

# licensing of houses in multiple occupation(hmos)

HOUSING ACT 2004, PART 2

## Licence Application Guidance Notes



## Introduction

The Housing Act 2004 introduced mandatory licensing of high risk Houses in Multiple Occupation (HMO) from 6 April 2006.

An HMO property which must be licensed is one that is occupied by 5 or more persons of more than one households, who share an amenity such as a kitchen or toilet and comprising of 3 or more storeys. This includes a single flat over a shop if the entire premises has 3 storeys. Buildings consisting solely of self-contained flats or purpose built flats, meeting as a minimum the requirements of the 1991 Building Regulation are exempt from licensing.

### Licence Application Procedure

Before completing an application form for an HMO licence, please ensure that you have read these guidance notes.

Please answer all questions unless otherwise directed. The form comprises of the following 3 parts:

**Part 1** - Applicant / Licence Holder / manager details;

**Part 2** – Other legal interests in property (ies);

**Part 3** – Individual property details & declaration.

When applying for a licence you must complete sections 1, 2 and 3 (as appropriate). If you have more than one property you need only submit licence holder and manager details in Part 1 for all properties in your control. Part 2 only needs to be completed once for all houses where the ownership information is the same. You must complete the property details in Part 3 for each property.

The Council aims to acknowledge receipt of your application within 10 working days wherever possible. You should keep your acknowledgement safe as this is proof that you have complied with the law. If a tenant or their representative asks you for a copy of your licence you should show them your acknowledgement letter.

The completed application form together with any supporting documents should be sent to the appropriate area office as listed below. Please do not send any fees with the application form as you will be invoiced.

### Meaning of HMO

HMO means a house in multiple occupation as defined by sections 254 to 259 of the 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 flat or flats;
- The living accommodation is occupied by more than 2 persons who do not form a single household;
- Where two or more 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 HMO's

A licensable HMO is a HMO which comprises 3 or more storeys and 5 or more persons of more than one unrelated households sharing facilities (e.g. kitchen, bathroom, WC).

A storey includes:

- Any basement used wholly or partly as living accommodation: that has been constructed, converted or adapted for use wholly or in part as living accommodation: that is being used in connection with and as an integral part of the HMO or it is the only or principal entry into the HMO from the street.

- Any attic used wholly or partly as living accommodation: that has been constructed, converted or adapted for use wholly or partly as living accommodation or is being used in connection with an integral part of the HMO.
- Each storey comprising business premises either above or below the living accommodation (certain basement premises are exempt. Please seek advice)

“HMOs consisting only of self contained flats meeting as a minimum the requirements of the 1991 Building Regulation 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.”

In the majority of cases we will process your application without visiting your property. We expect a large volume of applications, which may therefore mean sometime before a licence issued.

### **Licence Conditions**

All licences will be issued subject to conditions, some that we are required to issue and some to ensure that the property complies with national and local standards. We are required to consult all relevant parties about the conditions of the licence. You are allowed a period of representation about the licence conditions, during which any concerns can be considered and hopefully resolved. Where agreement cannot be reached the licence will be issued with conditions and you will have the opportunity to make an appeal to a Residential Property Tribunal. Your rights of appeal will be detailed with the issue of the licence.

### **Public Register**

Once we have processed your application we will enter details of your licence on a public register that the Council is obliged by law to keep.

### **You should note that:**

1. An HMO licence is not transferable. Where a property changes ownership the new landlord must make an application for a licence. No repayment of the licence fee will be made for any un-expired period of the licence and a fee will be required from the new applicant.
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)** (see note 4 below) has been served. At any time during the 3 months a formal application may be made for a TEN. The TEN will be valid for a period of 3 months and will take effect after the initial 3 months ends.
3. Where a licence holder wishes to alter the terms of their licence, for example there is a change in manager details or a change in occupancy levels, they may apply for a Variation to the Licence. The application will be an application to vary a licence. A fee is payable for this, to cover the Council's costs in administering the changes.
4. Where a licence holder intends to change use of the accommodation to single household/ family accommodation or to reduce the occupancy level, they may apply for a **Temporary Exemption Notice (TEN)**. A TEN is valid for up to 3 months and will be recorded on a public register. In some circumstances a TEN may be renewed for a second period of 3 months.
5. If the number of persons the house can accommodate turns out to be less than the number that the applicant has applied to licence then we cannot give a refund for any higher fee that has been paid
6. It is a criminal offence to make a false statement in an application for an HMO licence, or to fail to comply with any licence condition, or to permit the property to be occupied by more than the permitted number of persons/households.

