

FACT SHEET



AUGUST 2018

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Licensing of Houses in Multiple Occupation (HMOs)

CONTEXT

In May 2015, the UK Government announced that they would extend mandatory licensing of Houses in Multiple Occupation (HMOs) to address poor conditions and overcrowding.

WHAT IS A HOUSE IN MULTIPLE OCCUPATION?

Under the Housing Act 2004 an HMO is where three or more people share accommodation and amenities (washing and cooking facilities) and form two or more separate households (this can be a family, a couple or a single person).

Large HMOs are properties consisting of three or more floors and occupied by five or more people living in two or more single households where the occupiers share basic amenities.

NB: Since 6 April 2016 all large HMOs must be licensed with a local Council under mandatory licensing.

Each Council has the power to introduce additional licensing schemes which apply to certain HMOs that fall outside the scope of mandatory licensing.

NB: It is a requirement for the licence holder of a licenced HMO (mandatory or additional) to provide: An annual gas safety certificate; keep electrical appliances and furniture safe; ensure smoke and carbon monoxide alarms are fitted and kept in working order; provide written tenancy agreements.

A landlord or agent managing of an HMO must have a separate licence for each property. Each licence is valid for maximum of five years. Licences are non-transferable. The fee charged for a licence is set by each local Council.

NB: Upon the death of a licence holder, a three-month temporary exemption is automatically granted with an option to renew.

Licences are granted: If the house is suitable for occupation; the proposed licence holder or agent managing of the property is a 'Fit and Proper' person; and the proposed management arrangements are satisfactory.

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A 'Fit and Proper Person' test involves a check on whether the licence holder or agent has any previous convictions relating to violence, sexual offences, drugs or fraud; whether they have contravened any laws relating to housing or landlord and tenant issues; and / or whether the person has been found guilty of unlawful discrimination.

NB: Under the Housing and Planning Act 2016 additional criteria was added to the 'Fit and Proper Person' test. A landlord or agent managing an HMO must: Not be an illegal immigrant; not be insolvent or bankrupt; and not have committed an offence under the Immigration Act 2014.

Authorities do not have to inspect every licensable HMO before issuing a licence, but all licensable HMOs could be inspected within five years.

THE CHANGES

Mandatory licensing will no longer be limited to certain HMOs that are three or more storeys but will also include buildings with one or two floors. Any landlord who lets a property to five or more people, from two or more separate households, must be licensed by their local authority.

The rules also introduce new mandatory conditions for national minimum sleeping room sizes and waste disposal facility requirements.

NB: Local authorities can still designate a specific area as subject to additional HMO licensing if they believe there is a need to licence those HMOs not subject to mandatory licensing.

ELIGIBILITY

The new rules apply only to licences granted or renewed on or after 1 October 2018 and affect HMOs in England only.

NB: Landlords who have an existing licence for properties will be given up to 18 months to make any necessary changes to comply with the new licensing conditions (such as bedroom sizes) when re-applying for a licence when it expires.

WHAT DOES THIS MEAN?

Buildings covered

The definition of an HMO that is subject to mandatory licensing is contained in section 254 of the Housing Act 2004. These are HMOs that meet: "the standard test"; "the self-contained flat test"; and "the converted building test".

NB: Each local authority will establish if a building meets one of these tests to determine whether the HMO needs to be licenced.

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Standard test HMOs: More than one household has living accommodation and at least two households share basic amenities, or the living accommodation is lacking in basic amenities.

Self-contained flat test HMOs: Occupied by five or more people forming more than one household and the flat lacks basic amenities or more than one household shares basic amenities (all of which are in the flat).

NB: This includes flats above and below commercial premises, and flats in converted buildings. However, a purpose built flat (the building was designed and constructed for a particular use) situated in a block comprising three or more self-contained flats is not subject to mandatory licensing even if that flat is in multiple occupation.

Converted building test: A building that has been converted and where one or more of the units of living accommodation is not a self-contained flat.

NB: A converted building is a building (or part of a building) where living accommodation has been created since the building (or part) was constructed.

Mandatory licensing does not apply to converted blocks of flats (section 257 HMOs). However, individual flats within converted blocks will require a mandatory licence if they meet “the standard test”.

Minimum sleeping room sizes

Rooms used for sleeping by one person over 10 years old will have to be a minimum of 6.51 square metres, and those slept in by two people over 10 years old will have to be no smaller than 10.22 square metres. Rooms slept in by a child under 10 years old will have to be no smaller than 4.64 square metres.

