THE LETTINGS HUB
the home for lettings

Infosheet | Hidden Occupiers

Hidden occupiers, or unauthorised tenants (for example partners, friends or additional households) who move into a property without consent can turn a straightforward tenancy, into one that risks licensing breaches, can invalidate insurance, lead to safety failings, and, in serious cases can end up with costly possession action.

In this infoguide, we explain what hidden occupiers are, how to spot them, and the impacts of the Renters' Rights Bill.



What Is A Hidden Occupier

Anyone living at the property who isn't named on the tenancy, or is not formally recorded as a permitted occupier, is classed as a hidden occupier.

Typical scenarios include:

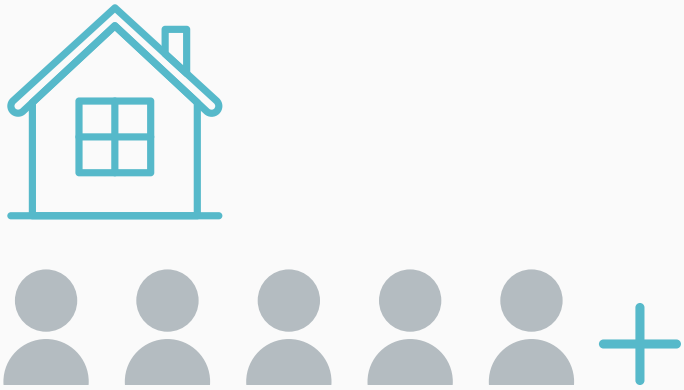
- A partner moves in temporarily but never leaves.
- Informal sub-lettings which have been created by a tenant.

Risks Of Creating A HMO

Unauthorised occupiers can trigger licensing issues, which expose you to civil penalties or Rent Repayment Orders and undermine safety compliance.

WHAT MAKES A HMO?

HMO thresholds kick in when five or more people or two or more households share a property.



HOW WILL HIDDEN OCCUPIERS BE IMPACTED BY THE BILL?

1 STRONGER LOCAL-AUTHORITY INVESTIGATORY POWERS

The Bill brings increased powers for authorised council officers to enter tenancies which are suspected of being in breach of the rules without a warrant; therefore, expect councils to be more proactive where over-occupation and sub-letting is suspected.

2 RENT REPAYMENT ORDERS

Under the Renters' Rights Bill, Rent Repayment Orders will double the maximum period of rent which can be reclaimed from 12 to 24 months, which would be very costly if hidden occupiers tip a property into unlicensed HMO use or other offences.

Rent Repayment Orders punish the landlord, not the tenant's behaviour, meaning the fine would be payable by the landlord if they are found to be operating an unlicensed HMO. The First-tier Tribunal only looks at whether the offence was committed, not who caused it; therefore, the tenant's role in creating the breach will be irrelevant to the liability.

3 NO MORE NO-FAULT EVICTIONS

With Section 21 notices being abolished, possession when there are hidden-occupiers will rely on Section 8 fault-based grounds, including:

- Ground 12 | Breach of tenancy terms
- Ground 14 | Nuisance/illegal use
- Ground 17 | False statement

Therefore, it will be vital to capture and store effective evidence throughout the tenancy in the event you discover hidden occupiers.



How Hidden Occupiers Create Liability For Landlords

1

LICENSING BREACHES

Tipping the property over the five-person/two-household limit without a licence exposes the landlord to penalties. Section 21 notices won't be valid if some licensing conditions are breached, and after the Bill is implemented the exposure to Rent Repayment Orders will be far tougher.

2

INSURANCE AND COMPLIANCE

Occupation above declared levels can invalidate your landlord's insurance policies.

3

POSSESSION

Where the tenant goes but others stay, you may still need court possession against occupiers; and this can take longer, and cost more.

