

Guidance notes for the completion of an application for an HMO Licence

Introduction:

The Housing Act 2004 introduced mandatory licensing of high risk Houses in Multiple Occupation (“HMO”).

A licensable HMO is one which accommodate 5 or more unrelated occupiers (consisting of 2 or more households), who share an amenity such as a kitchen, toilet, bathroom or lounge.

Buildings consisting solely of entirely self-contained flats or purpose built flats are exempt from licensing. However, if facilities are not fully contained, whether they are shared or not, such properties may require a licence if they fulfil the mandatory licensing criteria.

Licence Application Form - Completion of Relevant Parts:

The form comprises of the following parts:

Section 1 - Applicant / licence holder details.

Section 2 - Other licensed properties declaration.

Section 3 - Property details.

When applying for an HMO licence you must complete sections 1, 2 and 3 (as appropriate).

You must provide a floor plan of the property with room dimensions. An example is provided in Part 3 of the application. The plan does not have to be to scale, and may be hand drawn, but needs to clearly show the layout and dimensions of the rooms on each floor. If this is not provided your application will be deemed as incomplete and will be returned to you.

HMO Licensing Fee Procedure.

You should send your licence fee together with all of your other documents that form part of your application. If you fail to include the fee your application will be considered incomplete. The licence will last for up to 5 years.

Once you have paid your fee the Council will process your licence application. This will include an inspection of the property unless it has been inspected within the last six months. After your application has been processed a draft licence will be issued and you will be allowed a period to make representations during which any concerns relating to the licence conditions can be considered and hopefully resolved by the Council. You are advised to read your draft licence thoroughly and to contact the Council if you have any objections or queries.

Upon expiry of the representation period the full licence will be issued with a further appeal period. Once again it is the licence holder's responsibility to check the licence in particular the commencement and expiry dates. Appeals can be made to a First Tier Tribunal (Property Chamber – Residential Property), details of which are contained in the legal notice accompanying the full licence.

The Council is required by law to establish and maintain a register of all HMO licences granted. As such your name and address (as it appears on the licence) will appear on this register. This register is published on the Council's website.

Once the licence is issued the Council must be satisfied that the terms of the licence are being complied with and that the HMO is free from any Category 1 hazard, as detailed in the Housing Health and Safety Rating System (HHSRS) introduced by the Housing Act 2004. Therefore the Council will inspect your property at least once during the term of the licence, which in most cases will be five years.

You should note that:

1. An HMO licence is not transferable.

Where a licensed property changes ownership, the new landlord must make a full application for a new licence in his/her name. No repayment of the licence fee will be made to the existing licence holder for any unexpired period of the licence.

2. If a licence holder dies during the period of the licence, the licence ceases to be in force from the date of death. For 3 months from the date of death the house will be treated as if a Temporary Exemption Notice (TEN) has been served. This is known as the "Initial Period". At any time during the initial period, a formal application may be made for a TEN. The TEN will be valid for a period of 3 months and will take effect when the "Initial Period" ends.
3. Where a licence holder wishes to alter the terms of their licence, for example there is a change in manager details, occupancy levels or licence holder address, they may apply for a "Variation to the Licence". If this variation requires an increase in the permitted number, a fee will be charged.

It is important to note that it is an offence to change the terms of the licence without the agreement of the Council. This could lead to legal proceedings being instituted against both the licence holder and a fine of up to £20,000 upon summary conviction.

EXPLANATION OF TERMS

In these notes, "the Act" means the Housing Act 2004, unless otherwise stated, all references to sections etc. are to sections in the Act. Part 2 of the Act introduced a mandatory scheme to licence HMOs of a description contained in regulations. Where there is a conflict between these guidance notes and the Act/Statutory Instrument, the Act/SI will prevail. The national minimum HMO standards are detailed in the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England)Regulations 2006 (SI 2006 No 323).