NB: A room smaller than the specified size must not be used as sleeping accommodation. Communal space in other parts of the HMO cannot be used to compensate for rooms smaller than the minimum requirements.

Any area of the room where the ceiling height is less than 1.5 metres cannot be counted towards the minimum room size.

Landlords must notify the local Council of any room within their property that does not meet the minimum size requirement of 4.64 square metres.

NB: Local Councils will be able to set higher standards for room sizes within licence conditions but must not set lower standards.

A licence only permits a house to be licensed for a specified number of occupants.

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NB: The room size conditions and occupancy will not be breached by any temporary arrangements, such as visitors sleeping over-night on an occasional basis.

Waste disposal

All HMO licences will need to include a condition requiring compliance with the Council's storage, disposal and collection of household waste scheme if one exists.

NB: Local authorities should not introduce commercial waste charging on HMOs. Where schemes are not in place specifically designed for waste storage facilities at HMOs local authorities may decide to review their policies and put one in place.

TIMETABLE

Landlords who already have a licence under additional or selective licensing schemes do not need to reapply for a licence until the existing licence expires.

If a licence is granted before 1 October 2018 in respect of an HMO that will be subject to mandatory licensing from that date, the period for which the licence is granted should begin on 1 October 2018.

In the circumstances where an unlicensed HMO which is currently subject to selective licensing makes an application prior to 1 October 2018, the local housing authority should grant a mandatory HMO licence to begin from 1 October 2018.

Properties currently licenced under mandatory or additional

The existing licence is valid, and its conditions will apply until the licence expires.

Local authorities can only enforce against the existing conditions of the current licence until it expires. These landlords should receive necessary information from their Council about the new requirements.

NB: The new mandatory licensing conditions will apply from the renewal of the existing licence.

Properties currently licensed under a selective licensing scheme

These properties will be passported into the mandatory HMO scheme from 1 October 2018. The current conditions will apply until the licence expires.

NB: The existing licence remains valid (under the mandatory regime) and landlords should not be charged any additional fees.

On renewal of the licence the property will now be subject to the new mandatory requirements.

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If at the time the licence is renewed the licence holder is not compliant with a condition related to room size the local housing authority must provide notification and give the licence holder up to 18 months to comply.

IMPACT

If a licence is refused a landlord will be prevented from letting the property unless the authority is satisfied that suitable alternative management has been put in place.

Where a landlord is deemed not to be 'fit and proper' they have the option of putting an alternative manager in place e.g. a letting agent. Where no alternative can be found, and the property is occupied, the authority must make an Interim Management Order. If a solution cannot be found in 12 months, the authority can make a Final Management Order which will place the longer-term management of the property in the hands of the authority.

Licences can be revoked when the licence holder: Breaches a condition of the licence; the local authority no longer believes that the licence holder is a fit and proper person; and/or the local authority believes the property no longer meets the standards required for a licence.

A landlord who does not have a licence in respect of an HMO that should be licensed is presented from using the Section 21 procedure to obtain possession.

ENFORCEMENT

Landlords and agents with responsibility for managing property that fall within the scope of the rules will be committing a criminal offence if they fail to apply for a licence or a temporary exemption by 1 October 2018.

NB: Temporary exemption notices are issued by local authorities and last for three months. They are renewable for another three months in exceptional circumstances.

No offence will have been committed once an application for a licence or for a temporary exemption notice has been submitted.

Failure to license an HMO; failure to comply with an Improvement Notice; breach of HMO licence conditions; failure to comply with an Overcrowding Notice; and breach of Management Regulations can result in prosecution with an unlimited fine or a Fixed Penalty Notice of up to £30,000.

A Fixed Penalty Notices can be issued as an alternative to prosecution for each separate breach of the HMO rules.

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NB: Fixed Penalty Notices under Housing and Planning Act 2016 came into force in April 2017. They are an alternative to prosecution for various housing offences.

A landlord who fails to obtain a license could also be subject to Rent Repayment Order where rent, Universal Credit or housing benefit can be claimed back from the landlord by order of the First-tier Tribunal. See our Fact Sheet Housing and Planning Act Rent Repayment Orders.

A landlord who breaches the condition of a licence could also be subject to a Banning Order. See our Fact Sheet Housing and Planning Act Banning Orders.

Where a landlord or agent receives two or more civil penalties over a 12-month period, local Councils may include that person's details in the Database of Rogue Landlords and Letting Agents. See our Fact Sheet Housing and Planning Act Banning Order Database.

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