



Houses in Multiple Occupation (HMO): Licensing scope and schemes

Housing Act 2004 Factsheet No.3

Summary

- The Housing Act 2004 introduced the licensing of HMOs.
- It is mandatory to license larger, higher-risk HMOs. Local Housing Authorities (LHAs) also has the discretion to extend licensing to other categories of HMOs to address particular problems that may exist in these smaller properties.
- The Act also provides for a new definition of HMO, and limits the scope of licensing and enforcement action (other than in relation to Housing, Health and Safety Rating System action) to certain types of HMOs within that definition.

Definition of HMO

'House in Multiple Occupation' means a building, or part of a building (e.g. a flat):

- which is occupied by more than one household and in which more than one household shares an amenity (or the building lacks an amenity) such as a bathroom, toilet or cooking facilities; or,
- which is occupied by more than one household and which is a converted building which does not entirely comprise self contained flats (whether or not there is also a sharing or lack of amenities); or
- which comprises entirely of converted self contained flats and the standard of conversion does not meet, at a minimum, that required by the 1991 Building Regulation and at least one third of the flats are occupied under short tenancies.

And is 'occupied' by more than one household:

- as their only or main residence , or,
- as a refuge by persons escaping domestic violence, or,
- during term time by students, or,
- for some other purpose that is prescribed in regulations.

And the households comprise:

- families (including foster children, children being cared for) and current domestic employees,
- Single persons
- Co-habiting couples (whether or not of the opposite sex).

Exemptions from HMO definition

Certain types of buildings will not be HMOs for the purpose of the Act, other than Part one (HHSRS) and are, therefore, not subject to licensing. These include those:

- Buildings, or parts of buildings, occupied by no more than two households each of which comprise a single person (i.e. two person flat shares').
- Buildings occupied by a resident land lord with up to 2 tenants.
- Managed or owned by a public body (such as the police or the NHS) or an LHA or a Registered Social Landlord.
- Where the residential accommodation is ancillary to the principal use of the building e.g. religious establishments, conference centres etc.
- Student halls of residence, where the education establishment has signed up to an Approved Code of Practice.
- Buildings regulated otherwise than under the Act, such as care homes, bail hostels etc, and the description of which are specified in regulations.
- Buildings entirely occupied by freeholders or long leaseholders.

HMO Declarations

Where a building, or part of a building, is partly occupied by persons as their only or main residence, but is also partly occupied otherwise than as a residence e.g. a Bed & Breakfast establishment providing accommodation for both homeless people or asylum seekers and for holidaymakers, the LHA may declare the building an HMO if it is satisfied that the occupation by persons as their only or main residence is a significant use of the building, or part of the building.

If an owner or manager does not agree that the building should be subject to an HMO Declaration he/she can appeal against the LHA decision to a Residential Property Tribunal (RPT). On appeal the tribunal must either confirm the declaration or revoke it.

The LHA may revoke a declaration in force, either on its own volition, or upon the application of the owner or manager, if it is satisfied the building is no longer used significantly by persons as their only or main residence. If the LHA refuses to revoke the declaration the applicant can appeal to the RPT, which can either uphold that decision or revoke the declaration.

Mandatory Licensing Schemes

The Secretary of State and National Assembly for Wales have prescribed certain categories of HMOs that must be licensed by LHAs in England and Wales respectively.

These include HMOs (other than those that are exempt from licensing/ definition and converted blocks) which comprise of three storeys or more and are occupied by five or more persons, who comprise two or more households.

Converted blocks of flats that fall within the definition of HMO (see above) will not be subject to mandatory licensing. The Government intends that additional licensing should be available to tackle such blocks that are problematic (see *Additional Licensing Schemes*).

In calculating three storeys, regard should be had to attic or basement accommodation used, or capable of being used, for residential purposes. It is also intended that any part of a building not used for residential purposes, such as commercial premises on the ground or upper floor of a building, will form part of the HMO for determining the number of storeys, but shall be excluded for all other purposes. Basements in purely commercial use will not be included.

Additional Licensing Schemes

An LHA can make an additional licensing scheme that may apply to HMOs (other than those that are exempt from licensing/ definition or subject to mandatory licensing) in its area, or any part of it.

The additional licensing scheme may apply to such categories of HMOs as the LHA considers appropriate. Before making such a scheme the LHA must:

- Identify the management problems arising from the types of HMOs in the area for which it intends to make the scheme, including the extent to which those HMOs have been managed in accordance with any approved code of practice for HMO management that is in force.
- Consider whether there are other courses of action available to them that might provide an effective means of dealing with the issues which the scheme is intended to address and whether the scheme will significantly help them in dealing with those issues.
- Ensure that the making of a scheme is consistent with its overall housing strategy and is co-ordinated with its approach to dealing with homelessness, empty properties and anti social behaviour in the private rented sector.
- Consult on the proposed additional licensing scheme with those persons who are likely to be affected by it, including landlords, tenants and local recognised resident associations, and consider their representations.

A scheme requires the consent of the appropriate national authority. The Secretary of State has extended the general approval for additional licensing schemes to those authorities in England classified overall as "Excellent" or "Good" in Comprehensive Performance Assessment". In all other circumstances an individual scheme will require confirmation from the appropriate national authority.

A scheme which requires confirmation from the appropriate national authority, does not come into effect earlier than three months from the date that confirmation is given. Where a scheme is made under a general approval it does not come into force until three months after the scheme has been made.

A scheme will normally be in force for a maximum period of five years and LHAs are required to keep them under review during that period.

Passporting registered HMOs into licensing

Regulations provide that where an HMO is registered under an LHA Registration Scheme with Control Provisions the property may be passported into licensing. Where the HMO is registered and will be subject to mandatory licensing it must be passported into licensing. A licence will be granted for the residual period of registration and at no cost to the licence holder. Where the HMO is registered and is not subject to mandatory licensing the LHA may introduce a transitional licensing scheme to cover such types of property. Transitional schemes last for a maximum of 3 years. At the end of that period if the local authority wish to continue with additional licensing they may do so subject to the normal rules for additional licensing.

Temporary Exemption from Licensing

An owner or manager of an HMO may apply to the LHA for a Temporary Exemption Notice (TEN). 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.

An LHA 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, if planning permission has been obtained for the conversion of the HMO to single family occupation.

A TEN can only be granted for a maximum period of three months, but in exceptional circumstances the LHA 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.

If an LHA refuses to grant a TEN the applicant may appeal to the RPT, which can either uphold the LHA decision or reverse it.

Effect of mandatory licensing and additional licensing schemes

It will be a requirement that any person operating an HMO which is subject to mandatory licensing, or an additional licensing scheme, will need to obtain a licence from the LHA to continue operating the property (see *HMO Licensing requirements Factsheet 4* for details).

Further information

For further information, please contact:

Housing Services

Torrige District Council

Town Hall

Bideford

EX39 2HS

01237 428700