### **Housing Health and Safety Rating System (HHSRS)**

The Council must be satisfied that the terms of the licence are met and that the HMO is free from serious health and safety hazards, as introduced by the Housing Act 2004. The Council will inspect all properties at least once during the period of the licence, which in most cases will be 5 years. We will make arrangements with you regarding this inspection

## Fees

- HMO's with 5 or 6 persons £500.10
- HMO's with 7 or 8 persons £600.10
- HMO's with 9 + persons £700.15

## Discounts

One of the following discounts may be applied to applications:

- Discount for complete and early application
- Discount for applications where property shown to standard. (when fully completed application form is received accompanied by detailed floor plans showing existing amenities and room sizes)
- Discount for complete applications with no further works.

## Members of the Kirklees Landlord and Property Accreditation Scheme

A discount is available to the members of the Kirklees Landlord and Property Accreditation Scheme.

## Definitions

### Part 1.

#### **Applicant** (application 1.1 to 1.4 & 2.1)

This may be the property owner, the proposed license 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** (application 1.1 to 1.4 & 2.2)

The most appropriate person to be responsible for the property and to hold the licence. This will usually be the applicant.

#### **Owner**

Means person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the free hold 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 which has a term of more than 3 years to expire.

#### **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.

**Licensed Licensable HMOs** (application 1.5)

This is relating to houses licensable and actually licensed with this or another Local Authority. This will include licensable HMOs already registered with the Housing Solutions

**Membership of Accreditation Scheme** (application 1.6)

These are the members of the Kirklees Landlord and Property Accreditation Scheme. Please also inform us if you are member of any other Accreditation scheme run by other local Authority or professional body and if you are member of any nationally recognised landlords association or member of any professional body. This information will go towards fit and proper person assessment.

**Person managing the property** (application 1.7)

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.

**Fit and proper person** (application 1.8)

The local Authority 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. Not all convictions are relevant to a person's prospective role as an operator of an HMO.

The local Authority may ask for the Criminal Records Bureau check.

**Fit and Proper Person** (application 1.8 & 1.9)

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 is applied to any person managing the premises and any director or partner in a company or organisation which owns or manages the HMO. Not all convictions are relevant to a person's prospective role as an operator of an HMO. Please note that failure to declare a relevant conviction will be regarded with the conviction as more serious than the conviction itself.

**If you do have any convictions you are required to declare, these should NOT be sent with the application form but should be sent to the HMO Licensing Manager under separate cover marked Private & Confidential.**

Please sign the declarations at [1.9](#)

**Spent Convictions** (application 1.8a)

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 varies depending on the sentence or order imposed by the court – not the nature of the offence. Custodial sentences of more than two and a half years can never become spent. All borstal or detention centre sentences are now spent. The periods from the date of conviction are as follows:

Sentence	Rehabilitation Period
1. Prison sentences of 6 months or less, including suspended sentences and detention in a young offender institution	7 years (3 ½ years if 17 or younger when convicted)
2. Prison sentences of more than 6 months to 2 and a half years, including suspended sentences and detention in a young offender institution	10 years (5 years if 17 or younger)

