

# Licensing of Houses in Multiple Occupation in England

A guide for tenants



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# Licensing of Houses in Multiple Occupation in England

## Who should read this booklet?

You should read this booklet if you are a tenant (or licensee) and live in a house in multiple occupation (usually called an HMO) or if you are not sure whether your home is part of an HMO.

This booklet explains:

- more about HMOs
- which HMOs need to be licensed
- what licensing involves; and
- what responsibilities landlords have when managing HMOs.

This booklet does not provide an authoritative interpretation of the law; only the courts can do that. Nor does it cover every case.



## Introduction to licensing

The aim of licensing is to tackle poor management of houses in multiple occupation (HMOs).

Alongside the new Housing Health and Safety Rating System (a new system of assessing housing conditions) licensing should identify properties in poor physical condition lacking basic amenities. As a result, tenants should see an end to overcrowding in HMOs, with decent quality and safe accommodation being offered and managed to high standards.

The Housing Act 2004 introduced licensing for HMOs providing a detailed definition of HMOs and set out standards of management for this type of property.

Most of the Act came into force on 6 April 2006, except for sections relating to converted blocks of flats. These sections are likely to come into force during 2007. If you live in a converted block of flats you can check with your local council whether the Act applies to where you live.

Under the new laws, there are two types of HMO licensing:

- mandatory licensing; and
- additional licensing.

Licensing is **mandatory** for all HMOs which have three or more storeys and are occupied by five or more persons forming two or more households.

**Additional licensing** is when a council can impose a licence on types of HMOs for which licensing is not mandatory. The council may do this if it considers that a significant proportion of these HMOs are being poorly managed.



## Definitions

### What is a house in multiple occupation (HMO)?

In most cases an HMO is a house or a flat in which two or more **households** live as their **main or only residence** and where some of these households share basic facilities, such as a kitchen, toilet or bathroom.

Other types of HMOs include converted buildings that include non self-contained flats; buildings that include self-contained flats and which meet certain tests; and other buildings where basic facilities are missing.

### What is meant by 'household'?

A 'household' could be a single person, or members of the same family living together. This includes people who are married or living together as married (including those in a same-sex relationship). It also includes close relatives and foster children living with foster parents.

In addition, some domestic staff are also treated as being included in the household if they are living in the house as a result of the terms of their contract with the person for whom they are working. A live-in adult carer and up to three people receiving care in the one house will also be counted as a single household.

If there are three or more people living in a flat or building and they are not all in the same household, for example, a shared student house, the building or flat **may** be classified as an HMO.

### What is meant by 'main or only residence'?

An HMO is regarded as a person's main or only residence when the house is their only accommodation or the place where they mainly live; or:

- they are living in an HMO as a full time student in higher education
- the HMO is occupied as a refuge for persons escaping domestic violence
- the HMO is occupied by migrant or seasonal workers
- the HMO is occupied by asylum seekers in accommodation partly or wholly funded by the National Asylum Support Scheme.

## Is student accommodation (like a hall of residence) defined as an HMO?

No, not necessarily. Halls of residence (and some other buildings owned and managed by universities and higher education colleges) are not defined as HMOs if the university or college has agreed to manage the property according to an approved code of practice.

A full list of these properties and who manages them is available from Universities UK:

**[www.universitiesuk.ac.uk/acop](http://www.universitiesuk.ac.uk/acop)**

and Accreditation Network UK who operate the code of practice:

**[www.anuk.org.uk/LargeCode](http://www.anuk.org.uk/LargeCode)**

However, if the student accommodation is owned and/or managed by someone other than the college or university (eg a specialist provider of student housing or an organisation leasing from a university) it will be defined as an HMO even if it is managed in accordance with one of the codes of practice.

If you are a student and you are unsure whether the property you live in is an HMO you can seek advice from your university or college's welfare or accommodation officer, or alternatively from a Citizens Advice Bureau or the local council.



## Licensing of HMOs

### Which HMOs must be licensed?

HMOs must be licensed if they have three or more storeys **and** are occupied by five or more persons forming two or more households; this is mandatory licensing.

Councils also have powers to require licensing of other HMOs; this is additional licensing. Your landlord should know if his HMO is within an area which has been designated for additional licensing.

### How can I check if where I live needs to be licensed?

Your local council maintains a public register of all licensed HMOs within its area which you can view free of charge. In some cases the council may have given the HMO temporary exemption from licensing. The council also keeps a register of those properties which have been granted exemption from licensing, which is also available for public inspection.

If the property you live in is not on either of the public registers and you are not sure whether it ought to be licensed your council should be able to advise you.



## **I live in a property with a resident landlord. Does it require a licence?**

This depends on who else lives in the property.

Properties are HMOs if a resident landlord lives with three or more other people who are not members of his or her household. The property must be licensed if, in addition to the resident landlord (and his or her household), there are four or more persons living in a property which is on three or more storeys.

If you are unsure whether the house you live in needs a licence, please contact your council.

## **Can my landlord evict me to avoid licensing the HMO?**

No. Landlords are not allowed to evict existing tenants in order to avoid licensing.

If you have an assured shorthold tenancy agreement, the landlord cannot give you notice that he or she intends to evict you unless he or she has applied for, or been granted, an HMO licence, or has received temporary exemption from licensing.

Your council may take over the management of the HMO if it has clear evidence that your landlord is threatening to evict you to avoid licensing.

