety requirements contained in any enactment [;]

Regulatory Houses in Multiple Occupation (HMO)



- g. where the application is being made in respect of a section 257 HMO, the following information:
 - i. the number of storeys comprising the HMO and the levels on which those storeys are situated;
 - ii. the number of self-contained-flats and, of those, the number:
 - aa. that the applicant believes to be subject to a lease of over 21 years; and
 - bb. over which he cannot reasonably be able to exercise control;
 - iii. in relation to each self-contained flat that is not owner-occupied and which is under the control of or being managed by the proposed licence holder, and in relation to the common parts of the HMO:
 - aa. details of fire precautions equipment, including the number and location of smoke alarms;
 - bb. details of fire escape routes and other fire safety information provided to occupiers; and
 - cc. a declaration that the furniture in the HMO or house that is provided under the terms of any tenancy or licence meets any safety requirements contained in any enactment; and
 - iv. a declaration that any gas appliances in any parts of the HMO over which the proposed licence holder can reasonably be expected to exercise control meet any safety requirements contained in any enactment.
- It is a statutory requirement that the applicant provide their name, address, telephone number and e-mail address for the application, and that the name and address of the licence holder be recorded on the HMO register.

Regulatory

Houses in Multiple Occupation (HMO)



▼ **Can the address for the HMO register be a different address from that on the licence application?**

There is no requirement that the applicant's address be shown on the register. What is prescribed is the address of the licence holder and the person managing the licenced HMO.



Regulatory

Houses in Multiple Occupation (HMO)



▼ **Is a building categorised as a section 257 HMO if the only area of non-compliance is that it lacks a completion certificate?**

The absence of the completion certificate may be evidence of non-compliance with the appropriate building standards, but not conclusive evidence. The local authority should inspect the building to confirm whether the section 257 HMO test is met and not simply rely on the lack of a completion certificate.



Regulatory Houses in Multiple Occupation (HMO)



▼ **Is confirmation from a building surveyor that a property is not compliant with relevant building regulations required to prove it is a section 257 HMO?**

It is not a statutory requirement that non-compliance be confirmed by a Building Surveyor. A confirmation by a Building Surveyor would, of course, be good evidence of non-compliance with building regulations. If the building was converted prior to 1 June 1992 it is likely that it does not comply with the Building Regulations 1991. There are, however, other ways of confirming whether there has been compliance with building regulations such as requesting a completion certificate from the landlord. Depending on who carried out the works, if it was a local authority then the owner could request the local authority to provide a copy of the completion certificate.



Regulatory

Houses in Multiple Occupation (HMO)



▼ **How can a building be identified and proven as a section 257 HMO if the age of conversion is unknown?**

If the age of conversion is unknown, consideration must be given to whether at the present time the building works undertaken in connection with the conversion complies with the Building Regulations 1991, as well as regulations that apply if the conversion was after 1 June 1991. If the building was converted prior to 1 June 1992 it is likely that it does not comply with the Building Regulations 1991.



Regulatory

Houses in Multiple Occupation (HMO)



▼ **Do properties require an HMO licence if they are occupied by property guardians?**

Yes, as long as the property is occupied by the property guardians as a dwelling. The property owner can be prosecuted for failing to license an HMO and for breaches of management regulations.



Regulatory

Houses in Multiple Occupation (HMO)



▼ **Does a self-contained flat with five or more occupants, two or more households, situated in a purpose-built block comprising of no more than two self-contained flats (whether or not there is a commercial premises in the block) classify as a licensable HMO?**

Yes. The self-contained flat test relates to HMOs which comprise a self-contained, purpose-built flat situated in a block of no more than two self-contained flats (whether or not the block also contains non-residential premises). The flat would also need to satisfy section 254(2)(f) – that two or more of the households who occupy the living accommodation share one or more basic amenities, or the living accommodation is lacking one or more basic amenities.



Regulatory

Houses in Multiple Occupation (HMO)



▼ **Does a self-contained flat with five or more occupants, two or more households, situated within a converted block (but not a section 257 conversion since it meets building regulations and fails occupancy criteria to be a section 257), classify as a licensable HMO, regardless of the number of flats in the block?**

This depends on the property configuration. This would be licensable (under the converted buildings test) as long as the converted building contains at least one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not the converted building also contained self-contained flats).



