

House in Multiple Occupation (HMO) Licensing Policy 2018

The policy was first introduced in 2006 and revised in 2008 and 2012.

This 2018 version is the third revision.

1. Introduction

- 1.1. The Housing Act 2004 (the Act) defines houses in multiple-occupation (HMOs) in Part 7 and introduced HMO Licensing in Part 2. Certain buildings which are exempt from HMO Licensing are prescribed in Schedule 14 and associated regulations¹.
- 1.2. National regulations have required the Mandatory Licensing of large HMOs since 2006².
- 1.3. From 1st October 2018, HMOs occupied by five (5) persons forming two (2) or more households are subject to Mandatory Licensing³. Landlords of any such HMO must apply for an HMO Licence by this date.
- 1.4. Licences may only relate to a single HMO and are non-transferrable.

2. Applications for licences

- 2.1 To be considered a valid application, the following information must be provided to the Council in an acceptable format.
 - Licence application form completed in full, including all information specified by Regulations¹, plus any further information required by the Council; and
 - A declaration signed by the applicant (and also the proposed licence holder where different); and
 - The specified fee paid in full.
- 2.2 Where an HMO already has a licence in force, and a valid application is submitted before expiry and the same Licence Holder is proposed, a renewal application will be accepted and a reduced fee applied.
- 2.3 In all other cases, a new application form must be completed.
- 2.4 When the Council receives an application, it must decide whether to grant or refuse to grant an HMO Licence by reference to the following matters:
 - The house or flat in question is reasonably suitable for occupation by the intended number of occupants (either the number specified in the application or another number set by the Council) or can be made suitable by the imposition of licence conditions.
 - The proposed licence holder and manager are fit and proper persons.
 - The proposed licence holder is the most appropriate person to hold the licence
 - The manager is either the person having control or an agent or employee of the person having control.
 - The proposed management arrangements are satisfactory.

¹ The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 No. 373

² The Licensing of HMOs (Prescribed Descriptions) (England) Order 2006 No. 371

³ The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 No. 221

2.5 The following sections explain how the Council will reach its decisions on these matters.

3. Reasonably suitable for occupation

3.1 In reaching this decision the Council will take account of standards set by Regulations⁴ made under section 65(3) of the Act. Where these Regulations are not specific (for example where they require the Council to judge adequacy, suitability or practicability), we will use our adopted HMO Standards Policy, and will have regard to such other standards as we judge relevant, e.g. Building Regulations and British Standards.

4. Fit and proper person

4.1 In order to issue a licence the Council must be satisfied that the proposed licence holder is a fit and proper person and the most appropriate person to hold the licence.

4.2 The Council must also be satisfied that the proposed manager of the house is the person having control, or is an agent or employee of the person having control of the house, and is a fit and proper person.

4.3 The Council will generally consider a person to be fit and proper unless evidence to the contrary is found.

4.4 The Council must have regard to any of the following relating to the proposed Licence Holder or proposed Manager:

- Any unspent convictions that may be relevant to their role as either licence holder or manager and, in particular, any conviction involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.
- They have been found by a court or tribunal to have practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business.
- They have contravened any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law (including Part 3 of the Immigration Act 2014) which led to civil or criminal proceedings resulting in a judgement being made against them.
- They have ever had a licence refused, been convicted of breaching the conditions of a licence under Parts 2 or 3 of the Act; or have acted otherwise than in accordance with a Code of Practice approved under section 233 of the Act that concerns a property in their ownership (whether or not in the Council's district).
- They own or have previously owned or managed property that has been the subject of an interim or final management order or a special interim management order under the Housing Act 2004.
- They require leave to enter or remain in the United Kingdom but do not have it.
- They are insolvent or an undischarged bankrupt.

4.5 In addition, the Council may also take in to account whether any other person proposed to be involved in the management of the house, plus any person

⁴ Principally the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 No. 373

associated or formerly associated with the applicant or manager has done any of these things, if we consider this information relevant.

- 4.6 Where any evidence of the above is subsequently found, the Council will review the person's fit and proper status and may revoke their licence.

5. Satisfactory management arrangements

- 5.1 In order to issue a licence the Council must be satisfied that the proposed management arrangements for the house are satisfactory. If we are to be satisfied, we will expect, in particular, the licence holder to have in place the following arrangements:

- A person to whom the tenants can report defects at the HMO, including an emergency contact, and for this information to be displayed in written form in the premises.
- An established system for periodically inspecting the HMO to identify any repairs or maintenance.
- The ability to finance and to undertake repairs and maintenance in an appropriately timely fashion.
- Where the manager is not the owner of the property, the manager must be able to fund and implement urgent repairs in those situations where it is not possible to obtain the owner's approval without undue delay.
- A system to deal with any anti-social behaviour caused by tenants or their visitors, which causes nuisance or annoyance to people living in the vicinity.

- 5.2 The Council may also consider whether any person proposed to be involved in the management of the house has a sufficient level of competence. In this regard the Council may take into account matters such as the frequency and nature of any validated complaints we receive in connection with the property or its management, and the adequacy of any required response.

6. Inspections

- 6.1 Council Officers will generally inspect HMOs following receipt of a valid new application in order to assess the suitability of the HMO for the proposed number of occupants and households, and compliance with the prescribed standards and HMO regulations, having regard to the Council's HMO Standards Policy. HMOs will also be prioritised for assessment under the Housing Health and Safety Rating System (HHSRS). The Council will seek to ensure that all properties are inspected at least once every 5 years to ensure properties are free from significant hazards and complying with the HMO Regulations.
- 6.2 Further inspections may be undertaken throughout the lifetime of the licence, and may include (but are not restricted to) visits to check compliance with licence conditions, to assess ongoing confidence in management, or to investigate complaints.