In any case, if you are threatened with eviction (without a court order) you should contact your council as your landlord may be committing a criminal offence.



## Licensing requirements

### What will the council take into account when deciding whether or not to grant a licence for an HMO?

The council must look at the following factors:

- the suitability of the HMO for the number of occupiers
- the suitability of the facilities within the HMO, such as toilets, bathrooms and cooking facilities
- the suitability of the landlord and/or the managing agent to manage the HMO (this is called the “fit and proper” test); and
- the general suitability of managing arrangements.

### Can the council impose conditions in a licence?

Yes. The council must set certain conditions to ensure the safety of furniture, and gas and electricity installations, in the HMO. It must also require landlords to give tenants written information regarding the terms and conditions of their occupancy.

The council may also set conditions relating to the facilities in the HMO, its condition and the management of the property, including how the landlord deals with the behaviour of occupiers.

### **What happens to the occupiers living in the property at the time the licence is granted?**

Your council must ensure that a licensed HMO is not overcrowded and has suitable shared amenities and facilities for the number of persons occupying it.

If there are too many people living in the HMO at the time the licence is granted, the landlord must take reasonable steps to reduce the number of occupiers to the permitted number. Existing tenants will not normally be evicted. Instead, when they move out, it will be an offence for the landlord to allow new tenants to move in if that would bring the total number of occupiers above the maximum number allowed.



### **Enforcement**

#### **What happens if my landlord does not apply for a licence?**

It is a criminal offence to manage or control a property which should be licensed but is not. If convicted, the landlord or manager could be fined up to £20,000.

In addition landlords may have to pay back to the council any housing benefit they have received during the period of the offence, up to a maximum 12 months.

Your tenancy will not be affected if your landlord has failed to apply for, or obtain a licence, although the council may take over the management of the property. If this happens the local council will contact you to discuss the arrangements in more detail.

### **Can I withhold my rent if my landlord has not applied for a licence?**

No, you cannot withhold rent.

In certain cases, you may apply to a Residential Property Tribunal to reclaim rent. You can only do so if your landlord has been prosecuted by the council for running an unlicensed HMO or if the council itself has obtained a rent repayment order. Your council or a Residential Property Tribunal should be able to give you further details.

### **What happens if my landlord breaches the terms or conditions of the licence?**

If a landlord or manager allows an HMO to be occupied by more people or households than it is licensed for, without a reasonable excuse, he or she will be committing a criminal offence and could be fined up to £20,000.

If the landlord or manager breaches licence conditions he or she is committing a criminal offence and could be fined up to £5,000. If the breach is a serious or persistent one the licence may also be revoked.

If the council revokes a licence (and is unable to agree a replacement licence) it must take over the management of the HMO itself, unless the building is no longer licensable.

### What happens if the council refuses to grant a licence?

If the council is unable to grant a licence for the HMO then it will need to take over the management responsibility for the property until circumstances change and it can then be licensed.

There are special rules that apply when a council takes over the management of an HMO. If this happens your council will explain your rights and liabilities, and those of the landlord or former manager.

### Are there any controls on HMOs which do not need a licence?

Yes. All HMOs, including those which do not need a licence, have to be managed according to the laws setting out the responsibilities of both landlords and tenants. (These are set out in *The Management of Houses in Multiple Occupation Regulations 2006*.)

Managers of HMOs must ensure the good day-to-day management of HMOs and that necessary equipment is maintained in reasonable condition. Tenants must not stop the landlord or manager doing this. A landlord or tenant who fails to comply with these regulations may be fined up to £5,000.

If an HMO that does not need a licence is being managed badly the local council can, in some circumstances, apply to a Residential Property Tribunal to take over management of the property itself.

### What happens if the conditions in my HMO are poor?

Whether or not the HMO is licensed it should be reasonably free from hazards that might affect your health and safety. Your council is responsible for enforcing those standards and can require the landlord to take appropriate action to remedy any defects. In some emergency cases the council may do the works itself.

If you live in a licensed HMO the council must satisfy itself that the building is free from any major hazards. This will normally involve an inspection.

### Are there rules about tenancy deposits?

Yes. If your tenancy is an assured shorthold (and whether or not the HMO is licensed) and your landlord takes a deposit he or she is required to

protect it under a statutory scheme. Deposits are, therefore, safeguarded. Of course if you cause damage to the property or otherwise breach the terms of your tenancy you may not get back all of your deposit.



## Further Information

You can get more information about HMO licensing from your council. HMO licensing will be the responsibility of the section of the council dealing with private housing management or environmental health. Check your council's website or call their offices to find out. You can also get information or advice from a housing advice centre, the Citizens Advice Bureau or a solicitor.

Information about licensing is also available at:

**[www.propertylicencence.gov.uk](http://www.propertylicencence.gov.uk)**

Information on the Housing Health and Safety Rating System can be found in the guidance *Housing Health and Safety Rating System – Guidance for Landlords and Property Professionals* at:

**[www.communities.gov.uk](http://www.communities.gov.uk)**

Information on tenancy deposit protection can be found at:

**[www.direct.gov.uk/tenancydeposit](http://www.direct.gov.uk/tenancydeposit)**

The Residential Property Tribunal Appeal Service can give you details about Residential Property Tribunals:

**[www.rpts.gov.uk](http://www.rpts.gov.uk)**

or: **0845 600 3178**