Regulatory

Houses in Multiple Occupation (HMO)



▼ **Would the following property classify as a licensable HMO?**

A self-contained flat with less than five occupants, situated in a purpose-built block comprising of no more than two self-contained flats (whether or not there is a commercial premises in the block), when the total number of occupants between the two flats is five or more (and two or more households).

No. The self-contained flat in a purpose-built block with less than five occupants would not be licensable. The self-contained flat test requires each HMO to be occupied by five or more persons living in two or more separate households – it does not provide for aggregate occupants of self-contained flats in the same block. In this example the second flat in the block, provided it has more than five occupants living in two separate households, would be subject to mandatory licensing.

Regulatory Houses in Multiple Occupation (HMO)



▼ Would the following classify as a licensable HMO?

*A house that has been converted into
self-contained flats and is deemed to be a
section 257 HMO.*

No. Section 257 HMOs are outside the scope of mandatory licensing. These are buildings that have been converted into and consist of self-contained flats. Building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply, and less than two-thirds of the self-contained flats are owner-occupied.



Regulatory

Houses in Multiple Occupation (HMO)



▼ Would the following classify as a licensable HMO?

A self-contained flat with five or more occupants, two or more households, situated within a section 257 converted block of flats (whether or not there is a commercial premises within the building, and regardless of the number of flats in the block).

Whilst a block of section 257 HMOs do not require a mandatory licence as a whole, individual flats within it may require individual licences – if they fully satisfy the self-contained flat test. Our guidance clearly defines the self-contained flat test, reading “HMOs that meet the self-contained flat test under section 254(3) of the Act but are not purpose-built flats situated in a block comprising three or more self-contained flats”. We will look at changing Page 10 of the Guidance to amend the wording of ‘standard’ test to ‘self-contained’ test, to avoid any confusion.

Regulatory

Houses in Multiple Occupation (HMO)



▼ **If a local authority suspects short-term nightly letting in a licensable HMO, are they obliged to serve an HMO declaration before taking any measures as it does not meet the sole use definition?**

The local authority can declare the property to be an HMO if the local authority is satisfied that the property has “significant use” as an HMO. The local authority will need to gather evidence to demonstrate that the property is in use as an HMO before making an HMO declaration under section 255 of the Housing Act 2004. However, there is a presumption that the significant use test is met unless proven otherwise.

The declaration can be appealed to the First-Tier Tribunal and the appeal operates by way of a re-hearing of the decision.



Regulatory

Houses in Multiple Occupation (HMO)



▼ What is a purpose-built block of flats?

The addition of the word ‘originally’ enhances the explanation in our guidance of purpose-built: “Purpose-built is not defined in the regulations and therefore takes its ordinary and natural meaning, i.e. the building was originally designed and constructed for a particular use.”

You should note that a purpose-built flat situated in a block comprising three or more self-contained flats is not subject to mandatory licensing even if that flat is in multiple occupation.



Regulatory

Houses in Multiple Occupation (HMO)



- ▼ **Is a property which used to be a family house now converted into four flats purpose-built?**
- Is an office block which is now converted into flats purpose-built?**

No in both cases. These would be converted buildings where living accommodation has been created since the building (or part) was constructed. The ‘converted building’ HMO test in section 254(4) of the Housing Act 2004 would apply. A building meets the converted building test if it is a building that has been converted and in which one or more of the units of living accommodation is not a self-contained flat.

It does not matter whether the building also holds self-contained flats. Therefore, a house converted into bedsits may meet the converted building test, but so could a family house, where only a part of it has been converted to provide separate living accommodation.

NB: “self-contained flat” means a separate set of premises (whether or not on the same floor):

1. which forms part of a building;
2. either the whole or a material part of which lies above or below some other part of the building; and
3. in which all three basic amenities are available for the exclusive use of its occupants.



