

HMO

A PRACTICAL GUIDE TO LICENSING OF HMOs



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1 Introduction

This booklet is designed to offer guidance for licensing of HMOs under Part 2 of the Housing Act 2004. Not all HMOs need to be licenced, only those with less than 5 occupants are exempt from mandatory licensing.

If an HMO is required to be licenced, it is a criminal offence not to do so. You should be mindful that any rent paid by the tenants throughout the period that the HMO was unlicensed may be recoverable through due legal process.

This guide will offer practical advice to assist in deciding whether an HMO will need licensing, how to apply and what you might expect after an application has been submitted.

2 What is an HMO (House in Multiple Occupation)?

The definition is defined in the Housing Act 2004 section 254-258 and can be a building or part of a building which is occupied by more than 3 or more people, in 2 or more households:-

- sharing an amenity, e.g. bathroom, kitchen or WC in a shared house/ bedsits or
- consisting of flats some of which are not entirely self-contained, or
- converted into entirely self-contained flats, but does not meet Building Regulations 1991 standards, and at least one third of flats are let on short tenancies (i.e. not long leases)

The building must be occupied by 2 or more 'households', either:-

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

plus rents must be payable (or other consideration provided, e.g. accommodation provided with employment).

A 'household' can be a family, a single person, a couple (including same sex couples) and includes foster parents, carers, domestic staff, servants etc. Previous to the Housing Act 2004, some student groups had in law been held to form a single household where they signed a single tenancy agreement. The new definition has changed this interpretation so that persons must be members of the same family to be regarded as a household.

Certain buildings are exempt from being classed as HMOs. These include those managed or controlled by:-

- A Local Authority or Registered Social Landlord
- Police, Fire Authority and Health Service bodies
- Educational establishments (registered in Schedule 14 of the Housing Act 2004)
- Religious communities and
- buildings occupied by owners, their families and not more than 2 other persons, e.g. lodgers
- buildings occupied by only 2 persons living in 2 households
- certain buildings whose occupation is regulated by other legislation e.g. Residential Care Homes, Probation Hostels

Note that the definition of persons include children and babies.



What difference does it make whether or not a property is an HMO?

Local authorities are concerned that HMOs are not always effectively managed. They can have a bad image of being poor quality and sometimes dangerous. This is primarily why licensing is applied to the 'higher risk' HMOs. However, there will be more HMOs which do not require licensing than those that do. So what are the issues if a HMO is not licensable?

All HMOs must have adequate safety measures, with particular regard to gas, electricity installations and fire precautions. There should be adequate amenities for the number of occupants and there must be sufficient space for the occupants. All of these issues can be addressed in any dwelling, whether or not it is an HMO under the Health & Safety Rating System (see section 6,). However, the level of fire precautions and amenities will be assessed according to the risk and the number of occupants; hence HMOs will be treated accordingly.

All HMOs are subject to Management Regulations under section 234 of the Housing Act 2004 which require all parts of the HMO to be maintained (see section 10,).

HMOs which are not subject to mandatory licensing can be served with overcrowding notices if the Council decide they are, or are likely to accommodate an excessive number of people (see section 9,).

3 What is a licensable HMO?

HMOs containing 5 or more occupants, in 2 or more households, except those converted to entirely self-contained flats, regardless of the number of storey's, MUST have a licence to operate. This is known as Mandatory HMO Licensing. Typically, shared houses and bedsits with shared facilities, that have 5 or more occupiers (as above) will have to be licenced.

There may also be some HMO properties which are converted to self-contained flats, but also contain flats or bedsits which are not self-contained.

Some hostels, staff accommodation within hotels, and similar premises, may also be licensable.

Buildings which consist entirely of self-contained flats do not require licensing, although the flats within them will do if they contain 5 or more persons living as 2 or more households.

To be self-contained, a flat must contain a bath/ shower, WC and kitchen behind the front door to that flat. Facilities outside the front door, even if for exclusive use, will cause the flat to be considered non-self-contained and liable to licensing.

Flats which are purpose built will only require licensing if the building containing them contains no more than 2 flats, and then only if the flat(s) contain 5 or more persons living as 2 or more households. Most purpose built blocks, e.g. halls of residence will therefore be exempted.

If there is any doubt as to whether a HMO needs to be licenced, please contact us and we will advise you further

4 Why are we licensing HMOs?

HMOs are more likely to have poor physical conditions, lack facilities and be poorly managed. Residents of HMO's are often the most vulnerable members of society, and frequently HMOs are the only housing option open to them. So it is vital that they are properly regulated to ensure tenant's health, safety and welfare.

