

The washbasin fiasco

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Some may be wondering why on earth we are allocating space in this journal to a discussion on washbasins – surely there is nothing of interest to say about an everyday piece of bathroom porcelain? Unfortunately, following implementation of the Housing Act 2004 (the Act), this is not so.

Up and down the country landlords should by now have completed applications to register their Houses in Multiple Occupation (HMOs) with the relevant local authorities. I do not intend to repeat all the requirements of the Act in this article. However, basically:

- an HMO is any property occupied by more than one household; and
- mandatory licensing applies to any HMO with five or more occupants in a property comprising three or more storeys, where at least five occupants share basic facilities (being cooking, washing or toilet provisions).

Simplifying the position, under the old regime HMOs were those buildings (often older residences that had been converted) split into flats and bedsits let under separate tenancy agreements. However, the new definition includes a further category of properties, namely the larger shared houses let on a single agreement, the most obvious example being student houses.

It would be tempting to assume that a group of five students would form a single household, as that reflects how they live together. However, subject to some exceptions (for example domestic staff), the definition of a household only includes those related to each other.

The irony of the current position is that a group of five students sharing a conventional house with one kitchen live in a property that is deemed to require the protection of the Act and its secondary legislation. In contrast, a large four storey house split into five flats with five kitchens currently does not need a licence, provided that no more than four of the unrelated occupants share basic facilities. I understand that more secondary legislation is on its way next year to correct this anomaly. Obviously in an attempt to win over landlords from day one, it is proposed that these will be referred to as "poorly-converted properties".

So what about washbasins? It was decided that secondary legislation under the Act should set minimum decent standards (the standards) for the provision of basic facilities. I believe that few would argue with the requirements for kitchen facilities. As far as bathing and toilet facilities, the original proposal for the standards were for one bathroom with a bath or a shower per five sharing occupants, plus a separate toilet room with a washbasin.

Most properties with five bedrooms have at least one bathroom and a separate toilet, so again this should not be too onerous. Perhaps those who have maximised the number of bedrooms by converting reception rooms may have a problem complying but, remembering the three storey requirement, most shared houses probably already comply with the spirit of this aspect of the standards.

The original proposals for the standards then listed additional requirements in bedsit type accommodation requiring, in each room, a washbasin (or a sink if cooking facilities are provided). Some might wonder whether the implication that a kitchen sink can "double up" as a washbasin is wholly appropriate. Apart from this, the suggestion that tenants renting single rooms in a large house where they have no connection with the other occupants should have at least one bowl plumbed with hot and cold water may not be unreasonable.

The important point is that the original additional draft proposals for bedsit accommodation specifically excluded "shared houses". These were defined as any house designed for occupation by a single household, for the time being an HMO, but which could revert back to single household occupation without any internal adaptations.

In summary, the original proposals reflected the old amenity standards and would have applied only to old style three storey plus HMOs with five or more occupants sharing basic facilities, ie excluding shared houses.

The secondary legislation was introduced in The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations (SI 373 2006), dated February 2006 (the regulations). What happened? Well quite simply it seems to be commonly agreed that the exception for shared houses has been removed at a late stage and without any consultation. This means that despite the assertion that the standards would only apply to the highest risk properties, in the regulations adopted each bedroom in every licensable shared house with at least five bedrooms requires a washbasin.

Obviously, every legislation setting standards has to have some starting point. You might dispute the trigger point, but when it comes to fire protection some rule based on a minimum numbers of storeys and occupants makes some sense. However, it is difficult to see why five sharers in a three storey house all need their own private washbasin, but the same number in a two storey house do not.

If the new legislation does apply to all licensable properties only, this raises an interesting possibility. If a local authority decides to adopt an additional licensing scheme for a specific area, a property that needs a licence merely because it is situated in a trouble spot may, merely by virtue of its location, need additional washbasins.

Also, it is worth emphasising that the washbasin rules applies completely disregarding the number of bathrooms. Therefore, you could have a four storey shared house with two bedrooms and a fully equipped bathroom on each of the top three floors. Despite the ratio of one bathroom to two occupants, the six occupants still share basic facilities. In this case, strictly speaking, each bedroom would still require a washbasin. In fact, it could be argued that, taking the legislation literally, this house also requires at least one further toilet with a washbasin making a total of four toilets and ten washbasins for the six occupants, perfect for a group of students with a phobia for washing their hands.

In fact, some have interpreted the regulations to extend to any accommodation where five or more share basic facilities suggesting, for example, that any group of five sharers in a two storey house all need their own washbasins, whether the property is licensable or not. I am not persuaded that this is the case.

Not surprisingly, the late change to the draft legislation has not been met with universal acclaim. In fact many landlords, tenants and even some local authorities have expressed concern. Such were the representations to government, it was agreed to consider the matter in a debate in the House of Lords on 16 May.

Those hoping that common sense would prevail during this debate were very disappointed. Baroness Hanham (Conservative) opened the debate making the point that many landlords regarded the number of bathrooms required and need for washbasins in bedrooms was excessive and impractical to provide in terms of plumbing and reasonable cost.

