

A Practical Guide to Licensing of HMO's Housing Act 2004



Contents

1. Introduction

2. What is an HMO ?

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

3. What is a licensable HMO?

What constitutes a Storey?

What is Additional Licensing?

4. Why are we licensing HMO's?

5. The Licensing Process

Application Forms

Application Processing

Inspections

Criteria for Issuing a Licence

What is a 'fit and proper person'?

Granting of Licences

Licence Conditions

Duration and Cost of Licence

Refusals and Revocations

Appeals

Temporary Exemptions from Licensing

Changes to Licence Holder

Rent Repayment Orders

6. Hazard Health & Safety Rating System (HHSRS)

7. Fire Safety

8. Amenities

9. Overcrowding

10. Management

11. Grants



1. Introduction

This booklet is designed to offer guidance on Licensing of HMO's under Part 2 Housing Act 2004. Not all HMO's need to be licenced, indeed, many smaller ones, and even some larger ones are exempted from Mandatory Licensing.

If an HMO is required to be licensed, it is a criminal offence not to do so. Also, rent paid by tenants may be recoverable through legal action throughout the period that the HO was unlicensed.

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) ?

This has been redefined in Housing Act 2004 Section 254-258 and can be a building or part of a building which is occupied by more than one household:-

- sharing (or lacking) 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 more than one 'household', 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,

and 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 also includes fosterers, carers, domestic staff, servants etc. Until Housing Act 2004, some student groups have in law been held to form a single household where they signed a single tenancy agreement. The new definition changes this interpretation so that persons must be members of the same family to be regarded as a household.

Certain buildings are exempted from being classed as HMO's. These include those managed or controlled by:-

- A Local Authority or Registered Social Landlord
- Police, Fire Authority and Health Service bodies
- Educational establishments
- 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 persons include children and babies.



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

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

All HMO's should have adequate safety measures, with particular regard to gas, electricity and fire precautions. There must 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, below). However, the level of fire precautions and amenities will be assessed according to the risk and the number of occupants; hence HMO's will be treated accordingly.

All HMO's are subject to Management Regulations which require all parts of the HMO to be maintained (see section 10, below).

HMO's 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, below).

3. What is a licensable HMO?

The Government have determined that HMO's consisting of 3 or more stories and containing 5 or more occupants, excepting those converted to entirely self contained flats MUST have a licence to operate as from 6th April 2006. This is called Mandatory HMO licensing. Typically, shared houses and bedsits with shared facilities will be licensed. There will also be some HMO's which are converted to self-contained flats, but also contain flats or bedsits which are not self contained. Some hostels and staff accommodation in hotels and similar premises may also be licensable.

Properties with 2 stories and 5 or more people, or 3 stories and 4 or fewer people, or any building which consists entirely of self contained flats will not require mandatory licensing. 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.

What constitutes a Storey?

Storeys will include habitable attics and basements (whether in use or not) and also attics and basements which are used in connection with, and as an integral part of the HMO, whether or not they are converted or adapted for use as living accommodation.

Basements which are used for storage purposes or which contain gas, water or electric meters and/or stop taps will be counted as storeys for the purposes of licensing since the occupier, and others, will have reason to resort there from time to time. Attics which consist solely of a roof space accessed only by a ladder will not be counted.

Mezzanine floors will be counted as separate storeys if used solely or mainly as living accommodation or if used in connection with and as an integral part of the HMO. They will not be counted if used solely as a means of access between 2 adjoining floors.

Where the HMO is a flat in a building combined with other flats or other uses, all floors of the building are counted, except where there is a basement used for commercial use, in which case the basement is disregarded.

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

What is Additional Licensing?

'Additional Licensing' is a discretionary form of HMO licensing which local authorities can require in their areas, and can designate other types of HMO which must be licenced, beyond the mandatory licensing requirements. At this time, additional licensing is not being introduced in the Warwick District area.

4. Why are we licensing HMO's?

Larger HMO's are more likely to have poor physical conditions, lack facilities and be badly managed. The residents are often the most vulnerable members of society. HMO's are the only housing option open to many people and it is vital that they are properly regulated to ensure tenant's health safety and welfare.

Licensing aims to ensure that the higher risk HMO's will be targeted improved and managed to an acceptable standard. In particular:-

- landlords must be 'fit and proper' people (or employ managers who are)
- HMO's must meet prescribed standards of facilities and equipment
- HMO's must be suitable for occupation by a prescribed number of people
- The standard of management must be adequate

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

5. The Licensing Process

It is the duty of anyone who owns or manages a licensable HO to apply to the Council for a License. Landlords who do not bother to apply for a License will be prosecuted and fined up to £20,000.