Regulatory

Houses in Multiple Occupation (HMO)



When and how do exemptions under schedule 14 of the Housing Act 2004 apply:

- **If the developer is registered with the code are all of its properties exempt?**
- **If the organisation managing the property is different to the developer. Does this matter?**

And;

- **Does each individual building have to be registered?**
- **How do we check what is exempt?**

The exemption under paragraph 4 of Schedule 14 to the Housing Act 2004 applies to:

- specified educational establishments – the power to specify is under section 254(5) and paragraph 4 of Schedule 14;
- which are occupied by persons for the purpose of undertaking a full time course at that educational establishment; and
- where the buildings are managed and controlled by that educational establishment.

The specified educational establishments are listed in Schedule 1 of the Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2016/420.

Only properties that comply with the requirements of paragraph 4 of Schedule 14 are exempt. The fact that the developer is registered with the code is not a basis for exemption. The property must be managed and controlled by the specified educational establishment and not the developer. Adoption of the code by a developer is voluntary. In order to check whether the property is exempt you would need to consider:

- who is the building managed or controlled by;
- is the management or control by a specified educational establishment;
- who is occupying the property;
- are the occupants undertaking a full time course at the educational establishment that manages and controls the property.

The ANUK/Unipol Code of Standards for Larger Residential Developments for student accommodation managed and controlled by educational establishments sets out at Appendix 1 12 questions to ask in order to determine whether the property is managed and controlled by the educational establishment. The Code is available online.

Regulatory Legislation



When a landlord evicts tenants from an unlicensed house, what legislation do you use to prosecute the landlord?

Are tenants on Assured Shorthold Tenancies (ASTs) able to apply for compensation under the Land Compensation Act 1925 in cases where their home is prohibited through the Housing Act 2004 section 20 or section 21?

What is “case stated” and how can it be used when taking legal action?

Under what circumstances are home loss payments payable?



Regulatory Legislation



▼ When a landlord evicts tenants from an unlicensed house, what legislation do you use to prosecute the landlord?

The Protection from Eviction Act 1977 (“the Act”) can be used to act against landlords who evict their tenants illegally, irrespective of whether the property is licensed or unlicensed. It is an offence to deprive a residential occupier of their right to the premises. As long as the occupier occupies the house as a dwelling it does not matter that the house is unlicensed. A landlord will have unlawfully deprived a tenant of their occupation of the unlicensed house if the landlord did not have the legal right to recover the property from the tenant without a court order, unless it was an excluded tenancy or licence.

On a successful prosecution the landlord can be imprisoned for a term not exceeding six months or subject to an unlimited fine, or both, on summary conviction. On conviction on indictment, the landlord may receive a fine or imprisonment for a term not exceeding two years, or both. The guidance states: *‘My landlord wants me out’ Protection against harassment and illegal eviction (2011)* provides local authorities and tenants with useful information on illegal evictions. Legal departments of local authorities should consider prosecution where the landlord has unlawfully deprived the tenant of his occupation of the property.

Regulatory Legislation



▼ **Are tenants on Assured Shorthold Tenancies (ASTs) able to apply for compensation under the Land Compensation Act 1925 in cases where their home is prohibited through the Housing Act 2004 section 20 or section 21?**

The relevant legislation is the Land Compensation Act 1973. A home loss payment is payable where a person is displaced from a dwelling in consequence of the making of a prohibition order under the Housing Act 2004. Tenants on ASTs can apply as they have an interest in land as a tenant. It would not apply to some licensees, lodgers and squatters. To qualify, the tenant of an AST must have been in occupation of the dwelling as their only or main residence throughout a one-year period ending on the date of displacement. The displacement must be of a permanent nature.



Regulatory Legislation



▼ What is “case stated” and how can it be used when taking legal action?

An appeal by way of case stated is presented to the superior court on the basis of a set of facts specified by the inferior court. The superior court is then asked to make a decision on the application of the law to those facts. For example, a Magistrates’ Court may appeal to the High Court by way of case stated, the High Court will then state its opinion on the question raised by the Magistrates Court.

The ‘case’ is a document that sets out the question, the decision complained of, and the relevant background facts. For example, an appeal against an abatement notice to the Magistrates’ Court could result in an application to the High Court for the court to state its opinion on questions of law or fact arising from the service of the abatement notice.

Regulatory Legislation



Under what circumstances are home loss payments payable?