Baroness Maddock (Liberal Democrat) replied advising that she welcomed the provisions which (based on her experience twenty years ago inspecting old style HMOs occupied by young mothers with babies) were, in her opinion, vital, making the point that hotels manage to have washbasins in every room. Baroness Maddock also expressed her personal disappointment that licensing does not apply to more properties and expressed support for Shelter for the "evidence" they have provided.

Baroness Andrews (Labour) then spoke in favour of the mandatory requirements as an essential measure to protect the most vulnerable. In her opinion the choice was whether to spread resources more thinly and widen the definition of HMOs subject to mandatory licensing or use a definition that picks out the big houses with the most tenants and, therefore, the most vulnerable tenants. Another argument Baroness Andrews cited was the speed of construction that can be achieved nowadays makes changes to bathrooms easy to achieve.

So there we have it. Apparently the need for washbasins in a shared student house is supported by:

- the plight of single mothers living in old style HMOs in Southampton twenty years ago;
- a general need to protect the vulnerable;
- the fact that hotels provide washbasins in every bedroom; and
- the speed with which an existing bathroom can be renovated.

I cannot speak for all student houses but from those I have seen, fitting a washbasin would not make bring the property up to five star standard. However, if the facilities I provide as a student landlord are going to be compared to a more modest hotel then, as far as I am concerned, game on. Of course, I assume the students will agree to pay hotel rates – shall we start the bidding at £25 per room per night?

The new HMOs under the 2004 Housing Act are, in the main, domestic properties usually accommodating students and not commercial operations in the same way as hotels or old style HMOs are. There have not been, to my knowledge, any significant complaints about the provision of washbasins in bedrooms, and the only reason for this rule now being applied through the regulations is simply because it was a requirement in the old style HMO, which should not be used as a comparison for the new style HMO.

In summary, I see few objections to the standards being carried forward and continue to apply to the old style HMOs, though even in this case a strict interpretation of the regulations may lead to an excessive ratio of bathrooms and washbasins to the number of occupants, as explained in my theoretical six-bedroom example above. With the same proviso, I can even understand the need for rules regarding the number of toilets and bathrooms in a shared house. However, I cannot see why it is perfectly acceptable for a house occupied by a family of five to have to "make do" with one bathroom and a second toilet, but five occupants in a shared house next door need a washbasin in each bedroom, especially when the occupants are students, whom I would not classify as vulnerable.

Even if it is accepted in some cases that additional washbasins may be needed, the matter could be left to the discretion of local authorities to consider on a property by property basis, under similar lines as the Housing Health and Safety Rating System (HHSRS) rather than being compulsory under formulas in a Statutory Instrument.

The fitting of so many washbasins in domestic properties causes problems when they revert to family houses, especially if reception rooms are used as bedrooms when let to sharers. There are also significant physical constraints in many properties that limit the ability to fit such washbasins, especially on top floors where sloping walls are often the norm.

The whole point is that the regulation has been brought in without adequate consultation, using old style HMOs as the basis for new style HMO regulations. It is evident that this part of the regulations needs to be amended to ensure reasonableness.

A typical new five-bedroom house would probably only have two bedrooms with ensuite facilities and a third shared bathroom. Therefore, the standard we should retrospectively apply to a shared house even exceeds current building regulations. Just imagine if similar retrospective provisions applied to all new changes in statutory requirements. This would mean that nearly all rented accommodation would have to be rewired, have new windows and all solid walls insulated – and that is just the first three examples I could think of.

To comply with the legislation, a number of local authorities are requiring the provision of washbasins but are giving a five-year period in which the landlord has to comply. This, in itself, suggests that these local authorities realise that such a requirement is “over-the-top” regulation.

There are two possible escape routes.

Firstly, the government have stated that the minimum decent standards would be reviewed within three years to see if they are effective and appropriate. Therefore, provided that your local authority has taken this into account and will not be requiring you to comply with the standards before this review, there is a chance the legislation may be changed.

Secondly, it has been suggested that the legislation does not catch shared houses. The legislation refers to "units of accommodation" in the relevant properties each requiring a washbasin. It has been suggested that whilst a self-contained flat or a bedsit on a separate tenancy agreement are both clearly "units of accommodation" a genuinely shared house on a single tenancy agreement is a unit in its entirety. In other words the suggestion is that a sole bedroom in a shared house cannot be considered to be a "unit of accommodation" in its own right, so a washbasin is not required. It will be interesting to see the outcome of the first case on this matter to be taken to the Residential Property Tribunal.

Of course, if a Baroness has an elderly live-in parent and employs a carer, a housekeeper and a nanny for her children (including a foster child) then that group (let us say nine people in total) would form a single household under the regulations. The family would only need one bathroom to make their house fit for habitation and no extra washbasins!

The NFRL are in contact with the Department for Communities and Local Government (DCLG) on this matter.

<http://www.uk-legislation.hmso.gov.uk/si/si2006/20060373.htm> - sch3

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