Application Forms

Application forms are available on request or can be downloaded from the Council's website www.warwickdc.gov.uk. It is the HMO that 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 to prioritise its inspection programme. Completing the form inaccurately, missing out any questions or failing to enclose the relevant documents will only cause delays. Additional administrative charges can be made for this. If you have any queries regarding the application, please contact us for assistance.

The application is split into 4 sections to deal with the landlord, the manager, the property and the management. Where landlords are applying for more than one License, they are able to copy certain sections to avoid duplication and save time. A glossary of terms to assist in completing the forms is enclosed with the application pack.

When you have completed an application, it should be sent with the relevant supporting documentation and fee to Private Sector Housing, PO BOX 2175, Warwick District Council, Riverside House, Milverton Hill, Leamington Spa CV32 5QE.

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 landlord, manager or the property.

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

Inspections

The Council would normally seek to inspect a property in connection with a License application. It also has a duty to satisfy itself that the HMO is free from any particular hazards which would result in it taking action. This is called the Hazard Health & Safety Rating System (separate guidance is available about this), and is a new system of rating hazards in dwellings including HMO's.

The time between receipt of application and inspection will be influenced by the number of applications that we are required to deal with. It is expected that HMO's will also receive at least one other inspection during the term of the License. Further inspections may be necessary if management failures become apparent.

If an HMO has been inspected recently, and found to be satisfactory, and the other criteria are satisfied for licensing, a License may be issued prior to an inspection being made.

Criteria for Issuing a Licence

The Council is obliged to issue a License if satisfied that the landlord/manager is 'fit and proper', the HMO is reasonably suitable for occupation, it has adequate facilities and management arrangements are satisfactory including financial structures.

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 HMO's 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 License as soon as is reasonably practicable if it is satisfied with the criteria described above.

If the Council intends to issue a License, it must serve a notice on the applicant and all relevant persons stating the reasons for giving the License, any proposed conditions, the time allowed for representations to be made and the period of the License, normally 5 years.

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



Licence Conditions

When a licence is issued, it will stipulate 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

The following additional conditions may be attached:-

- restriction or prohibition on the use of parts of the HO
- steps be taken by the landlord/manager to deal with anti-social behaviour
- 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 Licence condition is an offence with a fine of up to £5000 per offence.

Duration and Cost of licences

Licences will normally last for 5 years, after which landlords will be reminded to re-apply.

The cost of a License 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 which are considered necessary. Larger HMO's 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.

Student HMO's which have already been issued with Accreditation Certificates or are at the accreditation standard and where an Application for Accreditation has been lodged by 6th April 2006 will qualify for a 40% discount.

A copy of the License must be kept at the HMO and should be prominently displayed.

Refusals and Revocations

If the Council is satisfied that the licensing criteria are not met, it may refuse to licence a HO. If there is no appeal against this decision, the Council has to make an Interim Management Order (IMO), allowing it 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 (FIMO) can be made, allowing it to manage the property for a further 5 years.

IMO's can also be made if a License is issued but License conditions are subsequently breached.

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

Appeals

You can appeal 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 Residential Property Tribunal (RPT), normally within 28 days. The Regional Office for this district is at: 2nd Floor, East Wing, Ladywood House, 45-46 Stephenson Street, Birmingham B2 4DH. Telephone 0121 643 8336.

Temporary Exemption Notices (TEN's)

If you intend to stop operating the 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 usually need to be made.

Rent Repayment Orders (RRO's)

Tenants of licensable HMO's whose landlords have been convicted for failing to obtain a Licence, can apply to the RPT 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 licences 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 comes into force on 6th April 2006 in line with HMO Licensing. It replaces the fitness standard for human habitation and applies to all dwellings including HMO's, in both rented and owner occupied accommodation.

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. There is a duty for the Council to take action for Category 1 and a power for Category 2. There are a range of possible actions to deal with hazards identified. Appeals can be made to the RPT.

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

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



7. Fire Safety

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

All property will be risk assessed, hence it is not possible to give prescriptive standards for fire alarm systems, and the level of protection required to suit every case. Separate guidance on fire safety will be made available.

8. Amenities

The Government has prescribed national minimum amenity standards for licensable HMO's. The Council already has adopted standards for HMO's and it will have regard to these in deciding whether to set standards which go beyond this minimum.

The Government standards specify 1 bath or shower and 1 WC per 5 persons, and at least one WC to be separated from bathrooms. No specific guidance has been issued on ratios of kitchen facilities depending on occupant numbers although each kitchen must be adequately sized and contain sufficient sinks, cookers, sockets, worktops, cupboards, refrigerators, freezers, refuse disposal facilities, extract fans, fire blankets and fire doors.

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

9. Overcrowding

HO Licences will set maximum occupancy levels, and these will have regard to both the number and location of amenities within the HO, and the number and size of letting rooms. The Council has adopted space standards which are used to

determine a maximum number for the HO. Landlords are invited to specify a maximum number of individuals and households they wish an HO 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 HMO's 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 HO.

