

West London property licensing application

HMO licensing - Information for applicants

From 6 April 2006, Part 2 of the Housing Act 2004 (The Act) places a duty on local authorities to license houses in multiple occupation (HMOs) that fall within certain categories.

Anyone who owns or manages an HMO that must be licensed has to apply to the local authority in which the property is situated for a licence.

If an HMO is required to be licensed, it is a criminal offence to operate the HMO without a licence, and a fine of up to £20,000 may be imposed. Furthermore, under certain circumstances, a tenant living in an HMO that should have been licensed may be able to apply for a Rent Repayment Order, to recover the rent they paid during the unlicensed period (up to a maximum of 12 months). Local authorities are also able to claim back housing benefit payments made in relation to unlicensed HMOs.

What is an HMO?

HMO stands for House in Multiple Occupation, which is defined under sections 254 & 257 of the Housing Act 2004. An HMO can be a building or part of a building if it is:

- Occupied by persons who form more than one household, and where those persons share (or lack) one or more basic amenities, such as a WC, personal washing and cooking facilities; or
- A converted building containing one or more units of accommodation that **do not** consist entirely of self-contained flats. (There is no requirement that the occupiers share facilities;) or
- A converted building consisting entirely of self-contained flats, where the building work undertaken in connection with the conversion did not comply with the 1991 Building Regulations and more than one third of the flats are occupied under short tenancies.

The HMO must be occupied by more than one household:

- As their only or main residence; or
- As a refuge by persons escaping domestic refuge; or
- During term time by students; or
- For some other purpose that is described in regulations.

In all cases:

- Occupation of the living accommodation must be the only use of that accommodation; and
- Rents are payable or other considerations are provided.

Under the Housing Act 2004, a household comprises:

- A single person; or
- Co-habiting couples (whether or not of the opposite sex); or
- A family (including foster children and children being cared for) and current domestic employees.

Exemptions from HMO definitions

Certain types of buildings will not be HMOs for the purpose of Part 2 of the Act. They are listed in Schedule 14 of the Act and include:

- Buildings, or parts of buildings, occupied by no more than two households, each of which comprise a single person only (for example, two person house or flat shares);
- Buildings occupied by a resident landlord with up to two tenants;
- Buildings managed or owned by a public sector body, such as the police, local authority, registered social landlords, fire and rescue authority and the NHS;

- Buildings occupied by religious communities;
- Student halls of residence where the education establishment has signed up to an Approved Code of Practice
- Buildings occupied entirely by freeholders or long leaseholders
- Buildings regulated otherwise than under the Act, such as care homes, bail hostels etc, and the description of which are specified in regulations.

Mandatory licensing of HMOs

Mandatory licensing of HMOs only applies to certain categories of HMO, which are detailed in The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006, and include HMOs which satisfy the following conditions:

1. the HMO or any part of it comprises three storeys or more; and
2. it is occupied by five or more persons; and
3. it is occupied by persons living in two or more single households.

The following storeys shall be taken into account:

- Any basement if it is used wholly or partly as living accommodation; it has been constructed, converted or adapted for use wholly or partly as living accommodation; it is being used in connection with, and as an integral part of the HMO; or it is the only principal entry into the HMO from the street.
- Any attic if it is used wholly or partly as living accommodation; it has been constructed, converted or adapted for use wholly or partly as living accommodation; or it is being used in connection with, and as an integral part of the HMO.
- Where the living accommodation is situated in part of a building above business premises, each storey comprising the business premises.
- Where the living accommodation is situated in part of a building below business premises, each storey comprising the business premises.

- Any mezzanine floor not used solely as a means of access between two adjoining floors if it is used wholly or mainly as living accommodation; or it is being used with, and as an integral part of the HMO.
- Any other storey that is used wholly or partly as living accommodation, or in connection with and as an integral part of the HMO.

Please note that buildings which have been converted into entirely self contained flats are exempt from mandatory HMO licensing.

If you own or manage an HMO which falls under mandatory licensing, you must complete and return the attached application form.

