

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 is 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.

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Notes to be read while completing the application form

Notes to part 1

If you are the person filling in this application form, then you are the **'applicant'**. As the applicant you are required to complete every part of the application form and sign the declaration at the end of the form, confirming that the information you have provided is correct to the best of your knowledge.

The **'proposed licence holder'** is the person whose name will be on the licence (if issued). The proposed licence holder must be the person who is the most appropriate person to hold the licence for the property, and this is likely to be the person who receives the rent for the property.

As the applicant, you are required to provide your:

- Name
- Correspondence address
- Contact details
- Date of birth; and
- State your relationship to the proposed licence holder and your interest in the licensable property.

Your interest in the licensable property is your connection or involvement with the licensable property, which is usually, but not always, of a legal nature such as:

- Freeholder
- Leaseholder
- Managing agent.

We understand that in some instances, the applicant may have no legal interest in the property, and may simply be completing the form on behalf of a relative or friend for example. If this is the case, please state this in the space provided at the bottom of page 1.

Notes to part 2

As the applicant, you must provide the proposed licence holders details as follows:

- Type of proposed licence holder
- Name
- Correspondence address
- Contact details
- Date of birth (if the proposed licence holder is an individual).

If the proposed licence holder is a company, you must provide the address of the registered office and the names of the company secretary and directors.

If the proposed licence holder is a partnership or trust, you must provide the names of all the partners and trustees.

Notes to part 3

If the property is managed by the landlord, or someone else manages it for him in an unpaid capacity, please tick the **'No'** box to the first question in Part 3, and then complete section 3.1. You must provide the details of the person responsible for managing the property as follows:

- Name
- Address
- Contact details.

If the landlord pays an agent to manage the property on his behalf, please tick the **'Yes'** box to the first question in Part 3, and then complete section 3.2. Indicate whether the manager is an individual or a company or any other body and provide manager details as follows:

- Name
- Address
- Contact details.

If a commercial agent is employed to manage the property, please indicate if they are a member of a trade body which regulates its members through a Code of Management Practice. The main regulatory bodies are the Association of Residential Letting Agents (ARLA); the Association of Residential Managing Agents (ARMA); the Royal Institute of Chartered Surveyors (RICS); the National Association of Estate Agents (NAEA); and the National Approved Lettings Scheme (NALS).

Notes to part 4

A **'freeholder'** can be a person (or persons) or a company who is registered as the proprietor of a freehold estate in the land with absolute title.

A **'leaseholder'** is somebody who owns a long lease on their property (usually for a term of more than 21 years), which gives them the right to occupation and use of the property for the term of the lease.

A **'person who collects the rent'** is considered to be anyone who collects rents from the persons who are occupying the property.

A **'person who receives the rent'** is the person who ultimately receives (whether directly or through an agent or trustee) rents or other payments from the persons who are occupying the property.

A **'person bound by a condition of the licence'** could be any person who is involved in the management and/or maintenance of the property. This will also depend on the licence conditions - see the general notes to the application form for a list of mandatory licence conditions.

Notes to part 5

An **'occupier'** means a person who occupies the property as a residence; this person can be either a tenant, leaseholder, licensee or a person having an estate or interest in the property.

Children and babies are also considered to be occupiers, and should each be counted as one individual regardless of their age.

A **'letting'** is any rented unit of accommodation, this could be a

- Room/bedsit
- Studio
- Flat
- Floor by floor let etc.
- House.

For example, a house let as bedsits and rented to five people would count as five lettings.

A **'household'** for the purposes of the Housing Act 2004 comprises:

- A single person; or
- Co-habiting couples (whether or not of the opposite sex); or
- A family, including parents, grandparents, children (including foster children, step-children and children being cared for), grandchildren, brothers, sisters, uncles, aunts, nephews, nieces or cousins. Half-relatives will be treated as full relatives.

Any domestic staff are also included in the household if they are living in rent-free accommodation provided by the person for whom they are working.

Therefore, three friends sharing together are considered three households because they are not related as family.

If a couple are sharing with a third person that would consist of two households.

If a family rents a property this is a single household.

If that family had an au-pair to look after their children that person would be included in their household.

