

Licensing of Houses in Multiple Occupation: Frequently asked questions.

Q Why has HMO licensing been introduced?

A

Licensing is aimed at raising management and amenity standards in the rented property sector. Houses in multiple occupation (HMOs) in particular are often poorly managed and in poor physical condition. Licensing will raise the standards of such accommodation and will also ensure that landlords are managing their HMOs to the required standards.

Q What are the advantages of a property being licensed?

A

A local housing authority will grant a licence for a property if it is satisfied that it is reasonably suitable for occupation by not more than a maximum number of households or persons, or that it can be made so suitable by the imposition of conditions. The property will need to meet minimum standards in terms of the number of bathrooms, toilets, washbasins, showers, cooking and laundry facilities. The local housing authority will also need to be satisfied that the house will be managed by someone who is competent and fit to manage it. Landlords of licensable HMOs will benefit from receiving support from local housing authorities which should help them to manage their properties more efficiently. Landlords will be able to guarantee tenants a certain standard of accommodation. Reputable landlords will no longer have to face unfair competition from those who undercut rents and offer poor quality accommodation. Landlords have also said that having a licence could help them when disputes arise because it will prove the quality of the accommodation they are providing.

Q Why is the Government targeting only certain HMO landlords?

A

HMOs provide affordable housing for many young and vulnerable tenants. However, it is possible to find the very worst housing standards in HMOs and these tenants are most at risk from poor management. The most common problems associated with multiple occupancy relate to poor fire safety standards, overcrowding, inadequate facilities and poor or unscrupulous management. Risk assessment carried out by ENTEC for the Department of the Environment, Transport and the Regions on fire safety in HMOs concluded that in all houses converted into bedsits, the annual risk of death per person is 1 in 50,000 (six times higher than in comparable single occupancy houses). In the case of bedsit houses comprising three or more storeys the risk is 1 in 18,600 (sixteen times higher).

Q What is an HMO?

A

If you let a property which is one of the following types it is a House in Multiple Occupation:

- An entire house or flat which is let to 3 or more tenants who form 2 or more households and who share a kitchen, bathroom or toilet. (For a definition of household see the relevant faq.)
- A house which has been converted entirely into bedsits or other non-self-contained accommodation and which is let to 3 or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities.
- A converted house which contains one or more flats which are not wholly self contained (ie the flat does not contain within it a kitchen, bathroom and toilet)

and which is occupied by 3 or more tenants who form two or more households.

- A building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies.

In order to be an HMO the property must be used as the tenants' only or main residence and it should be used solely or mainly to house tenants. Properties let to students and migrant workers will be treated as their only or main residence and the same will apply to properties which are used as domestic refuges.

Q What counts as a self contained unit of accommodation?

A

A self contained unit is one which has inside it a kitchen (or cooking area), bathroom and toilet for the exclusive use of the household living in the unit.

If the occupiers need to leave the unit to gain access to any one of these amenities that unit isn't self contained.

Q Is a block of flats an HMO?

A

A purpose built block of flats is not an HMO. However, an individual flat within it might be if it is let to 3 or more tenants (at least one of whom is unrelated). The flat will not be subject to mandatory licensing.

If the block is a house which has been converted entirely into self-contained flats the conversion will be regarded by local housing authorities as an HMO if it does not comply at least with the standards of the 1991 Building Regulations and if more than one third of the flats are let out on short leases. These blocks of flats will not be subject to mandatory HMO licensing, but they may be subject to additional licensing if they are located in Morecambe and Heysham.

Q What is a household?

A

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), grandchildren, 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.

Therefore three friends sharing together are considered three households. If a couple are sharing with a third person that would consist of two households. If a family rents a property that is a single household. If that family had an au-pair to look after their children that person would be included in their household.

Q Which HMOs need a licence?

A From 1st October 2018, HMOs that are occupied by five or more people living as more than one household, with any number of storeys will be licensable. This means

that flats, converted flats and one or two storey properties are licensable. Licensing also applies to blocks of purpose-built flats where there are up to two flats in the block and one or both are occupied as an HMO.

Q Are there any exceptions to the definition of HMOs?

A

Certain types of properties are not classed as HMOs for the purpose of the Housing Act 2004 (other than for the Housing Health and Safety Rating System) and, as a result, are not subject to licensing. These include:

- two person flat share; a property, or part of a property, lived in by no more than two 'households' each of which consists of just one person.
- a property where the landlord and his household is resident with up to 2 tenants.
- buildings occupied entirely by freeholders or long leaseholders.
- buildings managed or owned by a public body (such as the police or the NHS), a local housing authority or a registered social landlord.
- a building where the residential accommodation is ancillary to the main use of the building, for example, religious buildings, conference centres etc.
- buildings which are already regulated (and where the description of the building is specified in regulations), such as care homes, bail hostels etc. (However, domestic refuges are not exempt.)