Granting a licence

Under section 88 of the Act, having received a complete HMO licence application, the council must issue a licence if it is satisfied that:

- The proposed licence holder is a fit and proper person (see below)
- The proposed licence holder is the most appropriate person to hold the licence
- The proposed manager (if there is one) is a fit and proper person, and that the manager has control of the property (see below), or they are an employee of the person having control of the property.
- The proposed management arrangements for the property are satisfactory.
- The property is reasonably suitable for occupation.

A licence will normally last for up to five years, however, if the council has specific concerns in relation to the HMO itself or the management of it, they may decide to issue a licence for a reduced period, for example two years.

Person having control

In relation to premises, means the person who receives the rack rent of the premises (whether on his own account or as an agent or trustee of another person), or who would receive it if the premises were let at a rack rent.

Fit and proper person

In determining if a person is fit and proper for the purposes of the Act, the council must take into account:

- Any previous convictions relating to violence, sexual offences, drugs and fraud;
- Contravention of any law relating to housing or landlord and tenant matters;
- Whether the person has been found guilty of unlawful discrimination;
- Whether the person has contravened any Approved Code of Practice;

It is, however, a matter for the council to determine the relevance of these considerations (or other matters it considers to be relevant) in deciding whether or not a person is fit and proper.

Licence conditions

Every licence must contain certain conditions which are listed below. The council also has the discretion to add additional conditions to a licence.

- Mandatory condition requiring the licence holder to provide annual gas safety certificates (if gas is supplied to the property);
- Mandatory condition requiring the licence holder to ensure electrical appliances and furnishings provided are in a safe condition;
- Mandatory condition requiring the licence holder to ensure that smoke alarms are installed in the property, and that they are maintained in proper working order;
- Mandatory condition requiring the licence holder to supply the occupiers of the property with a written statement of the terms on which they occupy it.

The licence will also specify the maximum number of people who can occupy the HMO.

The licence holder or manager of an HMO who allows it to be occupied by more persons than are permitted under the licence commits an offence and can be fined up to £20,000.

Furthermore, if that person otherwise breaches or fails to comply with a condition of the licence he will also commit an offence and may be fined up to a maximum of £5,000.

Refusal of licence application

The council can refuse to grant a licence if they are satisfied that the HMO does not meet the appropriate standards, and/or the landlord or manager is not a fit and proper person.

Appeals against licencing decisions

An appeal may be made to a Residential Property Tribunal against a decision of the council to:

- Refuse to grant a licence.
- Grant a licence, including any conditions imposed.

An appeal must normally be made within 28 days of the decision being made, but if the tribunal thinks there are good reasons to do so, it may extend the period for appeal. In considering an appeal the tribunal rehears the council's decision, but is able to take account of new evidence put forward by the appellant. In its decision the tribunal may quash the council's decision or vary or confirm it.

Temporary exemptions from licencing

An owner or manager of an HMO may apply to the council for a Temporary Exemption Notice (TEN), if the property is required to be licensed, but is not licensed, and that the person having control is taking particular steps with a view to securing that the house is no longer required to be licensed. If a TEN is granted the HMO is exempt from licensing and accordingly the manager/ owner does not commit the offence of operating an HMO without a licence.

A council may only grant a TEN if it satisfied that the applicant is, or will shortly be, taking steps to ensure the HMO ceases to be subject to licensing. For example, the owner or manager of the property is able to provide notification in writing from a solicitor confirming that possession proceedings have been initiated, and evidence to show that they are likely to be successful and being taken legally and correctly.

A TEN can only be granted for a maximum period of three months, but in exceptional circumstances the council may issue a second TEN to last a further three months following the expiry of the original. No more than two consecutive TENs may be granted in succession for a given property.

Discretionary licencing

Also under Part 2 of the Act, local authorities have the discretion to licence additional categories of HMOs under an additional licensing scheme. This will mean that some HMOs that are smaller than the three-storey and five-person HMOs which mandatory licensing applies to (and certain self-contained flats) could be required to be licensed.

If you are in any doubt whether your property will need to be licensed you will need to contact the local authority where your HMO is located.