

Houses in Multiple Occupancy



'Guide to Houses in
Multiple Occupancy
and Mandatory
Licensing'

The 2004 Housing Act introduced the licensing of Houses in Multiple Occupancy (HMO's). It is NOW compulsory to license larger, high risk HMO's.

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

The building is occupied by a person if:

- it is their only or main residence or
- as a refuge for people escaping domestic violence or
- by students during term time or
- for other purposes prescribed by the government

A household includes:

- families (including couples and same sex couples, step children,)
- a single person
- other relationships, such as fostering, carers and domestic staff
- other prescribed relationships defined by the Regulations

Why does the Government want HMOS to be licensed?

Larger HMO's, such as bedsits and shared houses, often have poorer physical and management standards than other privately rented properties. The people who live in HMOs may be amongst the most vulnerable and disadvantaged in society. As HMO's are the only housing option for many people, the government recognises that it is vital that they are properly regulated and therefore introduced Mandatory Licensing for larger HMOs.

Licensing is intended to make sure that:

- landlords of HMOs are fit and proper people, or employ managers who are
- each HMO is suitable for occupation by the number of people allowed under the licence
- the standard of management of the HMO is adequate
- high risk HMOs can be identified and targeted for improvement

Where landlords refuse to meet these criteria, the council can intervene and manage the property so that:

- Vulnerable tenants can be protected
- HMOs are not overcrowded
- Councils can identify and support landlords, especially with regeneration and tackling anti social behaviour

Do all HMOs have to be licensed?

No. under the Housing Act 2004 there are three types of licensing:

1. Mandatory (required by law) licensing of HMOs for properties that are:

- have five or more people in more than one household, and
- share amenities such as bathrooms, toilets and cooking facilities or where the accommodation is not self contained

2. Additional licensing of HMOs

3. Selective licensing of other residential accommodation

Properties that are not subject to HMO licensing could be covered under a selective licensing scheme. This is where the Council may declare that certain areas, for example, where there is low demand for housing and/or antisocial behaviour, are appropriate for selective licensing. The licensing would cover all forms of private rented housing, including HMOs. It is Swale Councils intention to only introduce licences for mandatory HMOs. They may introduce the other two types of licensing later.

The Licensing Procedure how it works?

Anyone who owns or manages an HMO that must be licensed has a duty 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 – this will take account of facilities such as washing and kitchen provision
- 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

Are there any other works that have to be carried out before an HMO is licensed?

An HMO can be licensed without the property fully complying with the standards contained in the Housing Act 2004 and any regulations made under that Act. Under the Act, there is a requirement that the dwelling should be safe to live in. The method to determine this is the Housing, Health and Safety Rating System (HHSRS). The council have to ensure that within 5 years of the property being licensed there are no serious hazards in the property. This may require further works such as fire precautions to be carried out after the property is licensed.

What does a fit and proper person mean?

The council can carry out checks to make sure that the person applying for the licence is a fit and proper person.

In deciding this, the Council must take into account:

- Any previous convictions relating to violence, sexual offences, drugs and fraud
- Whether the proposed licence holder has contravened 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, or an approved landlords association that is affiliated to the National Federation of Residential landlords.

What is a HMO 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 upon application and each year thereafter
- Proof that all electrical appliances are in a safe condition.
- That any furniture is fire resistant
- Proof that all smoke alarms are correctly positioned, installed and maintained
- Each occupier must have a written statement of the terms on which they occupy the property, for example, a tenancy agreement.

Swale council may also apply the following conditions:

- Restrict or prohibit the use of parts of the HMO by occupants.
- A requirement that the condition of the property, it's contents, such as furniture and all facilities and amenities, bathroom and toilets for example, are in good working order.
- A requirement for specified works or repairs to be carried out within a particular time frame.

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 to cover the administration cost of the licence procedure.

Can the council refuse to licence my property?

Yes, if the property does not meet the conditions set out above in the licensing procedure 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 can allow the council to step in and manage the property. The owner will retain their rights as an owner of the property. This order can last for a year 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
- Refuse to vary a licence

You must appeal to the Residential Property Tribunal, normally within 28 days. Details of how to appeal will be on any legal documentation sent to you.

Temporary exemption from licensing

If a landlord or person in control of an unlicensed 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 lasts for a maximum of three months and the property in that time should be in the process of being converted from an HMO and therefore does not need to be licensed. If the situation is not resolved, then second Temporary Exemption Notice can be issued for a further 3 months. 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.

Failure to apply for a licence when required is an offence punishable on summary conviction to an unlimited fine. Alternative sanctions include issuing a Civil Penalty Notice of up to £30,000. In addition, anyone breaking any of the licence conditions commits an offence punishable on summary conviction to an unlimited fine per offence. A Civil Penalty Notice of up to £30,000 is an alternative sanction available to the Local Authority for breaching licence conditions.

Rent Payment Orders

A tenant living in a property that should have been licensed, but is 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 licence.

Is my Property an HMO?

It will be an HMO if it is one of the following	Housing Act 2004 section and schedule numbers
A shared house occupied by people who belong to more than one family* and who share one or more facilities**.	S254 (2) (The standard test)
A house in bedsits occupied by people who belong to more than one family* and who share one or more facilities**	S254 (4) (The converted building test)
An individual flat occupied by people who belong to more than one family* and who share one or more facilities**.	S254 (3) (The self contained flat test)
A building of self contained flats that do not meet 1991 Building Regulation Standards.	S257

Is my Property an HMO?

Exemptions:	Housing Act 2004 section and schedule numbers
• If it is occupied by only two people	Sch 14,7
• If it is occupied by the owner (and their family if any) and one or two lodgers	Sch 14, 6(c)
• If it is occupied by a religious community	Sch 14,5
• If the occupiers have their main residence elsewhere***	S259
• If no one at the property is required to pay rent	S254 (2)(e)
• If the owner or manager is a Public body	Sch 14,2
• If the owner or manager is an educational institution	Sch14,4
• A building of self contained flats if more than two thirds of the flats are owner occupied	S257(2)(b)
• If the property is part of a guest house or hotel (unless an HMO Declaration is made	S254 (2)(d) (s255(1))

Which HMO's must have a License

An HMO must have a licence if the following apply:

- a. It is a HMO (see definition of HMO above) and
- b. It is occupied by 5 people or more

Subject to certain legally defined exemptions as outlined above.

* Family – husband wife, co-habitee, child, step child, foster child, grandchild, parent, step parent, foster parent, grandparent, brother, half brother, sister, half sister, uncle, niece, nephew, cousin

S258

** Facilities – basic amenities, wc, wash hand basin, shower, bath, cooking facilities

S254*7)

*** Accommodation used by full-time students while they are studying is taken as their main residence

S259(2)(a)

Further Information

More detailed guidance and information can be obtained from

www.communities.gov.uk/housing/rentingandletting/privaterenting/housesmultiple/ and from **www.communities.gov.uk/publications/housing/housinghealth**

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