The relevant legislation is the Land Compensation Act 1973 (as amended by the Housing Act 2004). The circumstances under which a home loss payment is payable is where a person is displaced from a dwelling on any land as a result of:

- i. compulsory purchase;
- ii. making of a prohibition order under section 20 or section 21 of the Housing Act 2004 or a demolition order relating to category 1 or 2 hazard under section 265 of the Housing Act 1985;
- iii. redevelopment of land or improvement of any dwelling on land previously acquired or appropriated by an authority possessing compulsory purchase powers and currently held by such an authority;
- iv. redevelopment or improvement by a registered social landlord; and
- v. making of an order for possession where the landlord, in case of a secure tenancy, intends to demolish or redevelop the dwelling or carry out extensive work, or the area is to be sold and redeveloped.

To qualify for a home loss payment the applicant must have been in occupation of the dwelling as their only or main residence throughout a one-year period ending on the date of displacement, and the occupation must be as an interest or right in the property. Payment must be made within three months following the date of the claim or for present purposes on the date of displacement. Claims must be made within six years of the date of displacement.

Regulatory Licensing



In a selective licensing area, if a landlord has been prosecuted and convicted for failing to license their property but, fails to apply for a licence after the prosecution, can they be prosecuted again or issued with a financial penalty for the same property?

What checks can be done to demonstrate that a property is rented out and not owner-occupied where landlords attempt to demonstrate they are exempt from licensing by claiming that they are owner-occupiers?

Where a house is split into two flats but is registered as one house on Land Registry, does this require two selective licences?

Who should the mandatory licence holder be where the owners lease flats in shared blocks to companies, who subsequently rent them to students?

If someone has applied for and been issued the wrong licence e.g. has been issued with a Selective but should actually have applied for an Additional licence, do we now passport them across to the new Mandatory scheme when the Selective licence expires or make them apply for an Additional or a Mandatory licence?

Regulatory Licensing



▼ **In a selective licensing area, if a landlord has been prosecuted and convicted for failing to license their property but, fails to apply for a licence after the prosecution, can they be prosecuted again or issued with a financial penalty for the same property?**

Since this is a case of repeat offending by a landlord, the authority has cause to take further action. The rogue landlord enforcement guidance sets out the new powers available to local authorities for dealing with repeat offenders. These include:

- i. civil penalties;
- ii. banning orders;
- iii. rent repayment orders; and
- iv. management orders.

Regulatory Licensing



▼ **What checks can be done to demonstrate that a property is rented out and not owner-occupied where landlords attempt to demonstrate they are exempt from licensing by claiming that they are owner-occupiers?**

There are several ways to check whether the owner of the property is an owner-occupier. These include:

- i. making enquiries of those residing at the property;
- ii. requiring the owner to provide documents in addition to the Council Tax and Internet, these could include bank statements, other utility bills etc.;
- iii. carrying out a credit check with credit reference agencies;
- iv. requiring documents to be produced under Part 7 of the Housing Act 2004;
- v. seeking particulars of the owner under Part 1 of the Local Government (Miscellaneous Provisions) Act 1976; and making enquiries with the Land Registry.

Regulatory Licensing



▼ **Where a house is split into two flats but is registered as one house on Land Registry, does this require two selective licences?**

As the property is converted into two self-contained residential units, each unit is capable of being a separate HMO and would each require a separate licence.



Regulatory Licensing



Who should the mandatory licence holder be where the owners lease flats in shared blocks to companies, who subsequently rent them to students?

Section 64(2) and 66 of the Act stipulate who the most appropriate licence holder should be. This reads as follows:

2. If the authority are satisfied as to the matters mentioned in subsection (3), they may grant a licence either:
 - a. to the applicant, or
 - b. to some other person, if both he and the applicant agree.
3. The matters are:
 - a. that the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67; (aa) that no banning order under section 16 of the Housing and Planning Act 2016 is in force against a person who:
 - i. owns an estate or interest in the house or part of it, and
 - ii. is a lessor or licensor of the house or part;
 - b. that the proposed licence holder:
 - i. is a fit and proper person to be the licence holder, and

- ii. is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;
 - c. that the proposed manager of the house is either:
 - i. the person having control of the house, or
 - ii. a person who is an agent or employee of the person having control of the house;
 - d. that the proposed manager of the house is a fit and proper person to be the manager of the house; and
 - e. that the proposed management arrangements for the house are otherwise satisfactory.