Meaning of "HMO"

HMO means a house in multiple occupation as defined by sections 254 to 259, Housing Act 2004 and it applies to a wide range of housing types and includes:

- A building or a part of a building, which consists of one or more units of living accommodation not consisting of a self-contained flats or flats;
- The living accommodation is occupied by persons who do not form a single household;
- Where two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities;
- Buildings converted into self-contained flats if more than one third of the flats are tenanted and the conversion does not comply with Building Regulations 1991 or subsequent Building Regulations. See sections 254-257 of the Act.

Licensable HMOs

A licensable HMO is one which accommodates 5 or more unrelated occupiers consisting of 2 or more households and sharing facilities e.g. kitchen, bathroom, wc.

HMOs consisting only of self-contained flats are not subject to mandatory licensing. However, if there is a self-contained flat in the same HMO as non self-contained accommodation it has to be licensed as part of the HMO.

What is a “Household”?

The following are ‘households’ for the purposes of the Housing Act 2004:

Members of the same family living together including:

- Couples married to each other or living together as husband and wife (or in an equivalent relationship in the case of persons of the same sex)
- Relatives living together, including parents, grandparents, children (and step-children), grand-children, brothers, sisters, uncles, aunts, nephews, nieces or cousins.
- Half relatives will be treated as full relatives. A foster child living with his foster parent is treated as living in the same household as his foster parent.

Any domestic staff are also included in the household if they are living rent-free in accommodation provided by the person for whom they are working.

Applicant

This may be the property owner, the proposed licence holder, the proposed property manager, the person having control of the property or the person managing the property or somebody acting on their behalf who has completed the application for whatever reason.

Proposed licence holder

The most appropriate person to be responsible for the property and to hold the licence.

Person managing the property

This is not necessarily the same as the Managing Agent or the Manager. The person managing means the person who is an owner or lessee (tenant) of the premises or who receives the rent for the property or other payments for it from persons who are in occupation as tenants or Licensees of parts of the premises. This applies whether the person receives the rent directly or through an agent or trustee. Where the rents or other payments are received through someone who is an agent or trustee not only does it include the owner (or lessee) but it also includes the agent or trustee.

Person having control of the property

This means the person who receives the rack rent of the property or who would be in a position to receive it if the premises were let at a rack rent. Rack rent is defined as the rent which is not less than 2/3rds of the full net rental value of the premises. The person having control includes not only the person who receives the rent in this way on his own account but also someone who receives it as agent or trustee for another or someone else.

Where the property is owned by a company or similar body a responsible person of that company must be named as the licence holder.

Owner

Means a person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple of the premises whether in possession of reversion: and includes also a person holding or entitled to the rents and the profits of the premises under a lease of which the unexpired term exceeds 3 years.

'Fit and proper' person

The Council must be satisfied that the person applying for an HMO licence is a "fit and proper person" to hold a licence. The test applied to any person managing the premises and any director or partner in a company or organisation which owns or manages the HMO. The Council may check with the Criminal Records Authority whether the applicant has any relevant convictions. Not all convictions are relevant to a person's prospective role as an operator of an HMO. If you have any convictions you are required to declare, these should be specified on the application form in the appropriate place.

Spent Convictions

This is a detailed and comprehensive matter and it is recommended you seek independent legal advice on the matter but as a general guide under the Rehabilitation of Offenders Act 1974, criminal convictions can become spent or ignored after a rehabilitation period. They do not need to be disclosed.

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed. Rehabilitation periods that run beyond the end of a sentence are made up of the total sentence length plus an additional period that runs from the end of the sentence, which we have called the 'buffer period'. Other rehabilitation periods start from the date of conviction or the date the penalty was imposed.

Sentence/disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period).	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period).
Custodial sentence* of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3 ½ years

Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order**	1 year	6 months

*Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence of youth custody, a sentence of corrective training and a sentence of Borstal training.

**In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction.

Sentence/disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered).	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered).
Fine	1 year	6 months
Conditional discharge	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order	On the discharge of the order (i.e. when it is paid in full)	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance centre order	Period of the order	Period of the order
Hospital order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.