

licensing of **houses** in multiple occupation (hmos)

A GUIDE FOR LANDLORDS



The Housing Act 2004, introduces changes to provisions for assessing housing conditions and regulates Houses in multiple occupation (HMOs). These provisions come into force from April 2006. Further measures concerning Tenancy Deposit Protection will be introduced in October 2006.

The Act clarifies and defines what is an HMO and makes it compulsory for Local Authorities to License larger, high risk HMOs. Local Authorities are further empowered to license other HMOs which may not fall into compulsory licensing category.

What is an HMO?

HMO stands for House in Multiple Occupation, which means a building, or part of a building, such as a flat, that:

- is occupied by 3 persons of more than one unrelated households. who share an amenity or there is lack of an amenity, such as a bathroom, toilet or cooking facilities
- is a converted building but all units/ flats are not self contained and flats/ units are occupied by more than one household (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 Regulation and at least one third of the flats are occupied under short tenancies.
- And the building is occupied by households in return for rent as their only or main residence.

Exemptions:

A property will be exempt from being an HMO:

- If it is occupied by only two people.
- If it is occupied by the owner (and their family if any) and one or two lodgers.
- If it is occupied by a religious community.
- If the occupiers have their main residence elsewhere
- If no one in the property is required to pay rent.
- If the owner or manager is a public body.
- If the owner or manager is an educational institution.
- A building of self-contained flats if two thirds or more of the flats are owner-occupied.
- If the property is part of a guest house or hotel (unless an 'HMO Declaration' is made – see below).

What is a household?

- A household includes Families, single people (i.e. students), couples and same sex couples.

Mandatory licensing

HMO properties meeting following conditions must be licensed.

- It is an HMO;
- it is three storeys or more (includes habitable basements/ attics) and
- it is occupied by five people or more of more than one households.

Exemptions:

- If the property is a purpose built self contained block of flats.
- If the whole property is converted into self contained flats and meets the requirements of the 1991 Building Regulations.

How will Licensing work?

- Anyone who owns or manages an HMO that falls into mandatory category must apply to the Council for a licence. The Council must issue a licence if it is satisfied that:
- the HMO is reasonably suitable for occupation by the number of people allowed under the licence
- the proposed licence holder is a fit and proper person
- 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'
- the proposed management arrangements are satisfactory,
- the person involved in the management of the HMO is competent
- the financial structures for the management are suitable.

Where it is unclear whether the building is occupied by households as their only or main residence the Council can declare a building to be an HMO to remove the doubt. In addition to that Councils will be able to use power of entry for examination/ survey of a property to determine whether a license is required.

What does a 'fit and proper person' mean?

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, an approved landlords association or member of the Accreditation Scheme.

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, 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 under 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
- a requirement that the condition of the property, its contents, such as furniture and all facilities and amenities, are in good working order
- a requirement for specified works or repairs to be carried out within a particular timeframe
- a requirement that the responsible person attends an approved training course.

How long will the license last?

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

Is there a License Fee?

Councils are allowed to charge a fee to cover the administration costs of the licence procedure depending on the amount of time and resources that are needed to satisfy all the licensing conditions.

Can the council refuse to license my property?

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

What will happen then?

If a landlord fails to bring an HMO up to the required standard, or fails to meet the fit and proper person criteria, the council can issue an Interim Management Order (IMO), which allows it to step in and manage the property. The owner keeps their rights as an owner.

This order can last for a year or until suitable permanent management arrangements can be made. If the IMO expires and there has been no improvement, then the council can issue a Final Management Order.

This can last 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, or
- refuse to vary a licence.

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

What will happen if a licensable property to be occupied without a licence?

A landlord or person in control of the property will commit a criminal offence if he/she:

- 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.

He/she can be fined up to £20,000.

It is also a criminal offence to break any of the licence conditions and could lead to a fine of up to £5000.

What are rent repayment orders?

A tenant living in a property that should have been licensed, but was not, can apply to the Residential Property Tribunal to claim back any rent they have paid during the unlicensed period (up to a limit of 12 months). Councils can also reclaim any housing benefit that has been paid during the time the property was without a licence.

Temporary exemption from licensing

If a landlord or person in control of a property intends to stop operating it as an HMO or reduces the numbers of occupants and can give clear evidence of this, then he or she can apply for a Temporary Exemption Notice. This will last for a maximum of three months and ensures that a property is 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.

Additional licensing of HMOs

Councils have discretionary power to license other type of HMOs in it's area, for example, two-storey HMOs.

Selective licensing

In addition properties that are not subject to HMO licensing could be covered under a selective licensing scheme. This is where the council may declare that areas, e.g. where there is low demand for housing and/ or have high incidents of antisocial behaviour, are appropriate for selective licensing. This would cover all forms of private rented housing, including HMOs.

Kirklees Landlord Property Accreditation

Kirklees Council, initially intends to implement mandatory licensing and to continue to work with landlords, of all types of accommodation to improve standards through the accreditation scheme.