Section 66 of the Act then provides a comprehensive definition of how to determine if a proposed licence holder is a 'fit and proper person' etc.

It would therefore be for each local authority to assess the nature and structure of their HMO letting and management and determine under sections 64 and 66 who the most appropriate licence holder should be.

Regulatory Licensing



▼ **If someone has applied for and been issued the wrong licence e.g. has been issued with a Selective but should actually have applied for an Additional licence, do we now passport them across to the new Mandatory scheme when the Selective licence expires or make them apply for an Additional or a Mandatory licence?**

We have explained the general passporting arrangements in the Guidance as follows:

Properties currently licenced under Part 2 (mandatory or additional licensing):

- The existing licence is valid and its conditions will apply until the date the licence expires.
- The extended mandatory licensing conditions (minimum sleeping room sizes and waste disposal requirements) will apply from the renewal of the existing licence.

Properties currently licensed under a selective licensing scheme that will be subject to mandatory licensing from October 2018:

- Existing licence is passported and has effect as if issued under Part 2. Its current Part 3 conditions will apply until the date the licence expires.
- On renewal of the licence the property will now be subject to conditions under Part 2 mandatory licensing.
- The extended mandatory licensing conditions (minimum sleeping room sizes and waste disposal requirements) will also apply from the renewal of the existing licence.

If at the time the licence is renewed and the licence holder is not compliant with a condition related to sleeping room size, the local housing authority must provide notification specifying the condition or conditions and a period of up to 18 months within which the licence holder must become compliant.

However, under section 55(5) every local housing authority has the following general duties:

- a. to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for in Part 2 (HMO Licensing – mandatory and additional);
- b. to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time; and
- c. to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions that ought to be exercised by them in relation to the premises in respect of which such applications are made.

Local authorities need to ensure they are complying with these licensing duties when determining how to treat licence applications. It is not for the Department to comment on specific cases.

Regulatory Notices



Is it possible to waive the requirement to provide 24 hours' notice to inspect a property in cases where the local authority believes that urgent action is required and an emergency notice is subsequently served?

Should local authorities conduct an interview under caution before sending a notice of intention to issue a financial penalty?

Where it is not possible to provide 24 hours' notice of entry under section 239, how should an officer respond to urgent risks in a property?

Does an officer require written authorisation to enter each specific property, or can a local authority-wide written authorisation be provided for each officer?

Should managing agents or letting agents and landlords be prosecuted for failing to comply with notices?



Regulatory Notices



Is it possible to waive the requirement to provide 24 hours' notice to inspect a property in cases where the local authority believes that urgent action is required and an emergency notice is subsequently served?

Under section 239(7) of the Housing Act 2004 24 hours' notice is not required in cases where the local authority considers that premises need to be entered for the purpose of ascertaining whether an offence has been committed. The offences are:

- i. operating an unlicensed HMO which is required to be licensed under the mandatory licensing scheme (section 72(1))
- ii. exceeding the specified occupancy limit in a licensed HMO (section 72(2)); (iii) failing to comply with a licence condition in a licensed HMO (section 72(3));
- iii. operating an unlicensed property which is required to be licensed under a selective licensing scheme (section 95(1));
- iv. failing to comply with a licence condition in a property licensed under a selective licensing scheme (section 95(2)); or
- v. failing to comply with the HMO Management Regulations (section 234(3)).

If the reason for gaining access is to serve an improvement notice or a hazard warning notice then the local authority must give 24 hours notice. The guidance currently states: "If entry is refused or immediate entry is required because of an imminent risk to health and safety, officers should obtain a warrant from the Justice of the Peace." It is for local authorities to decide whether a warrant should be obtained.

