

## 2004 Housing Act - Licensing of HMOs

The 2004 Housing Act comes into force in April 2006 and introduces compulsory licensing of larger, higher-risk Houses in Multiple Occupation (HMOs). The government has issued an advisory leaflet for landlords which can be found on the internet at [http://www.odpm.gov.uk/pub/21/LandlordsDoyouneedapropertylicensePDF279Kb\\_id1164021.pdf](http://www.odpm.gov.uk/pub/21/LandlordsDoyouneedapropertylicensePDF279Kb_id1164021.pdf) .

This document is to provide more detailed guidance to landlords.

Initially, only those properties with the highest health and safety risks will need to be licensed. These will be properties with three or more storeys, having five or more people living as more than one household and sharing at least one standard amenity (such as a toilet, bath, washbasin, kitchen etc).

### What counts as a property of 3 or more storeys in height?

The following examples are of property types which will be counted:

- House with 3 or more floor levels,
- House with attic conversion,
- House with 2 floors above ground and a habitable basement,
- Property with three or more floor levels and a shop or other commercial use on the ground floor and living accommodation above,
- Property with 3 or more floor levels, living accommodation on the lower 2 levels and commercial use above,
- House on a sloping site with 2 floor levels at the front and 3 at the back.

### What is an HMO?

A House in Multiple Occupation (HMO) is defined in section 254 of the Housing Act 2004. The definition is long and complicated and is therefore summarised in this section; final determination will need to be made by reference to the section and any relevant guidance.

An HMO is a building, or part of a building, (such as a flat) that is occupied by more than one household:

- which shares an amenity, such as a bathroom, toilet or cooking facilities,
- which is a converted building – which may contain but is not entirely self-contained flats, e.g. floor-by-floor lets, (whether or not some amenities are shared or lacking),
- is converted into self contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulations, and at least one third of the flats are occupied under short tenancies.

Note: A building occupied by just two people living as two households does not constitute an HMO.

The building must be occupied by more than one household:

- as their only or main residence,
- as a refuge for people escaping domestic violence,

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- by students during term time,

A household is:

- a family,
- a single person living on their own, couples and same sex couples,
- other relationships, such as foster parents, carers and domestic staff.

## **Why does the government want HMOs to be licensed?**

Larger HMOs, bedsits and shared houses, often have poorer physical and management standards than other privately rented properties. The people who live in HMOs are generally amongst the most vulnerable and disadvantaged members of society. As HMOs are the only housing option for many people, the government recognises that it is vital that they are properly regulated.

Licensing is intended to make sure that:

- landlords and managers of HMOs are fit and proper people,
- each HMO is suitable for occupation by the number of people occupying,
- the standard of management of the HMO is adequate,
- high risk HMOs are identified and targeted for improvement,.
- councils can identify and support landlords, especially with regeneration and tackling antisocial behaviour.

Where landlords refuse to meet these criteria the council can intervene to:

- manage, repair and improve the property,
- protect vulnerable tenants,
- ensure HMOs are not overcrowded.

## **Do all HMOs have to be licensed?**

No. Under the new Housing Act 2004, the law requires licensing for properties which:

- are 3 or more storeys high,
- have five or more people in more than one household, and
- share amenities such as bathrooms, toilets and cooking facilities,
- where rents or other considerations are payable.

For more information on the other types of housing licences, please refer to the following website [www.odpm.gov.uk/index.asp?id=1151996](http://www.odpm.gov.uk/index.asp?id=1151996) .

## **How will Licensing work?**

Anyone who owns or manages an HMO that must be licensed has to apply to the council for a licence.

The council must give a licence if it is satisfied that the:

- HMO is reasonably suitable for occupation by the number of people allowed under the licence,
- proposed licence holder is a fit proper and competent person,
- proposed licence holder is the most appropriate person to hold the licence,
- proposed manager, if there is one, is a fit proper and competent person,
- proposed management and funding arrangements are satisfactory.

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## **What does a 'fit and proper person' mean?**

The council will carry out checks to make sure that the person applying for the licence is a fit and proper person. In deciding whether someone is fit and proper the council must take into account:

- any previous convictions relating to violence, sexual offences, drugs and fraud,
- whether the proposed licence holder has broken any laws relating to housing or landlord and tenant issues,
- whether the person has been found guilty of unlawful discrimination,
- whether the person has previously managed HMOs that have broken any approved code of practice.

It is advisable for the landlord or manager to be a member of a professionally recognised body, e.g. the National Federation of Residential Landlords, or Residential Landlords Association.

## **What is in a licence?**

The licence will specify the maximum number of people who may live in the HMO. It will also include the following conditions, which apply to every licence:

- a valid current gas safety certificate, which is renewed annually, must be provided,
- proof that all electrical appliances and furniture are kept in a safe condition ,
- proof that all smoke alarms are correctly positioned and installed,
- each occupier must have a written statement of the terms on which they occupy the property, for example, a tenancy agreement.

Councils may also apply the following conditions:

- restrictions or prohibitions on the use of parts of the HMO by occupants,
- the landlord or manager must take steps to deal with the behaviour of occupants or visitors,
- to ensure that the condition of the property, its contents, such as furniture and all facilities and amenities, bathroom and toilets for example, are in good working order,
- to carry out specified works or repairs within a particular timeframe,
- a requirement that the responsible person attends an approved training course.

## **How long will it last?**

A licence will normally last for a maximum of five years, although it can be for a shorter period.

## **How much will it cost?**

Landlords will have to pay a fee of £400 to cover the administration costs of the licence procedure. The license will last for a period of five years.

## **Can the council refuse to license my property?**

Yes, if the applicant is not a fit and proper person or the property does not meet the conditions set out above.

## **What will happen then?**

Where there is little or no prospect of the property being brought up to a licensable standard or where the owner fails to provide a “fit and proper person” to manage the property, the council has a duty to issue an Interim Management Order (IMO). This allows it to step in and manage the property and collect the rent. This order can last for a year, until suitable permanent arrangements can be made. If the IMO expires and there is no likelihood of a positive change in the circumstances, then the council can issue a Final Management Order. This removes the property from the control of the owner for a period of up to five years and can be renewed.

## **Can I appeal?**

You may appeal if the council decides to:

- refuse a licence,
- grant a licence with conditions,
- revoke a licence,
- vary a licence,
- refuse to vary a licence.

You must appeal to the Residential Property Tribunal, normally within 28 days. Details of how to appeal will be available soon.

## **Temporary exemption from licensing**

If the landlord or person in control, intends to stop the property operating as an HMO or reduce the numbers of occupants and can give clear evidence of this, then she or he can apply for a Temporary Exemption Notice. This lasts for a maximum of three months and ensures that a property in the process of being converted from an HMO does not need to be licensed. If the situation is not resolved, then a second Temporary Exemption Notice can be issued. When this runs out the property must be licensed, become subject to an Interim Management Order, or cease to be an HMO.

## **Are there any other penalties?**

It is an offence if the landlord or person in control of the property:

- fails to apply for a licence for a licensable property, or
- allows a property to be occupied by more people than are permitted under the licence.

A fine of up to £20,000 may be imposed. In addition, breaking any of the licence conditions can result in fines of up to £5,000.

If you require any further information or would like to discuss your HMO with an officer please phone or email - Mr S Appleyard, Senior Environmental Health Officer on 01727 819 0172719447 or [s.appleyard@stalbans.gov.uk](mailto:s.appleyard@stalbans.gov.uk).