Licensing aims to ensure that the higher risk HMOs are targeted, improved and managed to an acceptable standard. In particular:-

- A landlord must be a 'fit and proper' person (or employ a manager who is)
- HMOs must meet prescribed standards of facilities and equipment
- HMOs must be suitable for occupation by a prescribed number of people
- The standard of management must be adequate

If the Council decides that any of these criteria are not met, they can refuse, or revoke a licence and ultimately take over management of the property.

5 The Licensing Process

It is the duty of anyone who owns or manages a licensable HMO to apply to the Council for a licence. Landlords who simply do not bother to apply for a licence will be prosecuted and could face an unlimited fine, or a fixed penalty notice.

Application Forms

Application forms are available on request or can be downloaded from the Council's website www.stratford-dc.gov.uk. It is the HMO which is being licenced and not the landlord, although the licence has to be issued to the landlord or occasionally the manager.

The application form is extensive because the Council needs to be satisfied that it has enough information to be able to issue a licence and in order to prioritise the inspections. Completing the form inaccurately, missing out any questions, or failing to enclose the relevant documents will cause delays therefore additional administrative charges will be made for this. If you have any queries regarding the application, please contact us for assistance.

The licence application is split into several sections:-

- The Property
- The Licence Holder
- The Manager
- Also other forms covering relevant issues, including a Glossary of Terms to assist in completing the forms with the application pack.

When completed, the application forms should be sent with all the relevant supporting documentation and fee to

**Private Sector Housing,
Stratford-on-Avon District Council,
Elizabeth House, Church Street,
Stratford-upon-Avon CV37 6HX.**



Application Processing

The Council will acknowledge receipt of your application and payment. It will check the application and may ask for clarification or further information. It may make other enquiries with regard to the licence holder, manager or the property.

If it is determined that your property does not need a licence, this will be confirmed in writing and your fee will be returned.

Inspections

The Council would normally seek to inspect a property prior to issuing a licence. It also has a duty to ensure that the HMO is free from any hazards which would result in formal action. This is called the Hazard Health & Safety Rating System (separate guidance is available about this), and is a risk-assessed system of rating hazards in dwellings including HMOs.

All HMOs will also receive at least one other inspection during the term of the licence. Further inspections may become necessary if management failures are apparent.

If an HMO has been inspected recently and found to be satisfactory and compliant for licensing, a licence may then be issued prior to a further inspection being made.

Criteria for Issuing a Licence

The Council is obliged to issue a licence if satisfied that:-

- (a) the landlord/manager is a 'fit and proper' person,
- (b) the HMO is reasonably suitable for occupation,
- (c) it has adequate facilities
- (d) and management arrangements are satisfactory.

What is a 'fit and proper person'?

The Council will take account of convictions relating to:-

- violence, sexual offences, drugs and fraud
- housing or landlord and tenant law
- unlawful discrimination

The Council will also consider whether the person has previously managed HMOs in breach of any approved code of practice. It will look at the track record of management of any rented accommodation.

Granting of Licences

The Council will seek to issue a licence as soon as is reasonably practicable if it is satisfied with the criteria described above.

If the Council intends to issue a licence, it must serve a notice on the applicant and all relevant persons stating the reasons for giving the licence:-

- (a) any proposed conditions,
- (b) the time allowed for representations to be made
- (c) the period of the licence will be 5 years, unless there are reasons to limit this..

Any representations will be considered, and if the licence is modified, repeat the consultation process. Once this is finished, a decision is made and the licence will be issued.



Licence Conditions

When a licence is issued there are mandatory conditions relating to:-

- a maximum number of occupants
- gas safety testing and certification
- electrical appliance testing and certification
- furnishings being fire retardant
- smoke alarms
- occupiers having written tenancy agreements
- refuse storage and disposal
- minimum room sizes

The following additional conditions may be attached:-

- restriction or prohibition on the use of parts of the HMO
- steps be taken by the landlord/manager to deal with anti-social behavior
- ensure that all parts of the property are maintained
- undertake specified works within a particular timescale
- landlord/manager to attend an approved training course

Failure to comply with any of the licence condition is an offence with an unlimited fine per offence.

Duration and Cost of a licence

A licence will normally last for 5 years, after which landlords need to re-apply.

The cost of a licence has been set according to the enclosed fees sheet. The Council is able to charge for all of its administrative costs involved in processing and issuing the licence, including any necessary investigations and inspections. Larger HMOs will be charged at a higher rate, and there will be certain penalties if there are serious deficiencies in the application or applications are not submitted in good time.

A copy of the licence **must** be prominently displayed at the HMO.