Regulatory Notices



▼ **Should local authorities conduct an interview under caution before sending a notice of intention to issue a financial penalty?**

No. Under section 23 of the Housing and Planning Act 2016, the standard of proof for imposing a financial penalty is the criminal standard, namely ‘beyond reasonable doubt’. There is no requirement under the legislation to conduct an interview under caution before serving a notice of intention. An interview under caution would be required if the local authority were intending to prosecute as opposed to imposing a financial penalty. Section 21(2) of the Housing and Planning Act 2016 states that: “If a financial penalty under section 23 has been imposed in respect of the breach, the person may not be convicted of an offence under this section”. If the local authority do not interview under caution it may not then be possible to prosecute. Unless the offender is interviewed under caution, the local authority’s enforcement options are narrowed before they have necessarily got all the information they would need to determine the most appropriate course of action.



Regulatory Notices



▼ **Where it is not possible to provide 24 hours' notice of entry under section 239, how should an officer respond to urgent risks in a property?**

Where the officer is invited into the premises the inspection would be neither illegal nor unlawful. There are conflicting First-tier Tribunal (FTT) decisions on whether such an inspection could form the basis of enforcement action. In *Williams v Monmouthshire County Council* the FTT held that it couldn't. In *Cheltenham Construction Ltd v Gloucester County Council* the FTT held that there was no requirement to give notice under Section 239 to either the owner or the occupier if the local authority officer had been invited into the property. In the case of an urgent risk the local authority should also consider applying for a warrant of entry from the Magistrates Court.



Regulatory Notices



▼ **Does an officer require written authorisation to enter each specific property, or can a local authority-wide written authorisation be provided for each officer?**

Section 239(9) provides that the authorisation must state the particular purpose or purposes for which the entry is authorised. The authorisation does not have to relate to a specific property.



Regulatory Notices



▼ **Should managing agents or letting agents and landlords be prosecuted for failing to comply with notices?**

This is a matter for each individual local authority. The rogue landlord enforcement guidance for local authorities (April 2019), sets out at section 3.3 the guiding principles and that any action should be in line with a local authority's policies and procedures.



Regulatory Property Redress Schemes



Where a limited company manages property only owned by one or more of its directors, does that property need to be in a redress scheme?



Regulatory Property Redress Schemes



▼ **Where a limited company manages property only owned by one or more of its directors, does that property need to be in a redress scheme?**

If the limited company has been set up to manage the property owned by the directors and in respect of which they receive remuneration then it could fall within the definition of carrying out lettings or property management work 'in the course of business'. The directors would likely be responding to tenants who want to find property in the private rented sector.



Landlord and Tenant behaviour



Should there be a relaxation of the requirements of retaliatory eviction and preventing landlords pursuing possession in cases where a tenant is preventing their landlord from doing works?

What approach can a landlord take when they are attempting to carry out property checks (e.g. gas certification) and the tenant is refusing access?

At what point is a tenant protected from retaliatory eviction? If an improvement notice is served on a landlord shortly after they have served a section 21 notice, does this invalidate the section 21 notice?



Landlord and Tenant behaviour



Should there be a relaxation of the requirements of retaliatory eviction and preventing landlords pursuing possession in cases where a tenant is preventing their landlord from doing works?

The Deregulation Act 2015 renders a section 21 notice invalid in circumstances where the eviction is retaliatory, and the landlord has either not responded to the tenant's complaint about the condition of the property or, the response is inadequate or the landlord gave a section 21 notice following the complaint. It will be for the court to decide on the validity of the section 21 notice. If the landlord has given an adequate response by describing their proposed remedial action and given a reasonable timescale for carrying out the works, and if the delay is due to the tenant preventing the landlord from carrying out the works, the court may find that the section 21 notice is valid.

Landlord and Tenant behaviour



▼ **What approach can a landlord take when they are attempting to carry out property checks (e.g. gas certification) and the tenant is refusing access?**

The landlord can apply for an access injunction. Standard tenancy agreements have clauses that allow the landlord to enter the property on reasonable notice to inspect the property as well as carry out checks. If the tenant is refusing access then the tenant can be ordered by the Court to provide access during reasonable hours for the landlord to carry out essential checks. Eviction should be a measure of last resort. The landlord could also seek assistance from the local authority. Our guidance currently states that: “Local authorities can carry out reactive inspections, if they have received a complaint, or proactive inspections to identify any action that may need to be taken”.