Purpose built blocks of flats are not HMOs. However, if any of the individual flats are shared by more than 2 tenants in two or more households they will be HMOs. Houses which are converted entirely into self-contained flats will only be HMOs if the conversion did not meet the standard of the 1991 Building Regulations and more than one-third of the flats are let out on short term tenancies.

Q My property is used mainly for other residential purposes. I only let a part of it to tenants. Is it an HMO and do I have to get a licence?

A

If a property is partly lived in by tenants as their main residence, but is also used for other purposes the local housing authority may class the building as an HMO if it is satisfied that the more permanent tenants are making significant use of the building.

Examples of this would include:

- a B&B providing accommodation for homeless people as well as a place to stay for short-term guests
- a house that is used in the summer for holiday lets but is let to tenants out of season.

If the local housing authority classes your property as an HMO then if it meets the criteria for licensing you will have to apply for a licence. You have the right to appeal against the local housing authority's decision to classify the property as an HMO.

Q How long will the application process take?

A

The length of the application process will vary depending on a number of factors, such as the circumstances of each property or the total number of applications that we have to get through. Provided that a landlord has submitted a valid application, the HMO can continue to operate legally until the local housing authority reaches its decision and any appeals against that decision are complete. However, the property

may need to be inspected in order for the local housing authority to be satisfied that it is suitable for licensing.

Q How long is the licence valid for?

A

An HMO licence will normally last for up to five years.

Q How much will a licence cost?

A

See fee structure.

Q Why hasn't a limit been set on fees?

A

Experience from previous registration schemes where there has been a cap on fees suggests that local housing authorities will charge the maximum allowed regardless of whether that is the actual cost of licensing. As a result in some areas the fees won't cover the costs and in others landlords will end up paying more than they should for the service.

Q Will council tax be increased to pay for the scheme?

A

The Housing Act 2004 enables local housing authorities to recover the full cost of licensing from licence fees. However, local housing authorities may also choose to subsidise licensing from council tax. They may not use the licensing income to subsidise other projects.

Q Are some councils providing grants to help landlords comply with HMO regulations?

A

There are no grants available to landlords in the Lancaster City Council district

Q Is there an ombudsman I can appeal to about the charges?

A

Yes. In general appeals against licensing decisions by the local housing authority will be heard by a residential property tribunal. The local housing authority will have to send you details of your right to appeal with all notices of their decisions.

Q What is the criteria for a licence to be granted?

A

In order to grant a licence for an HMO a local housing authority has to be satisfied of the following:

- That the proposed licence holder and any manager of the property is a fit and proper person
- That the proposed licence holder is the most appropriate person to hold the licence
- That proper management standards are being applied at the property
- That the HMO is reasonably suitable, or can be made suitable, for occupation by the number of tenants allowed under the licence with at least the minimum prescribed standards of amenities and facilities. These include the number, type and quality of shared bathrooms, toilets and cooking facilities.

The licensing application form contains questions which enable the local housing authority to decide whether or not the landlord and the property meet the criteria and can be given a licence.

Q What are the minimum standards set for HMOs?

A

The Government has specified minimum amenity standards, setting out the requirements for kitchens, bathrooms and toilets in an HMO, space standards and provisions for waste management.

If your property does not hold enough amenities for the number of tenants the local housing authority will either:

- grant a licence with conditions that extra amenities will be put in within a specified timeframe
- grant a licence for a smaller maximum number of occupants based on the amenities which are installed
-

in properties with the worst conditions we may decide not to grant a licence at all if they cannot be brought up to required standards.

Q Will there be on-site inspections? If so, how many?

A

The local housing authority does not have to inspect the property before granting a licence but in some cases an inspection may be necessary in order for us to be satisfied that the property is suitable for licensing.

Inspections will also allow the local housing authority to prioritise properties for inspection under the Housing Health and Safety Rating System (which replaces the former Fitness for Human Habitation test).

Q What are Housing Health and Safety Rating System inspections?

A

The Housing Health and Safety Rating System (HHSRS) will apply across all residential premises and is concerned with avoiding, or at the very least, minimising potential hazards (it doesn't set out minimum standards).

The local housing authority has to satisfy itself that there are no category 1 hazards (the most severe hazards) in licensable HMOs within 5 years of receiving a licence application. This may require them to carry out an HHSRS inspection on a property. We may choose to make this inspection when deciding whether to grant a licence or they may decide to inspect at a later date.

Under HHSRS, a landlord may have to carry out work to remedy any identified hazards. The sort of work that needs to be carried out and the severity of the enforcement measures will vary depending on how serious the problem is. However, the local housing authority cannot put conditions on a licence requiring work to be done on the property under the HHSRS.

Q My property is currently only rented to four people but it has room to rent to more. Should I apply for a licence?

A

If your property houses 5 or more tenants in two or more households at any point from the date that licensing is introduced, you have to apply for a mandatory licence. So long as you house a smaller number of tenants you do not have to apply for a licence even though the property may be capable of housing 5 or more. (If your

property houses 5 or more but then you decide to let to fewer tenants you can ask us to revoke the licence if you wish although we do not have to agree to this request.)