3. Fines (even if subsequently imprisoned for fine default), compensation, probation (for convictions on or after 3rd February 1995), community service, combination, action plan, curfew, drug treatment and testing and reparation orders	5 years (2 ½ years if 17 or younger)
4. Absolute discharge	6 months
5. Conditional discharge or bind-over, probation(for convictions before 3rd February 1995), supervision, care orders	1 year or until the order expires (whichever is longer)
6. Attendance centre orders	1 year after the order expires
7. Hospital orders (with or without a restriction order)	5 years or 2 years after the order expires (whichever is longer)
8. Referral Order	Once the order expires

### **Enforcement Action** (application 1.8d)

The appropriate enforcement action detailed in Section 5 of the Housing Act 2004 is:

- (a) An Improvement Notice under Section 11 of the Housing Act 2004;
- (b) A Prohibition Order under Section 20 of the Housing Act 2004;
- (c) A Hazard Awareness Notice under Section 28 of the Housing Act 2004;
- (d) Emergency Remedial Action under Section 40 of the Housing Act 2004;
- (e) An Emergency Prohibition Order under Section 43 of the Housing Act 2004;
- (f) A Demolition Order under Subsections (1) or (2) of Section 265 of the Housing Act 1985;
- (g) A premises being in a Clearance Area under Section 289 of the Housing Act 1985.

### **Equality Monitoring** (application 1.10)

The Council monitors the information to improve services. Please help us by providing the information requested.

## **PART 2.**

### **Information regarding the property ownership.**

**Applicant** (see above) ; **Owner** (see above) ; **Person having control of the property** (see above)

#### **Freeholder** (application 2.7)

Person owning the freehold of the property

#### **Mortgagee** (application 2.9a/ 2.9b)

The mortgagee is the company lending money against the security of the premises.

## **PART 3.**

### **Type of premises** (application 3.1)

- 1) **Detached.** A single dwelling which is free standing from any other structure except its own outbuildings.
- 2) **Semi detached.** A dwelling which shares a structural party wall with one other dwelling forming a pair which are free standing from any other structure except their own outbuildings.
- 3) **Terraced.** A dwelling forming part of a group of three or more dwellings linked by side party walls in a linear layout, excluding those defined as end terrace. Crescent layouts would be included.

- 4) **End terrace.** A dwelling at the end of a terrace of dwellings which therefore shares a side party wall with one other dwelling only.
- 5) **Back to back terrace.** A dwelling forming part of a group of three or more dwellings linked by side and rear party walls in a linear layout.
- 6) **Grouped Design.** A dwelling which shares a party wall with one or more other dwellings set out in a non linear layout such as a cluster or around a courtyard. Entrances will normally be private.
- 7) **Residential block.** A dwelling in a block, as defined in field 11, which is entirely designed for residential or related use.
- 8) **Mixed use block.** A dwelling in a block, which contains a mix of units designed for both residential and non-residential use.

#### **Self Contained Flats** (application 3.4)

HMO's consisting only of self contained flats (meeting the requirements of the 1991 Building Regulation) are not subject to mandatory licensing unless taken together with any floors containing commercial use the numbers of storeys is three or greater and the numbers of occupants includes 5 or more. 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. Accommodation occupied by 3 or more people of two or more households who share bathroom or kitchen facilities is not self-contained.

#### **Storeys** (application 3.9 & 3.10)

A storey includes:

- 1) Any basement used wholly or partly as living accommodation: that has been constructed, converted or adapted for use wholly or in part as living accommodation: that is being used in connection with and as an integral part of the HMO or it is the only or principal entry into the HMO from the street.
- 2) Any attic used wholly or partly as living accommodation: that has been constructed, converted or adapted for use wholly or partly as living accommodation or is being used in connection with an integral part of the HMO.
- 3) Each storey comprising business premises either above or below the living accommodation, but excluding businesses in basement areas.

*Mezzanine floors are counted as storeys*

#### **Household** (application 3.11)

A household includes single people, couples, families, same sex couples and other relationships, such as fostering, carers and domestic staff.

#### **Amenities** (application 3.11)

Please provide information about the amenities in the properties.

#### **Fire Safety** (Application 3.12 – 3.16)

Please provide information about fire safety measures in the property and enclose fire safety system test report.

