

VIEWPOINT: information on issues of concern.

Housing Act 2004 & Houses in Multiple Occupation [HMO's]

Introduction

The changes implemented by the 2004 Act are wide ranging and are the most significant changes to housing legislation in a half a century. There will be a major impact on the private sector housing market.

The major changes affecting private rented accommodation are as follows;

- Housing fitness standards to be replaced by the Housing Health and Safety Rating System (HHSRS)
- New Definition of Houses in Multiple Occupation
- Mandatory Licensing of some HMOs, 3 storey or above AND 5 or more people (excluding self-contained flats)
- Discretionary Licensing of other HMOs
- Discretionary Licensing of areas of low demand housing
- Mandatory Tenancy Deposit Scheme
- Management Orders where properties are not properly managed or are left empty for a prolonged period of time
- Home sellers packs.

At this time it is expected that the Housing Health and Rating System and Mandatory HHSRS HMO Licensing will come into force at the beginning of December. This date may be subject to change as secondary legislation must be passed by government. There will be a 3 month period after which enforcement powers will be introduced. A review of the management regulations is planned no timescale is available at this time.

Which new provisions will apply to properties?

Type of property and provisions applying

1. Single family dwelling - HHSRS *
2. Non HMO (e.g. 2 people sharing or some self contained flats) - HHSRS *
3. HMO — Non mandatory licensable (less than 3 storeys and/or 5 people) - HHSRS, and Management Regulations *
4. HMO — Mandatory licensable 3+ storey & 5+ people HHSRS, and Management Regulations and Mandatory Licensing

[Possible discretionary licensing at a future date]*

For private landlords

HOUSING HEALTH AND SAFETY RATING SYSTEM

The Housing Health and Safety Rating System (HHSRS) will replace the existing housing fitness standard. The HHSRS aims to assess the potential impact of the house on the health, safety and well being of the occupants and any visitors. This is a very necessary change as housing has the potential to greatly impact upon all aspects of occupants lives.

There are 29 hazards, which have been identified which must be assessed assuming the most vulnerable occupant. The system has been piloted by a small number of authorities, they have advised that the most significant hazards are as follows; -

- Excess cold
- Damp and mould
- Electrical hazards
- Falls associated with stairs and steps
- Structural collapse/falling elements
- Falls on the level (uneven surfaces, small changes in level)
- Fire
- Entry by intruders
- Falls from windows, etc.

Hazards

Below is a brief description of the standards expected in relation to the top 4 hazards.

Excess Cold

Heating should be controllable by the occupants and capable of heating the whole of the dwelling adequately and efficiently. Structural thermal insulation should be provided.

Damp and mould

The structure and finishes of a dwelling should be maintained free from rising, penetrating dampness or persistent condensation. There should be sufficient and appropriate means of ventilation to deal with moisture generated by normal domestic activities without the need to open windows.

Electrical hazards

Electrical installations must be safe. Live parts must be insulated there must be sufficient earthing of metal parts, gas and water pipes. Where equipment operates at 230V or above, RCD protection is required.

Falls

Stairs must be safe. Risers and treads must be even and of an appropriate size. There must be adequate guarding, handrails and lighting. Stair coverings must be in good condition, i.e. not loose, worn or ripped. Width of staircase and winders will also be considered. Tripping hazards must be minimised, examples include threshold steps, uneven or slippery floors and external surfaces.

Window cill heights and window types must reduce the risk of falls.

There must be adequate guarding to internal and external drops, e.g. flat roofs, light-wells and landings.

Bathrooms must have adequate space, lighting, fittings must be secure and positioned to reduce the likelihood of an accident and the extent of any injury.

Other factors affecting on the severity of injuries incurred must be considered, e.g. space and surfaces at the foot of the stairs.

Appropriate fire precautions will be required in all residential accommodation

For Private Landlords

HMO DEFINITION

The Housing Act 2004 introduces a new definition of a House in Multiple Occupation (HMO). The new definition is very complex, it includes small-scale shared student housing. Generally a house in multiple occupation will be a property occupied by more than one household and more than two people, and may include bed-sits, shared houses, non self contained flats and some self contained flats.

Houses fully converted into self contained flats will generally not be HMOs provided that they were converted in accordance with the appropriate Building Regulation standards. This will, as a minimum be the 1991 Regulations. Generally the sole use of the property must be as an HMO, however the Local Authority may declare the property to be an HMO where there is significant usage.

For Private Landlords

MANDATORY HMO LICENSING

The new Act introduces a compulsory national licensing scheme. This will apply to three storey (or higher) HMOs occupied by 5 (or more) persons. Attic floors, lower ground floors and some basements will be included in the term "storey".

