

Houses in multiple occupation (HMOs) - Fact Sheet

All HMOs are subject to control under the Housing Act 2004 and standards laid out in regulations including the Management of Houses in Multiple Occupation (England) Regulations 2006 and the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.

Definition

Under the changes in the Housing Act 2004, if you let a property which is one of the following types it is a House in Multiple Occupation:

- 1) 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.
- 2) 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.
- 3) A converted house which contains one or more flats which are not wholly self-contained (i.e. 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.
- 4) 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.

Households are defined as follows:

The following are 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.

Exemptions

Certain types of buildings will not be HMOs and are, therefore, not subject to the Management Regulations or licensing. These include those:

- Buildings, or parts of buildings, occupied by no more than two households each of which comprise a single person (i.e. two person flat shares').
- Buildings occupied by a resident landlord with up to 2 tenants.
- Managed or owned by a public body (such as the police or the NHS) or an LHA or a Registered Social Landlord.
- Where the residential accommodation is ancillary to the principal use of the building e.g. religious establishments, conference centres etc.
- Student halls of residence, where the education establishment has signed up to an Approved Code of Practice.
- Buildings regulated otherwise than under the Act, such as care homes, bail hostels etc., and the description of which are specified in regulations.
- Buildings entirely occupied by freeholders or long leaseholders.

Bed and Breakfast Hotels

The Council will regard bed and breakfast hotels as HMOs if they are housing any people who use the hotel as their main residence for more than 30 consecutive days. Where this accommodation is used as a main residence, the same standards as for other HMOs should be met.

Mandatory licensing

Mandatory licensing from 6th April 2006 will include HMOs (other than those that are exempt from definition as an HMO and converted blocks) which

- comprise of three storeys or more, and
- are occupied by five or more persons, and
- it is occupied by persons living in two or more single households.

Converted blocks of flats that fall within the definition of HMO (see 3.1 above) will not be subject to mandatory licensing. The Government intends that additional licensing should be available to tackle such blocks that are problematic (see 4.6 below).

In calculating three storeys, regard should be had to attic or basement accommodation used, or capable of being used, for residential purposes. It is also intended that any part of a building not used for residential purposes, such as commercial premises on the ground or upper floor of a building, will form part of the HMO for determining the number of storeys, but shall be excluded for all other purposes. Basements in purely commercial use will not be included.

Suitability for occupation

A licence must be granted if the Council is satisfied that:

- the HMO is reasonably suitable for occupation by the number of persons permitted under the licence (The Licensing (HMOs and Other Houses) Regulations 2006 Sch 2)
- the 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 not the licence holder, is fit and proper and
- the proposed management arrangements are satisfactory, including that the person involved in the management of the house is competent and the funding for management is suitable.

Management arrangements

Satisfactory management arrangements under paragraph 5.1 above should include

- a system for tenants to report defects (including emergencies) and arrangements for responding
- a system of periodic inspections to identify repair or maintenance matters
- a declaration from the owner, where he is not the manager, that adequate funding will be provided to the manager to deal with repairs.

Fit and Proper Person

In assessing whether the applicant and/or any manager and/or any person associated with them or formerly associated with them are fit and proper people to own or manage an HMO the Council must have regard to:

- a) unspent convictions relating to offences including fraud, dishonesty, violence or drugs, or sexual offences
- b) unspent convictions relating to unlawful discrimination including on grounds of sex, race, or disability in connection with the carrying on of any business.
- c) unspent convictions relating to housing or landlord and tenant law
- d) the applicant has not been refused a HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the approved code of practice under S197 of the Act within the last five years
- e) the applicant has not been in control of a property subject to an HMO Control Order, Interim Management Order (IMO) or Final Management Order (FMO) or work in default carried out by a local authority
- f) the applicant has not been subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation.

Variation of licences

A licence may be varied by the Council with the agreement of the licence holder, such as where a new manager is agreed.

The Council may vary the licence without agreement if there has been change of circumstance, such as there is need to provide additional amenities, carry out works or alter the maximum number of persons permitted to occupy the property. However, in deciding whether to vary a licence the Council may not impose higher, or otherwise different, standards than applied when it originally granted the licence, except where the standards are required to meet new amenity standards prescribed by regulations.