#### **Electrical Installation & Portable Electrical Appliances Safety Reports**

An electrical safety report must be obtained every five years. It is recommended that a Portable appliance test should be carried out every 2 years. Please enclose inspection reports with application.

#### **Gas Safety** (application 3.19)

Gas appliances must be safe and tested and certificated in accordance with the Gas Safety Installations and use regulations 1998. Please enclose gas safety certificate with the application.

### **Furniture and Furnishings** (application 3.20)

All upholstered furniture provided with rented accommodation must comply with the Fire and Furnishings (Fire Safety/Amendment) Regulations 1993. This means that all furnishings provided within the tenancy must have passed cigarette and match ignition tests and the filling materials have passed the flammability tests. If your furniture complies it should have a label attached permanently with the lining giving details as appropriate.

Please sign the declaration at 3.20.

### **Tenancy Arrangements** (application 3.21)

HMO occupier must have a written statement of the terms/ tenancy agreement on which they occupy the property.

Please enclose copy of statement of terms/ tenancy agreement with the application.

### **Financial Arrangements for Repairs/ Improvements** (application 3.25 & 3.26)

Please confirm if there are adequate financial arrangements available to the proposed licence holder to enable essential repairs to be carried out to the property or to fund improvements to the property to meet the National Minimum Standards or to undertake essential fire precaution work or other works.

### **Property Information** (application 3.27)

Information provided will assist in assessing the property's suitability for the number of occupant applied for and standard of amenities.

### **Informing Interested Parties** (application 3.28)

You must let certain persons know in writing that you have made this application or give them a copy of it. A specimen letter is included in the application guide. The persons who need to know about the application are:

- Any mortgagee of the property (the lender)
- Any owner of the property to which the application relates (if it is not you) i.e. the freeholder and any head lessees who are known to you
- Any other person who is a tenant or long leaseholder of the property or any part of it (including any flat) who is known to you other than a statutory tenant or other tenant whose lease or tenancy is for less than three years (including a periodic tenancy)
- The proposed licence holder (if it is not you)
- The proposed managing agent (if any) (if it is not you)
- Any person who has agreed that he will be bound by any condition or conditions in a licence if it is granted

#### **You must tell each of these persons:**

- Your name, address, telephone number and e-mail address or fax number (if any)
- The name, address, telephone number and e-mail address or fax number (if any) of the proposed licence holder (if it is not you)
- That this is an application made under Part 2 of the Housing Act 2004
- The address of the property to which the application relates
- The name and address of the local housing authority to which the application will be made
- The date the application will be submitted

#### **See appendix 3 for specimen letter**

Please sign the declaration confirming that you have notified the relevant parties.

### **Declaration** (application 3.29)

All relevant parties must sign the declaration.