Landlord and Tenant behaviour



▼ **At what point is a tenant protected from retaliatory eviction? If an improvement notice is served on a landlord shortly after they have served a section 21 notice, does this invalidate the section 21 notice?**

If a local authority serves an improvement notice on a landlord, the landlord cannot serve a section 21 notice for six months. An earlier section 21 notice is also invalidated if the tenant had previously made a complaint to the landlord and subsequently makes a complaint to the local authority that ends in formal enforcement action.



Landlord and Tenant behaviour

Determining whether a
landlord is 'fit and proper'



When determining whether a landlord is 'fit and proper', how should housing offences be judged?



Landlord and Tenant behaviour

Determining whether a landlord is 'fit and proper'



When determining whether a landlord is 'fit and proper', how should housing offences be judged?

When assessing whether a person is 'fit and proper', the local authority must take into account, among other things, any wrongdoings committed by the individual concerned including sexual offence or offence involving fraud, dishonesty or violence, unlawful discrimination, breach of landlord/tenant law or any HMO management code of practice (there is only one HMO management code of practice in effect currently re student accommodation approved by S.I. 2010/2615).

Prosecutions and the issuing of Community Protection Notices (CPNs) are responses to actions believed to represent a breach of criminal and civil law. The guidance states that: "The wrongdoing has to be relevant to the person's fitness to hold a licence and/or manage the particular residential building to which the application for a licence relates and, in regard to criminal offences, the Local Housing Authority (LHA) must only have regard to unspent convictions. An LHA should not adopt a blanket policy with respect to its treatment of wrongdoings. Each case must be considered on its own merits and if a licence is to be refused on the ground that a person is unfit, the LHA must be able to defend that decision with cogent reasons".

Landlord and Tenant behaviour

Offshore Registered Owners



How can local authorities enforce standards against owners registered offshore?

How can civil penalty costs be recovered from property owners who are registered offshore?

How should absent landlords who breach standards practically be dealt with? What action can be taken, how should notices be served and how should prosecution action be taken when they are abroad?



Landlord and Tenant behaviour

Offshore Registered Owners



▼ How can local authorities enforce standards against owners registered offshore?

Where the owner is offshore-registered, the local authority has the option of taking action against the person having control or managing the premises, as the owner may well have appointed managing agents to collect the rent and manage the premises. Section 263 of the Housing Act 2004 provides that a 'person having control' includes the person who receives the rack-rent as agent or trustee of another person. The 'person managing' includes a person who receives rents or other payments as agent or trustee. Under Schedule 1 part 1 of the Housing Act 2004, in cases where the premises are an HMO or licensed under selective licensing, enforcement action must be taken against the holder of the licence. Where the premises are not licensed under selective licensing, or are an unlicensed HMO, then the action must be taken against the person having control, or the person managing the premises.

Landlord and Tenant behaviour

Offshore Registered Owners



▼ How can civil penalty costs be recovered from property owners who are registered offshore?

Although the property owner may be registered offshore, the owner is likely to have appointed a managing agent to manage the property. A civil penalty can be imposed on both the landlord and the property agent. If the property owner is registered overseas, an appropriate course of action will be to recover the penalty from the property agent.



Landlord and Tenant behaviour

Offshore Registered Owners



▼ **How should absent landlords who breach standards practically be dealt with? What action can be taken, how should notices be served and how should prosecution action be taken when they are abroad?**

A number of practical ways to deal with absent landlords are outlined as follows:

- **Serve an improvement notice.** Under the Housing Act 2004, an improvement notice can be served on the person having control of the dwelling, or in the case of an unlicensed HMO on the person having control of the HMO or on the person managing it.
- **Make an interim management order.** An interim management order in relation to residential accommodation gives the local authority the right to possession of the house and the right to do in relation to the residential house anything which the owner would be entitled to do.
- **Serve an abatement notice.** Under the Environmental Protection Act 1990, an abatement notice can be served on the owner or occupier of a premises.
- **Take emergency remedial action.** Where a category 1 hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of residential premises, the local authority can take emergency remedial action in order to remove the imminent risk of serious harm. Notices in respect of emergency remedial action can be served by fixing a copy of the notice to some conspicuous part of the premises or building.

This is not an exhaustive list of measures that can be adopted and local authorities should take their own legal advice when enforcing against absent landlords.