7. Licence Conditions

- 7.1 Licences may include such conditions that the Council considers appropriate for regulating any aspect of the HMO's management, use, occupation, conditions or contents. Licences issued by the Council will include conditions which fall one of the following categories:

7.1.1 Mandatory Conditions

The Housing Act 2004 Schedule 4 (as amended) prescribes Mandatory Licence Conditions which must be included in all HMO licences.

7.1.2 Discretionary Conditions (General)

A set of standard conditions will be included in all licences issued by the Council. The general purpose of these conditions is to secure the effective management of the licensed HMOs across the district.

7.1.3 Discretionary Conditions (Specific)

Licences may also contain conditions designed to regulate specific matters relating to the licensed HMO in question.

8. Issuing of Licences

8.1 Draft licences (the 'Intention Notice') must be issued within a reasonable period of time following receipt of a valid application. Our aim is to issue Intention Notices within 12 weeks of the application.

8.2 The applicant will be given at least 14 days after the date of service of the Intention Notice to make any representations regarding the proposed licence. Any representations received will be reviewed by a senior officer and a written response provided before the Council proceeds to issue the actual licence (the 'Decision Notice').

8.3 Licences will generally be issued for 5 years, except in cases where we have concerns relating to the management of the property, including non-compliance with licence conditions, breaches of the HMO Management Regulations or contraventions of other relevant legislation. In such cases, licences will generally be issued annually and the length of licence reviewed upon renewal.

9. Licence fees

9.1 The Council will charge a fee for each licence. The fee will periodically be reviewed and will be set in accordance with available best-practice guidance. The Council may determine that different fees will apply in different situations and may, for example, set a lower rate for licence renewals, or a higher fee for new HMOs found operating without a licence. Fees will be reviewed and revised as necessary through the Council's fees and charges setting procedures and as required by any legislative changes.

10. Variation of licences

10.1 The Council may vary a licence either with the agreement of the licence holder or without agreement if it considers there has been a change of circumstances since the licence was granted. Change of circumstances will be taken to include the discovery of new information.

11. Revocation of licences

11.1 The Council may revoke a licence either with the agreement of the licence holder or in the following circumstances:

- Where the Council considers that the licence holder or any other relevant person has committed a serious breach of a licence condition or repeated breaches of a condition, or
- Where the Council no longer considers that the licence holder is a fit and proper person to hold the licence, or

- Where the Council considers that the management of the premises is no longer being carried out by fit and proper persons;
- Where the premises has ceased to be an HMO requiring a licence, or
- Where the Council considers that, were the licence to expire at that time, it would not grant a further licence because of the structure of the premises.

12. Appeals

12.1 The licence applicant, anyone with an estate or interest in the premises, a person managing the premises or anyone on whom the licence would place any restriction or obligation, may appeal to the First-tier Tribunal against the Council's decision to either grant or refuse to grant a licence, or in connection with decisions in relation to revocation or variation. The appeal period is set as 28 days.

13. Temporary Exemption Notices (TENs)

13.1 Where a landlord or manager makes an application in writing, the Council may issue a Temporary Exemption Notice (TEN) for three months if we are satisfied that particular steps are genuinely being taken to ensure either that the building will cease to be an HMO, or that it will become an HMO that is no longer subject to licensing.

13.2 A suitable step could include entering into a contract for the sale of the building with vacant possession for use other than as an HMO. However, simply putting, or proposing to put an HMO on the market for sale will not normally be sufficient for the Council to agree to issue a TEN.

13.3 TENs will be refused in cases where it appears the application has only been sought with the aim of avoiding or evading licensing, since that would be contrary to the purpose of the Act.

13.4 The Council will confirm its decision in writing by serving a Notice giving the reasons for its decision whether or not to grant the exemption. Applicants may appeal the decision to the First-tier Tribunal within 28 days.

13.5 Temporary exemption can only be granted for a maximum of three months, although in exceptional circumstances it can be renewed for a further three months on further application to the Council.

13.6 If the licence holder dies while the licence is in force the licence ceases and for three months from the death the building will be treated as having a temporary exemption notice granted. During that period the licence holder's personal representatives may apply to the Council for an extension to the exemption for a further three months whilst affairs are being sorted out. Whilst the Council does not have to grant a further extension, consent is unlikely to be unreasonably withheld in such cases.

14. Enforcement

14.1 It is an offence to:

- Have control of or manage an HMO which is required to be licensed but is not so licensed.
- Have control of or manage an HMO which is licensed and to knowingly permit another to occupy the house with the result that the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

- Be a licence holder or a person on whom restrictions or obligations are imposed under a license and fail to comply with any condition of the licence.
- Fail to comply with the HMO Management Regulations.

14.2 These offences carry a range of punitive actions which the Council may wish to pursue, including:

- Prosecution resulting in an unlimited fine on summary conviction
- Seeking Banning Orders following successful convictions
- Financial penalties of up to £30,000 for each offence
- Rent Repayment Orders to recover Housing Benefit/Universal Credit
- Assisting tenants to apply for Rent Repayment Orders
- Entering landlords and agents into the 'Rogue Landlords Database'
- Interim or Final Management Orders

14.3 Any decision to pursue enforcement action will be taken in line with the relevant Enforcement Policies.