## **Appendixes**

### **Example Plan (Appendix 1)**

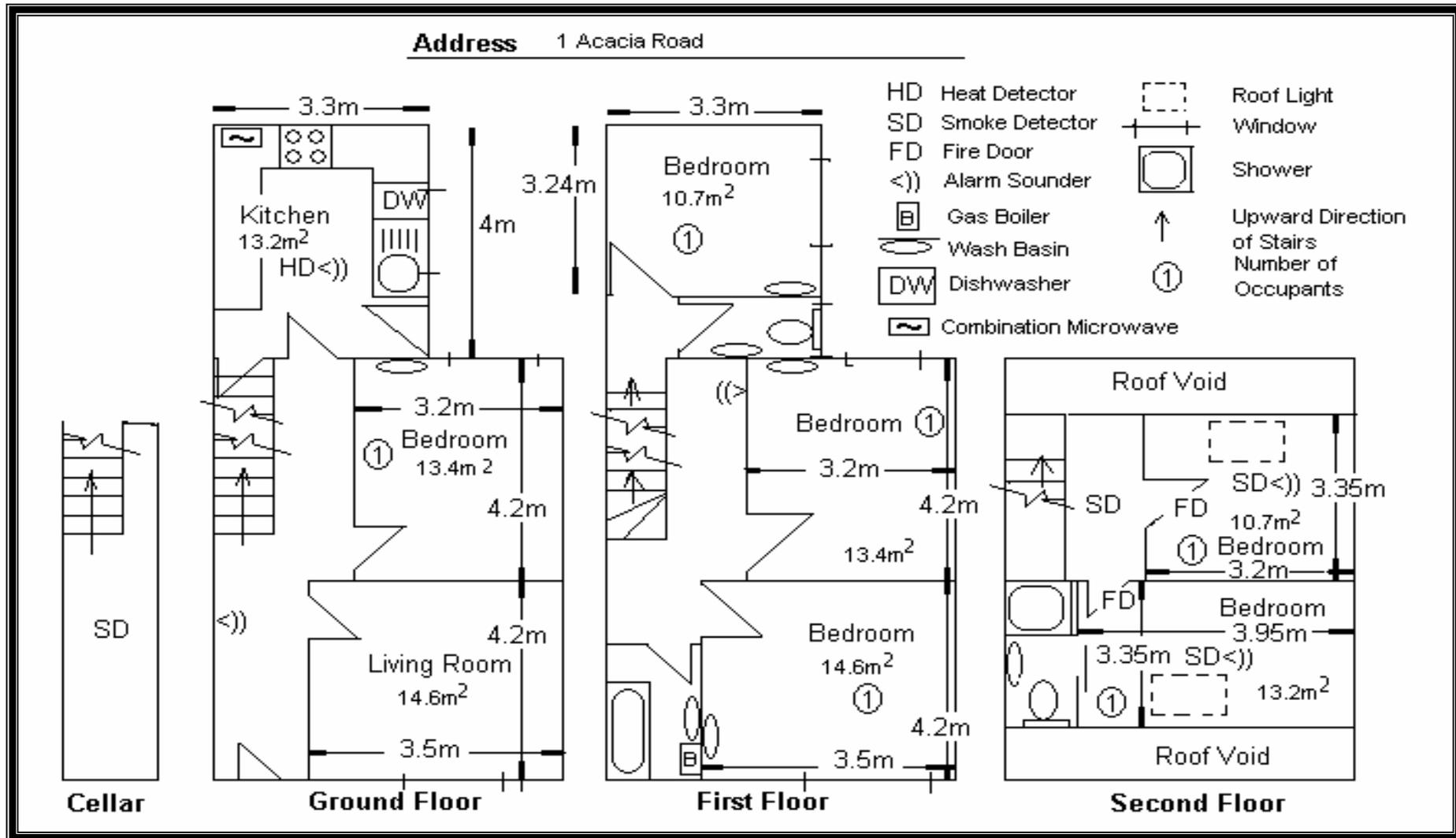
### **Graph Paper (Appendix 2)**

### **Specimen Notification Form (Appendix 3)**

## Appendix 1

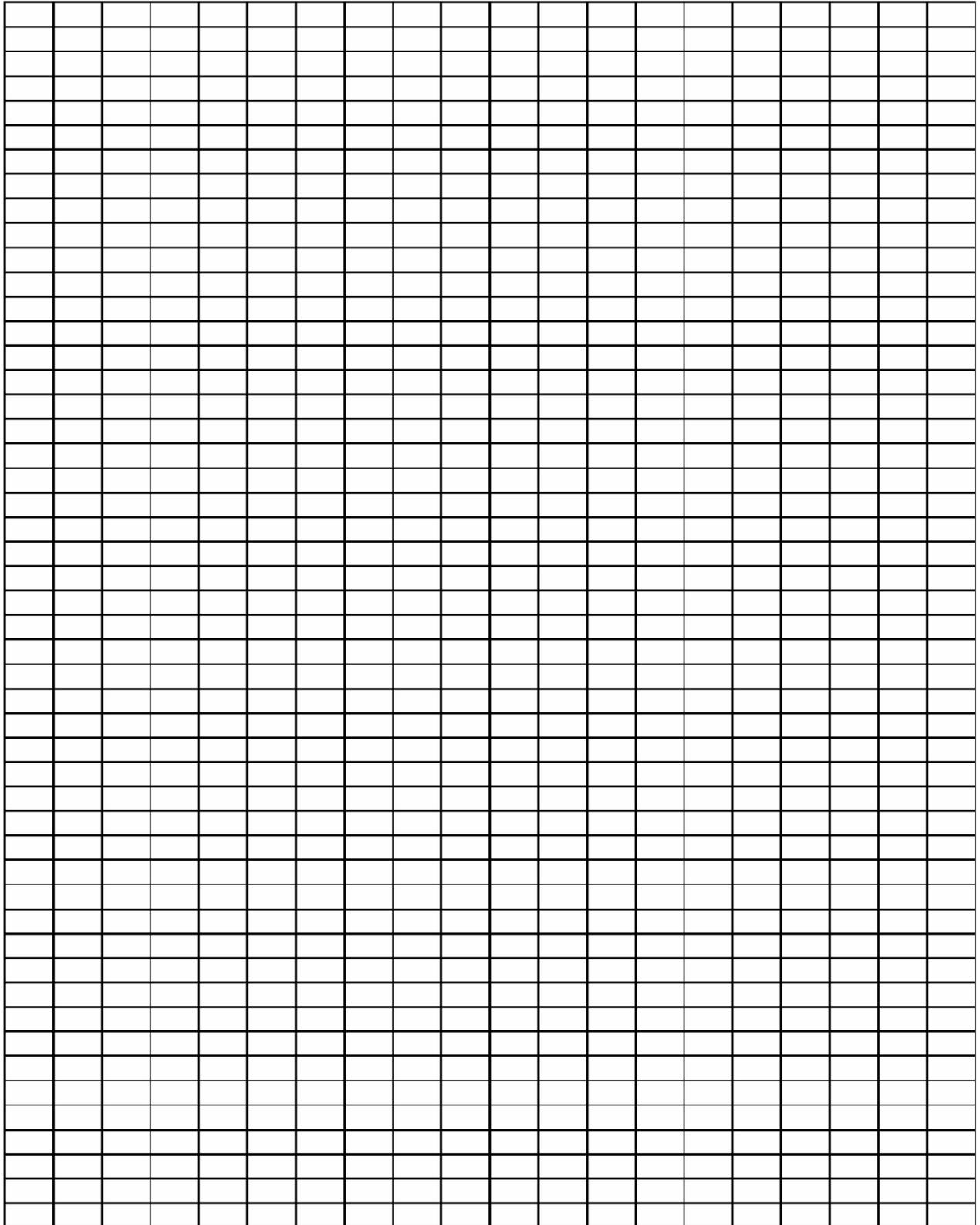
### Example Plan

This is an example plan that will be acceptable for HMO licence applications. It is to show existing facilities only. The plan may be hand drawn providing it is clear and roughly in proportion. This plan is not intended to show the fire standards that will apply to these properties.



The plan does not need to be professionally drawn. Hand drawn sketch with all details as shown above will be acceptable.

Sketch Paper



**Appendix 3**

**Specimen Notification Form to be sent to interested parties**

I (Name):

.....

of (Address):

.....

.....Postcode.....

Telephone: ..... Fax number: .....

E.mail .....

wish to advise you that I have applied for a licence for a house in multiple occupation under Part 2 of the Housing Act 2004 to Kirklees Council's Housing Solutions, Compliance Team, Civic Centre 3 Market Street Huddersfield HD1 2YZ the application being dated ...../...../20..... in respect of the property known as:

(Address).....

.....Post Code.....

The name, address, telephone number and Email address of the proposed licence holder is detailed below (if different from above).

Name of proposed Licence holder: .....

Address:.....

.....Post Code.....

Telephone Number: ..... Fax Number: .....

E.mail:.....