Q Will I have to evict tenants to make sure that my property is not housing more than the licence allows?

A

Landlords may not evict existing tenants to avoid licensing or to comply with the maximum number of occupants allowed in the property. It is considered reasonable that the tenants were in occupation at the time the licence was granted and landlords will not be penalised. However, when the tenancy comes to an end, landlords or agents will be committing an offence if new tenants are allowed to move in bringing the total occupants above the maximum number permitted under the licence.

Q What happens if a property of mine becomes licensable because of a change in the makeup of the household which occurs without my knowledge? For example, if a tenant's partner moves in, bringing the total number to five?

A

A landlord commits an offence if he knowingly lets a property to more people than it is licensed to hold.

In the interests of good management standards you should be aware of who is living in your property at all times. However, if you are genuinely not aware that there are more people living in your property than it is licensed to hold then you may have a reasonable excuse.

If you are knowingly accepting rent from the additional occupants (whether or not you know they are tenants) this could be taken to mean that you know that they are living in the property.

If guests come to stay with the tenant then provided that they are staying there as short-term guests and are not paying rent and using the property as their main or only residence they will not count towards the number of occupants.

Q How and on what grounds will the council decide who is a 'fit and proper person'?

A The application form will ask you about details of :

- Any unspent convictions you may have for offences involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003
- Any unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business
- Any contravention of any provision of the law relating to housing or of landlord and tenant law; (including any civil proceedings that resulted in a judgement against you.)
- If you require permission to enter or remain in the UK and do not have it (ie. is an illegal immigrant) or
- Have received civil penalties or has been convicted of an offence, for renting to a disqualified person (ie. an illegal immigrant under Part 3 of the Immigration Act 2014)
- Are insolvent or an undischarged bankrupt

If you do not declare unspent convictions you will be committing a criminal offence and will be subject to a fine of up to £5000. There is also every likelihood that when this comes to light your licence will be denied or revoked.

Simply because someone has an unspent conviction for one of these offence does not mean that they will automatically be denied a licence. Each application will have to be considered on its own merits and the circumstances of an offence and its relevance to the licence application should be taken into account.

Q Will HMO licensing be used to hold landlords responsible for tenants' anti-social behaviour?

A

As a licensed landlord it will be your duty to take reasonable steps to ensure that tenants are not causing problems within the boundaries of the property through anti-social behaviour. For example, if the landlord has a complaint from a neighbour about loud music late at night or rubbish left lying around the property, it would be the responsibility of the landlord to talk to the tenants and work with other agencies such as the Council to try to resolve any problems. If a condition is set on the licence about anti-social behaviour the Council will be work closely with landlords to combat the problem.

If you report anti-social behaviour to the appropriate authority but that authority then chooses not to act, or takes only limited action, you will be deemed to have taken appropriate action and should not be considered to have breached the conditions of your licence.

Q Once a property is licensed as a HMO, is it possible to convert it back to a single dwelling?

A

Yes, as HMO licensing cannot be used to require a property to remain occupied as an HMO.

However certain HMOs, whether or not they are licensable, require change-of-use planning permission to be converted back to a single dwelling. For more information about planning permission please contact the Planning Department on 582950.

If a licensed property is let in a way which takes it out of being a licensable HMO the licence will remain in force until its end-date (unless the local housing authority agrees to revoke it). However, we would require proof to show that it was not being used as a HMO once the licence had run out.

Q What happens if I wish to sell my property on as an HMO?

A

Licences are not transferable to another person or property. If you wish to sell your property on as an HMO, the new landlord would need to apply for a new licence.

Q What would happen to my tenants if I decided to convert an HMO into a single dwelling?

A

You may not unlawfully evict your current tenants in order to return the property to being a single dwelling. If you attempt to do so the Council may apply for a management order to take over management of your property. Provided that your HMO is not one which requires planning permission then when the existing tenancy

comes to an end you may let it in due course to multiple occupants, a single occupant or a family as you wish.

Q What happens if I fail to register for a licence?

A

Failure to apply for a licence is a criminal offence and can result in a fine of up to £20,000.

Q Are there any other penalties for operating without a licence?

A

A rent repayment order is an order can be made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

The rent is paid back to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis

A rent repayment order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed in paragraph 1.8 above. Where an application for a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

Q How will the HMO licensing scheme be enforced to capture the worst landlords?

A

From July 2006 it will be a criminal offence to operate an HMO without applying for a licence. The offence will be subject to a fine of up to £20,000. The local housing authority, and in certain circumstances the tenant, can apply for a rent repayment order, under which they can reclaim the rent paid during the period up to a maximum of 12 months when the landlord did not have a licence or a licence application outstanding. Finally, a landlord without a licence will not be able to use a section 21 notice to evict tenants. (A section 21 notice can be used by landlords to serve notice to seek possession from the tenants simply because he wants to regain possession of his property, not on grounds of rent arrears or other reasons.)