



2016 CHAPTER 22

**PART 3**

Enforcement of licensing requirements

*Offences*

**Unlicensed HMO**

**30.**—(1) The owner of an HMO commits an offence if—

- (a) the HMO is required to be licensed under section 7 but is not so licensed, and
- (b) the owner does not have a reasonable excuse for not having a licence.

(2) If—

- (a) an HMO is required to be licensed under section 7 but is not so licensed,
- (b) any person, acting as an agent for the owner of an HMO, does anything that the agent knows will permit or facilitate the occupation of the HMO by any other person, and
- (c) the agent does not have a reasonable excuse for doing so,

the agent commits an offence.

(3) The owner of an HMO commits an offence if—

- (a) the HMO is required to be licensed under section 7 but is not so licensed, and
- (b) the owner authorises a person to act as mentioned in subsection (2)(b).

(4) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction—

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- (a) to a fine not exceeding £20,000, and
- (b) to a further fine not exceeding £50 for every day or part of a day after conviction on which the HMO is required to be licensed under section 7 but is not so licensed.

(5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding £10,000.

#### Commencement Information

II S. 30 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

### Exceeding licensed occupancy or breach of licence conditions

**31.**—(1) If the number of persons occupying a licensed HMO exceeds the number authorised by the licence and—

- (a) the owner or managing agent of the HMO has done anything that permits or facilitates the excessive occupation, or
- (b) the owner or agent knows, or ought reasonably to know, that the HMO is so occupied and does not take such steps as are reasonably necessary to ensure that the excessive occupation ceases,

the owner or agent (as the case may be) commits an offence.

(2) If—

- (a) a condition in an HMO licence imposes a restriction or obligation on the owner or managing agent of the HMO or any other person named in the condition,
- (b) that person breaches the condition at a time when the HMO is required to be licensed under section 7, and
- (c) the person does not have a reasonable excuse for breaching the condition,

the person commits an offence.

(3) If—

- (a) a condition in an HMO licence imposes a restriction or obligation on any person (whether or not named in the licence),
- (b) any person breaches the condition at a time when the HMO is required to be licensed under section 7,
- (c) the owner or managing agent of the HMO either permits the breach or did not take such steps as are reasonably necessary to secure that the condition was not breached, and
- (d) the owner or agent does not have a reasonable excuse for permitting the breach or for failing to take those steps,

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the owner or agent (as the case may be) commits an offence.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction—

- (a) to a fine not exceeding £20,000, and
- (b) to a further fine not exceeding £50 for every day or part of a day after conviction on which the excessive occupation continues.

(5) A person guilty of an offence under subsection (2) or (3) is liable on summary conviction to a fine not exceeding £10,000.

**Commencement Information**

**I2** S. 31 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

**Untrue claim that HMO is licensed**

**32.**—(1) A person who is the owner or managing agent of an HMO commits an offence if the person—

- (a) claims that an HMO is licensed at a time when it is not licensed, and
- (b) does not have a reasonable excuse for making that claim.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £10,000.

**Commencement Information**

**I3** S. 32 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

**Agents not named in licence**

**33.**—(1) The owner of a licensed HMO commits an offence if—

- (a) the owner authorises any person to act as a managing agent in relation to the HMO, and
- (b) the person so authorised is not named in the licence as managing agent of the HMO.

(2) A person (“A”) commits an offence if—

- (a) A, on behalf of the owner of a licensed HMO, acts as a managing agent in relation to the HMO,
- (b) A is not named in the licence as managing agent of the HMO, and
- (c) A does not have a reasonable excuse for doing so.

(3) For the purposes of this section, a person acts as a managing agent in relation to an HMO if the person—

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- (a) does, in relation to the HMO, any of the acts mentioned in paragraph (i), (ii) or (iii) of the definition of “managing agent” in section 88(1), or
  - (b) engages in any other activity or course of activity which constitutes, or assists in, the management of the HMO.
- (4) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding £10,000.

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**Commencement Information**

**I4** S. 33 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

**Reasonable excuse**

**34.—**(1) This section sets out some circumstances in which the owner of an HMO has a reasonable excuse for the purposes of sections 30(1) and 31(2) and (3).

(2) This section does not limit the circumstances which may amount to a reasonable excuse apart from this section.

(3) For the purposes of section 30(1), the owner of an HMO has a reasonable excuse for not having a licence if—

- (a) an HMO licence held by the owner in respect of the HMO has been revoked, and
- (b) the owner has taken reasonable steps with a view to securing that the living accommodation in question ceases to be an HMO which requires to be licensed, but
- (c) despite having taken those steps, the owner is unable to stop it from being such an HMO without breaching the terms of any tenancy or other occupancy arrangement under which any person occupied it on the day on which the licence was revoked.

(4) For the purposes of section 31(2) and (3), the owner of an HMO has a reasonable excuse for breaching a condition, or for permitting such a breach, if—

- (a) the owner has taken reasonable steps with a view to securing that the condition is not breached, but
- (b) despite having taken those steps, the owner cannot secure compliance with the condition without breaching the terms of any tenancy or other occupancy arrangement under which any person occupied the HMO on the day on which the condition first had effect.