Properties comprising self-contained flats, with single household occupation, will not require licensing.

A licence will be issued for a period of up to 5 years.

The Government may extend compulsory national licensing to lower risk HMOs. In addition, the new Act gives a Council the power to declare a local licensing scheme to cover other types, or areas, of HMO.

Briefly the requirements for licensing are that:

- Each individual licensable HMO is licensed.
- There are adequate amenities and the house is not overcrowded.
- The licensee is a “fit and proper person”. In general terms this is a person who has complied with housing and related legislation, is competent to manage the property and has the resources to do it.
- Electrical appliances are safe.
- Furniture/furnishings are safe.
- Landlord gas appliances are safe.
- Fire alarm systems are maintained.
- A copy of a “written statement of the terms” of occupation is provided to the occupiers.
- The HMO will be properly managed.
- Other requirements may also be specified.

Conditional licenses may be granted. These enable an HMO to be licensed whilst any necessary improvements are carried out. There will be a lead in period of 3 months after licensing begins, after this period enforcement powers and duties will come into force.

A landlord may apply for a temporary exemption notice (TEN) whilst works are undertaken which will remove the requirement for a licence (e.g. conversion back to single family dwelling or self contained flats). A TEN can only last up to three months, with a maximum of two being served in succession.

A Council has a duty to properly apply licensing. It must also ensure that all licensable HMOs comply with the HHSRS standard.

A Council may charge a licence fee, and can impose sanctions in the event of non-compliance: -

- Fine up to £20,000.
- Rent recovery (by tenant or housing benefit)
- Management Orders

Housing Health and Safety Rating System [HHSRS]

Part 1 of the Housing Act 2004 replaces the existing housing fitness standard contained in the Local Government and Housing Act 1985 with the Housing Health and Safety Rating System (HHSRS). It also adapts and extends the powers of enforcement currently available to Local Housing Authorities (LHA) to tackle poor housing conditions.

A dwelling is unfit if, in the opinion of the local authority, it fails to meet one or more of the requirements set out in paragraphs (a) to (i) of section 604 (1) and by reason of that failure is not reasonably suitable for occupation.

The requirements constitute the minimum deemed necessary for a dwelling house or a House of Multiple Occupation (HMO) to be fit for human habitation.

If a local authority identifies a property as unfit it has a duty to take action. Under part XI of the 1985 Act local Authorities also have the powers to require works to render HMO's fit for the number of occupants.

Local authorities will use the HHSRS when carrying out an inspection of a property. The HHSRS system accesses twenty-nine categories of housing hazards.

The assessment is based on the risk to the potential occupant who is most vulnerable to that hazard. For example, stairs constitute a greater risk to the elderly, so for accessing hazards relating to stairs they are considered the most vulnerable group. The very young as well as the elderly are susceptible to low temperatures. A dwelling that is safe for these most vulnerable to a hazard is safe for all.

A hazard rating is expressed through a numerical score that falls within a band.

There are 10 bands (being A to J): -

Scores in Band A to C are Category 1 hazards.

Scores in Band D to J are Category 2 hazards.

Under section 5, local authorities will have a general duty to take action to deal with Category 1 hazards.

Under section 7, local authorities will have discretionary powers to take action to deal with Category 2 hazards.

The Courses of Action available to authorities where they have either a duty or a power to act are to:

- Serve an improvement notice requiring remedial works
- Make a prohibition order, which closes the whole or part of a dwelling or restricts the number of permitted occupants
- Serve a hazard awareness notice
- Take emergency remedial action
- Make a emergency prohibition Order
- Make a demolition Order
- Declare a clearance area;

Action by local authorities will be based on a three-stage Consideration:

1. the hazard rating determined under HHSRS
2. whether the authority has a power to act, determined by the presence of a hazard above or below a threshold prescribed by Regulations (Category 1 and Category 2 hazards); and
3. the authority's judgment as to the most appropriate course of action to deal with the hazard.

Acknowledgements and sources

http://www.plymouth.gov.uk/newslink_13.pdf

http://www.tauntondeane.gov.uk/tdbcsites/housing/standards/Housing_Health_and_Safety_Rating_System.asp.

http://www.odpm.gov.uk/stellent/groups/odpm_housing/documents/page/odpm_house_030188.hcsp

More details of HHSRS from ODPM web site at; -

http://www.odpm.gov.uk/stellent/groups/odpm_housing/documents/page/odpm_house_603508.hcsp

To access source of information select then CTRL +left click on link to view.

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