Refusals and Revocations

If the Council is satisfied that the licensing criteria are not met, it may refuse to licence an HMO. If there is no appeal against this decision, the Council has to make an Interim Management Order (IMO), allowing it to take over the management of the property. This lasts for 12 months. After this, the management can be transferred back to the landlord, or a Final Management Order (FMO) can be made, allowing it to manage the property for a further 5 years.

IMOs can also be made if a licence is issued but then licence conditions are subsequently breached.

Once granted a licence can be revoked by agreement for serious or repeated breaches of conditions, or if the licence holder or manager is no longer 'fit and proper'.



Appeals

Appeals can be made against any of the following:-

- refusal to grant a licence
- unreasonable licence conditions
- revocation of a licence
- variation of a licence
- refusal to vary a licence

Appeals have to be made to the First-tier Tribunal (Property Chamber) normally within 28 days. The Regional Office for this district is at: City Centre Tower, 5-7 Hill Street, Birmingham B5 4UU. Telephone 0121 600 7888.

Temporary Exemption Notices (TEN's)

If you intend to stop operating an HMO, or reduce numbers to take it below the threshold for mandatory licensing, you can apply for a Temporary Exemption Notice. You must have a clear plan and be able to provide evidence of steps taken to this effect. If granted, a TEN will last for 3 months. If the property remains licensable after expiry, a second TEN can be issued. However, once this expires, the property must either be licenced, or be subject to an IMO, assuming it still remains licensable.

An example of when a TEN may be granted would be if the landlord operated an HMO which was due to be vacated within 6 months, and would not be re-let to 5 or more persons thereafter. Landlords seeking to let a licensable HMO for a full academic year would have to licence or face prosecution and an Interim Management Order being made.

Changes to Licence Holder

A licence is personal to the person(s) or organisation concerned. If the licence holder changes, for example through death, divorce or sale of the HMO, a new application will need to be made. A licence is not transferrable.

Rent Repayment Orders (RRO's)

Tenants of licensable HMOs whose landlords have failed to licence an HMO can apply to the First-tier Tribunal (Property Chamber) for a Rent Repayment Order to claim back any rent they have paid during the unlicensed period, up to a maximum of 12 months. The Council can also reclaim any Housing Benefit during the unlicensed period.

Landlords will wish to ensure that they apply for, and obtain their licence to prevent tenants from making such applications and asking the Council to take enforcement against their landlords.

6 Hazard Health & Safety Rating System (HHSRS)

HHSRS came into force in 2006 and applies to all dwellings in both rented and owner occupied accommodation, including HMOs.

The principle behind the system is that a dwelling should provide a safe and healthy environment for the occupants and any visitors. Dwellings are assessed to determine whether there are deficiencies, the likelihood of an occurrence which could cause harm, and possible health outcomes arising from that occurrence.

Hazard ratings are calculated and graded according to their risk as Category 1 or Category 2.

The Council has a duty to take action for Cat 1 hazards, and a power for Cat 2 hazards. There are a range of possible actions to deal with any hazards identified and appeals can be made to the First-tier Tribunal (Property Chamber).

Landlords will need to have general regard to any possible hazards when inspecting their properties. In cases where there is any doubt, the Council will be able to offer further advice.

HHSRS inspections will normally be undertaken at the same time as any licensing inspection.

7 Fire Safety

HHSRS is used as a means of assessing fire safety in all dwellings including HMOs. Although HMO licence conditions may specify works and timescales, the improvement notice procedure under HHSRS will be an alternative route of securing improvements to fire precautions in HMOs.

All property will be risk assessed, in accordance with LACORS Fire Safety guidance. This considers the number of storeys and occupancy type, e.g. students, professionals etc.

8 Amenities

The Government has prescribed national minimum amenity standards for licensable HMOs. The Council has already adopted standards for HMOs.

The Council's standards specify 1 bath or shower and 1 WC per 5 persons, and the WC to be separated from bathrooms where shared by 5 persons.

One kitchen is generally adequate for up to 6 persons.

Adequate heating is required, in each unit of living accommodation and in bathrooms.

9 Overcrowding

An HMO Licence will set maximum occupancy levels, and these will have regard to both the number and location of amenities within the HMO, plus the number and size of letting rooms.

The Council has adopted space standards which are used to determine a maximum number for the HMO.

Landlords are invited to specify a maximum number of individuals and households they wish an HMO to accommodate when making their application and this will be considered by the Council.

Part 4 Housing Act 2004 allows the Council to serve overcrowding notices for HMOs which are not subject to mandatory licensing. This would be in a case where the Council considered that an excessive number of persons is being, or is likely to be accommodated in the HMO.

For all dwellings, including HMOs, the Council is required to use HHSRS for the assessment of overcrowding and space, having regard to the number of occupants who occupy the property.