A **'habitable room'** is any room which can be occupied during the day. This includes bedroom, living room and dining room. It does not include bathrooms, WCs and small kitchens.

When measuring rooms for plans please do not include any floor area which has a ceiling height below 1.53m (5ft).

Notes to part 6

A 'shared house' is a self contained premises which is let to individuals who occupy their own bedrooms and share a kitchen, bathroom or toilet.

A 'shared flat' is a separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building. The accommodation is let to individuals who occupy their own bedrooms and share a kitchen, bathroom or toilet.

Both 'self contained flats' and 'studios' are separate and self-contained premises. All facilities are available behind the front door of the living accommodation.

In premises occupied by the room (e.g bedsits), flatlets, on a floor-by-floor basis or room-by-room basis, or any combination of these arrangements, tenants will have a room or number of rooms for their exclusive occupation. There is some sharing of amenities, usually a bathroom and/or toilet. In this type of accommodation each occupancy would be separately rented.

Premises referred to as **'hostels'** includes establishments providing medium to long term accommodation for persons for whom the premises is their permanent place of residence. Examples include hostels for homeless people and rehabilitates.

A **'self-contained single household'** unit is accommodation that is self-contained and occupied by one household only.

'Relevant building regulations' are regulations made under the Building Act 1984.

Notes to part 7

'Exclusive use' of any amenities or facilities is considered to be those that are singly available to one person or one household, unshared, i.e. to the exclusion of others.

In this respect, exclusive use relates to those facilities available to one unit of accommodation only, e.g. bathrooms/showers, kitchens, WCs and wash hand

basins. It does not refer to general communal areas such as staircases, landings and hallways, gardens, etc.

A self-contained unit of accommodation should have a full range of exclusive use amenities within its perimeter. However, remote or separate amenities, such as a kitchen, bath/shower, WC, may still be deemed 'exclusive use' if they are made available to one person or household only, and are not shared by any other person or household within the property.

Notes to part 8

All HMOs should have a safe escape route in the event of fire and adequate fire precautions, which include fire alarms, smoke and heat detectors, emergency lighting, fire extinguishers and fire blankets. These must be well maintained and adequate for the number of residents and the size of the property.

In Part 8 of the form you are required to provide information of the fire safety provisions there are in the property that needs to be licensed. They include fire detection and emergency lighting systems, and other fire precautions such as fire doors and a protected means of escape (i.e. staircases, landings etc). Please tick the appropriate boxes on the form to indicate what fire safety measures there are in the property.

A **'30 minute fire door'** is one which must be capable of providing 30 minutes fire resistance in terms of integrity when tested or assessed to BS 476: Part 22: 1987.

An **'emergency lighting system'** is designed to automatically illuminate the escape route upon failure of the supply to the normal artificial lighting. Any emergency lighting system installed in the property must comply with BS 5266: Part 1: 1988.

'Fire safety equipment' such as extinguishers and fire blankets where provided must be checked periodically and the correct sort of extinguisher must be provided. As a general guide, water extinguishers are required in escape routes, and carbon dioxide extinguishers along with fire blankets are required in shared kitchens.

The **Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended)** set levels of fire resistance for domestic upholstered furniture, furnishings and other products containing upholstery. Upholstered furniture must have fire resistant filling material and must pass a cigarette resistance test and permanent covers must pass a match resistance test. Landlords letting residential property will be expected to ensure that any soft furniture complies with these regulations.

'Upholstered furniture' which is covered by the above regulations include: beds, headboards, mattresses, sofa-beds, nursery furniture, garden furniture which can be used indoors, furniture in new caravans, scatter cushions, seat pads and pillows and loose and stretch covers for furniture.

You should be looking for furniture which is **properly labelled** as meeting the requirements of the regulations.

Notes to part 9

The most common **'gas appliance'** in many properties is the central heating boiler, which provides hot water and/or heating. All associated fittings, including flues, are deemed to be included in the appliance. Wall mounted individual gas heaters need checking, as well as ovens and hobs, and anything else that uses gas as its power source.