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**Commencement Information**

**I5** S. 34 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

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### *Rectification of breaches of conditions*

#### **Power to require rectification of breach of condition**

**35.**—(1) This section applies where the council is satisfied that—

- (a) a condition in an HMO licence has been breached and the breach is ongoing or has not been rectified, or
- (b) a condition in an HMO licence is likely to be breached.

(2) It does not matter whether the council has taken any other action, or whether criminal proceedings have been commenced, in respect of the breach or anticipated breach.

(3) The council may serve on the owner of the HMO a notice (a “rectification notice”) which requires the owner to take such action, specified in the notice, as the council considers appropriate for the purpose of rectifying or (as the case may be) preventing the breach.

(4) The action which may be specified includes the carrying out of work in or to the HMO.

(5) The notice must specify a date by which the action must be taken.

(6) Different dates may be specified for different actions.

(7) A date specified under subsection (5) must not be earlier than the date by which the council reasonably considers that the action can be taken.

(8) A notice which requires work to be carried out in or to the HMO may also specify particular steps which the council requires to be taken in carrying out that work.

(9) Where the action specified in a notice is or includes the carrying out of work in or to the HMO, Parts 1 and 2 of Schedule 3 apply to the notice.

(10) The council must send a copy of the notice to the occupants of the HMO.

#### **Commencement Information**

**I6** S. 35 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

#### **Revocation of rectification notice**

**36.**—(1) The council—

- (a) may revoke a rectification notice, and
- (b) must do so if it is satisfied that the owner has complied with the requirement (or all the requirements) in the notice.

(2) A notice may be revoked under this section—

- (a) on the application of the owner, or

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(b) on the council's own initiative.

(3) The council must serve the following on the owner and the occupants of the HMO—

- (a) notice of any revocation under this section;
- (b) if the owner applies for a revocation but the council decides to refuse it, notice of that refusal.

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**Commencement Information**

**I7** S. 36 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

**Failure to comply with rectification notice**

**37.—**(1) If the owner of an HMO fails to take any action specified in a rectification notice by the date specified in relation to that action, the owner commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.

(3) In determining the seriousness of an offence under subsection (1), regard is to be had to the following matters (as well as to the seriousness of the failure to take the action specified in the rectification notice)—

- (a) the seriousness of the breach of the condition (if any) which resulted in the issuing of the rectification notice, and
- (b) whether any such breach amounted to an offence under section 31(2) or (3).

(4) Subsection (3) applies—

- (a) to a court for the purposes of sentencing, and
- (b) to a council in determining the amount of a fixed penalty under section 64.

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**Commencement Information**

**I8** S. 37 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

*Orders of the court: revocation and disqualification*

**Revocation orders and disqualification orders**

**38.—**(1) This section applies where a court convicts—

- (a) any person of an offence under section 30, 31, 32 or 33;
- (b) any person of an offence under section 37(1);

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- (c) any person of an offence under section 60;
  - (d) an owner or managing agent of any living accommodation of an offence under section 80(5) or 82(4) in relation to that accommodation;
  - (e) any person of an offence under paragraph 14 of Schedule 2 (false statement in connection with application for HMO licence).
- (2) The court may (in addition to any other order it makes)—
- (a) revoke any HMO licence having effect in relation to the living accommodation in question;
  - (b) where the convicted person is the owner of the accommodation, disqualify the person from holding an HMO licence;
  - (c) where the convicted person is the managing agent of the accommodation, disqualify the person from being able to act as a managing agent in relation to any HMO.
- (3) Where the convicted person is a body (whether incorporated or not), the court may disqualify any director, partner or other person concerned in the management of the body in the same way in which it may disqualify the body.
- (4) The court may disqualify a person under subsection (3) whether or not it disqualifies the convicted person.
- (5) A disqualification order is to have effect for such period, not exceeding 5 years, as the court specifies in the order (but this is subject to sections 39 and 40).

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**Commencement Information**

**I9** S. 38 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

**Revocations and disqualifications: appeals**

- 39.—**(1) A person may appeal against a revocation order or disqualification order in the same manner as the convicted person may appeal against sentence.
- (2) The court which made a revocation order or disqualification order may suspend its effect pending such an appeal.

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**Commencement Information**

**I10** S. 39 in operation at 1.4.2019 by S.R. 2019/39, art. 2 (with art. 3)

**Discharge of disqualification orders**

- 40.—**(1) The court which made a disqualification order may discharge the order with effect from such date as the court may specify.

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(2) Such a discharge is to be made on the application of the person disqualified.

(3) No such discharge is to be made unless the court is satisfied that there has been a change in circumstances which justifies the discharge.

(4) No application under this section may be made during the first year for which a disqualification order has effect.

(5) The court may order the applicant to pay the whole or part of the expenses arising from an application under this section (whether or not the application is granted).

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**Commencement Information**

**II1** S. 40 in operation at 1.4.2019 by S.R. 2019/39, **art. 2** (with **art. 3**)



**Changes to legislation:**

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