For all dwellings, including HMO's, 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.

Section 216 Housing Act 2004 is an enabling power which allows the Government to make an Order which could effectively introduce a new overcrowding standard for all dwellings including HMO's. At this time no such Order has been made.



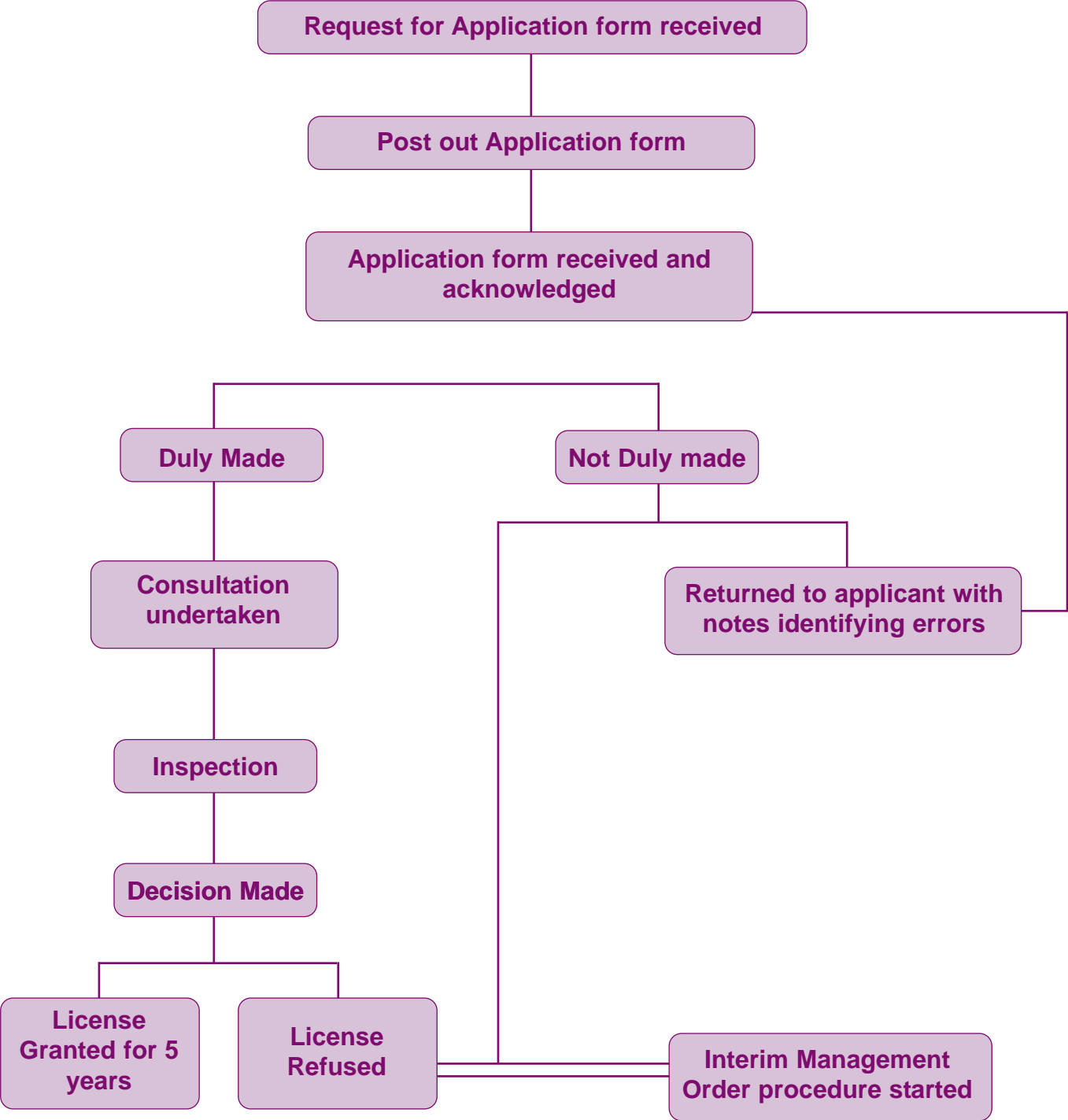
10. Management

The Management of HMO's (England) Regulations 2006 apply to all HMO's (except those converted into entirely self contained flats for which separate Regulations are expected to be made). The Regulations generally require the manager to maintain all parts of the property in reasonable condition. There are also requirements for occupiers of HMO's to act reasonably. Failure to comply with these Regulations is an offence and the manager is liable to a fine not exceeding £20,000.

11. Grants

Certain grants and loans may be available to bring HMO's up to standard. It is suggested that you visit the Council website www.warwickdc.gov.uk or contact Private Sector Housing on (01926) 456733 for details.

HMO Licensing Application





INVESTOR IN PEOPLE