10 Management

The Management of HMOs (England) Regulations 2006, apply to all HMOs (except those converted into entirely self-contained flats for which separate regulations exist).

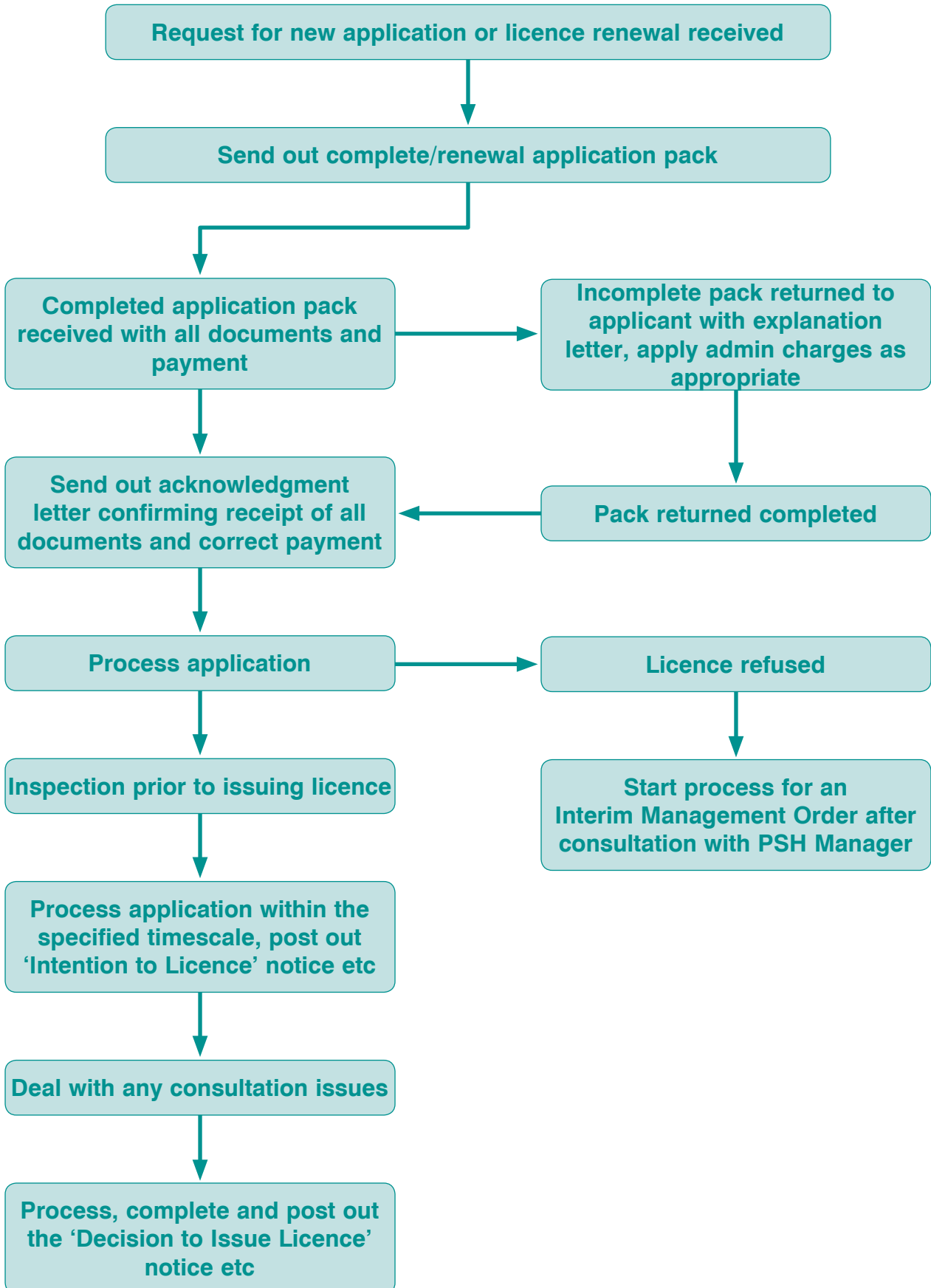
The regulations require the manager to maintain all common areas within the property in a reasonable condition.

The manager must provide copies of any or all certificates with 7 days of a request by the local authority.

There are also requirements for occupiers of HMOs to act reasonably and not to frustrate the manager in carrying out their duties.

Failure to comply with any of these regulations is an offence, the manager, and or the occupier/s are liable to prosecution, or a fixed penalty notice.

HMO Licensing Application Flow Chart





**Private Sector Housing
Stratford-on-Avon District Council**

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