Signs Of Hidden Occupiers

The warning signs that there could be a hidden occupier in the property include:

- Extra beds added to the property.
- Additional post with unusual or unfamiliar names.
- Multiple vehicles at the property.
- A change to utility usage.
- Reports from neighbours.



When You Have Concerns

Tenants are entitled to 'quiet enjoyment', which means that entering without permission risks allegations of harassment or illegal eviction.

Issue written notice to the tenants, giving at least 24-hour notice, and specify why you want to make an inspection. If access is refused, document your attempts and consider legal action.

If there are additional tenants at the property, serve a letter stating that the tenancy has been breached, and identify the clause which has been breached, for example - no unauthorised occupiers or sub-letting allowed.

Serving a Section 8 | If the breach persists or is serious, consider Ground 12 (breach) and, where applicable, Ground 14 (nuisance/illegal use) or Ground 17 (false statement).

If The Named Tenant Leaves But Others Remain

It is most likely that you will likely need to start possession proceedings against the occupiers.

Don't take your own action, such as changing the locks, or cutting off any services, as this can trigger criminal and civil liability. The earlier you start evidencing occupation, the better your court prospects.



Prevention Beats Cure

It will always be better to have a watertight tenancy agreement before the tenant moves in,

- Define "permitted occupier" and clearly cap the maximum occupants.
- Make it a condition that your tenants have to notify you before anyone else moves in, and to supply basic ID details.
- Include inspection clauses in the agreement and detail the notice and reasonable time to reinforce lawful access.

Best Practice

Before a tenant moves in, make sure you ask about partners or dependants and intended sharers; verify their identity with referencing.

Make routine inspections for example, at three months, then six-monthly thereafter. Take photos of communal spaces, and make sure you log all notices, outcomes, and any refusals.

SUPPORTING YOUR ACCIDENTAL LANDLORDS

Don't forget, enforcement action will apply to all landlords – whether they are larger-scale both professional or are smaller accidental landlords with a single property; but smaller landlords may not be aware they are equally liable – yet the impacts of action such as Rent Repayment Orders could be catastrophic.



Renters Rights Bill Watchlist

1 | When no-fault evictions end, the need for more evidence begins. Assume you'll be proving breaches in court, so increase your documentation and audit trails.

2 | Council powers will increase; you can expect more inspections and investigations where overcrowding or unlawful eviction is suspected. Try to build cooperative relationships with your local enforcement teams.

3 | Rent Repayment Order exposure increases. If there are hidden occupiers, they could push you into other offences, for example becoming an unlicensed HMO – and this could mean your tenants could reclaim up to two years' rent.



Agent Checklist

- Application and Tenancy Agreements | Make sure you state the maximum occupants allowed, define permitted occupiers and clauses about notification and consent.
- Onboarding | Confirm who is moving in, including the names and relationships – and make sure you set the inspection frequency and access expectations in writing.
- Record-keeping | Keep detailed records of all inspections, together with photographs. Also, make sure you file all notice letters sent, and tenant responses.
- Licensing | Re-check HMO status after any household change and document your rationale.

Getting Renters' Rights Bill Ready

Update your staff training on Section 8 evidence, and brief your landlords on the risks of Rent Repayment Orders, and increased council investigatory powers,

Hidden occupiers aren't always malicious, but they can create both legal and operational risks. When the Bill is enacted, gaining possession will need to be evidence-led and councils will have greater powers. Therefore, detailed records, clear tenancy terms, and proactive licensing checks will be vital.

BOX

YOUR COMPLETE TENANCY MANAGEMENT PLATFORM



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At The Lettings Hub, we're always here to support you through the ever-changing lettings landscape. With the Renters' Rights Bill introducing new regulations, staying updated is crucial. That's why we offer a variety of resources to help you navigate these changes smoothly. From webinars and blogs to tailored guides, our platform is packed with expert insights.

Be sure to follow us on LinkedIn and bookmark our Renters' Rights Hub for the latest updates, tips, and advice.

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