Businesses and self-employed people working on gas fittings or appliances are legally required to be registered with CORGI (Council for Registered Gas Installers). If you need to find a registered installer, or need to check anyone's registration, you can visit the CORGI website at www.corgi-gas-safety.com or telephone their Customer Services on 0870 401 2300.

The Gas Safety (Installation & Use) Regulations 1998 specify that it is the duty of landlords of relevant premises to ensure that all gas appliances, fittings and flues provided for tenants are safe. You must arrange safety checks on an annual basis and provide the council with copies - only certificates produced by bona fide CORGI Registered Gas Installers will be acceptable.

'Rooms and areas in common use' are essentially rooms and areas that are accessible by everyone occupying the property, and include shared kitchens and bathrooms, staircases, hallways and landings, storage rooms etc.

Examples of **'pests and vermin'** that can affect rented accommodation are: rats, mice, squirrels, foxes, cockroaches, beetles, flies, silverfish, garden ants, pharaoh ants, wasps, bedbugs, fleas and moths.

Notes to part 10

Please tell us if the tenants are given a written tenancy agreement or similar document which sets out the terms of their contracts with the landlord (10.1).

Please tell us whether a written record is made of the furniture, fixtures and fittings in each letting and the condition they are in (an inventory) when tenants move into the property (10.2).

Please indicate whether the tenants receive a written record of the rent that has been paid (10.3). Unless records are given regularly to all tenants, please tick the 'No' box.

Please indicate whether the tenants are given a written procedure which explains what they should do if they have a complaint. This could be a part of the tenancy agreement or a separate document (10.4).

If the tenants are given a 24 hour telephone number to use in an emergency, please indicate this and give us the telephone number (10.5)

If tenants are asked to pay a deposit at the beginning of the tenancy, please indicate this. If a deposit is requested, tell us whether the tenants are given a written procedure for dealing with any dispute about whether the deposit should be returned in full or in part when the tenancy ends. This procedure could be part of the tenancy agreement or a separate document (10.6)

Notes to part 11

Part 11 aims to collect information on all persons named in Parts 1 to 4 of the form, to enable the council to determine if they (or any associate of those persons) are fit and proper persons (see general notes for definition).

Answering yes to any of the questions in this part will not necessarily mean that the council will refuse to issue a licence. However, the council reserves the right to reject any person nominated as the proposed licence holder if they are not considered a fit and proper person. Under such circumstances, somebody who is deemed to be a fit and proper person will have to be nominated to hold the HMO licence.

Notes to part 12

Part 12 gives you an opportunity to demonstrate whether the landlord takes any steps to keep himself informed of good management practices and any changes in the law which could affect his duties as a landlord.

Landlords' association refers to a legally constituted trade body which regulates the conduct of its members and represents their interests. Other relevant professional or bodies include the Housing Ombudsman Service, and those covering real estate such as property letting or surveying. Industry bodies covering building and construction trades could also be relevant if they evidence skills relating to the management and maintenance of tenants' homes (12.1).

Accreditation is the voluntary compliance by private landlords with good standards in the condition and management of their properties and their relationship with their tenants. Accreditation schemes are run at a local level by local councils, higher educational institutions and their agents and landlord associations (12.2).

Notes to part 13

Please use this section if you require any further space to answer any of the previous questions (please indicate which question your answer relates to). You can also use this area to add any further information that you feel could be relevant to your application.

Notes to part 14

You must complete Part 14 by using the space provided to list the names, addresses and descriptions (e.g. leaseholder, mortgagee etc) of all persons who need to know that an application for an HMO licence has been made. The full list of persons who must be informed of the application are listed in Part 14 of the form. The details which the you must provide these people with are also listed in Part 14 of the form.

If you require more space to complete Part 14, please use the space provided in Part 13, or continue on additional sheets of paper, making sure you clearly number the sheets and attach them securely to the form.

The declaration must be signed and dated by:

- The applicant
- The proposed licence holder (if different to the applicant)
- The manager (if there is a manager).

Checklist: You must ensure that you submit with the application form all the documents that are listed in the checklist section at the end of the form where relevant (for example not all properties will have gas appliances or fire detection systems). You must tick the appropriate boxes to inform the council which documents have been submitted.

The application will be considered incomplete if any of the required documents are not submitted at the same time as the form.