Revocation/cessation of licences

A licence may be revoked with the agreement of the licence holder, such as when a house ceases to be an HMO. It also ends automatically after 5 years or after the period specified in the licence (if that is different).

A licence ceases to be in force on the death of a licence holder and for the first three months following the death of that person no licence is required as if a temporary exemption notice (see para 14 below) had been issued and was in force. Unless the HMO ceases to be licensable within that period or the Council grants a temporary exemption notice on the expiry of that period the HMO must be relicensed or an Interim Management Order made in respect of it.

Other than in those circumstances, a licence may only be revoked if:

- there has been a significant breach of the licence conditions;
- or the licence holder and others involved in the management of the house are no longer fit and proper persons;
- or the property ceases to be an HMO that is subject to licensing;
- or if the Council would not have granted a new licence for the HMO at the time it terminates the licence because of reasons relating to the structure of the HMO which render the property unsuitable for licensing on similar terms.

On revocation of a licence (unless this is because the HMO no longer requires to be licensed) the Council must grant another licence or make an Interim Management Order.

Appeals

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

- Refuse to grant a licence.
- Grant a licence, including any conditions imposed.
- Vary a licence.
- Revoke a licence.
- Refuse to vary or revoke a licence.

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 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. The RPTs are not yet established but are expected to be regional and in place by April 2006.

Housing health and safety rating system (HHSRS)

An inspection of each licensed HMO must be carried out under the Housing Health and Safety Rating System (HHSRS), which is set out in the Housing Act 2004 and replaces the current housing fitness standard. The rating system is a risk assessment of the effect of housing conditions on the health and safety of occupiers and involves the assessment of 29 potential hazards and scoring their severity to decide whether improvements are needed. If more serious category 1 hazards are found the Council has a duty to take action. If less serious category 2 hazards are found, the Council has the discretionary power to take action.

Where category 1 or 2 hazards are found informal action will be used to encourage owners to carry out works, but if this fails enforcement action will be taken in accordance with the Act and our Private Sector Housing enforcement policy.

A licence cannot be refused where the Council have identified a hazard within the property, as defined by the HHSRS, but granting the licence does not insulate the property from enforcement action under the HHSRS in the future

This new enforcement regime involves a new set of notices to deal with these HHSRS hazards including hazard awareness notices and notices requiring either improvement, prohibition of the use of the dwelling or demolition. The notices are similar to those currently in use except that a Prohibition Notice can be served to prohibit the use of the whole or part of a dwelling or to prohibit its use by a description of persons, for example those aged under five or over 60

An Improvement Notice is likely to be the most practical remedy for most hazards. Repair or renewal is generally cost-effective because of the high value of property in West Devon. The Council can also serve suspended Improvement Notices which can be used in circumstances where obtaining other consents will cause delay – an example would be where planning permission is being applied for.

Temporary exemption notices

Where a landlord is, or shortly will be, taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. For example, if planning permission has been obtained for the conversion of the HMO to single family occupation. A second three-month TEN can be served in exceptional circumstances. A TEN will be served where an owner of a licensable HMO states in writing that he/she is taking steps to make an HMO non-licensable and states that the HMO will not be licensable within three months.

A second temporary exemption notice will only be allowed in exceptional and unforeseen circumstances.

Rent repayment orders

Where a landlord is summarily convicted for failure to license a HMO the Council may make application to the Residential Property Tribunal (RPT) for a Rent Repayment Order (RRO).

If rents are paid through Housing Benefit, the Council will use its powers under the Act to seek RROs for repayment of twelve months' Housing Benefit or for the period since the landlord was required to license the HMO, if less. We will also provide tenants with information about how to apply for an RRO.

Interim and final management orders

Where there is no prospect of an HMO being licensed, the Act requires the Council to make an Interim Management Order. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended as a Final Management Order to five years with the Council also having the power to grant tenancies.

Orders can only be made with the authorisation of the Residential Property Tribunal and the Council will only use these powers in exceptional circumstances.

The Council will endeavour to develop a procedure with partner Registered Social Landlords to manage such properties on behalf of the Council.