

Houses in Multiple Occupation (HMO) Licensing Application Guidance Notes



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Foreword

The Housing Act 2004 introduced mandatory licensing of high risk Houses in Multiple Occupation (HMO) from 6 April 2006.

A high risk HMO is a property occupied by 5 or more unrelated persons, who share an amenity such as a kitchen or toilet comprising of 3 or more storeys. This includes a single flat over a shop if the entire premises has 3 storeys. Buildings consisting solely of self-contained flats or purpose built flats are exempt from licensing. See www.sheffield.gov.uk/hmolicensing for details of exemptions.

An application for a licence should be submitted

- prior to occupation for new conversions.
- before completion of a sale for new purchases where the house is already occupied and requiring a licence
- before the expiry of a previous licence.

The government propose to extend mandatory licensing, currently to all properties occupied by 5 persons excluding self-contained flats and purpose built blocks of more than 2 flats. Details will be published on the Councils website at www.sheffield.gov.uk/hmolicensing when details are known.

Where the application is for a licence renewal and there only changes from the previous licence are the works carried out to comply with licence conditions, where the licence holders are the same (a reduction is okay) and all the licence conditions of the previous licence have been complied with – including training requirements)

Meaning of HMO

HMO means a house in multiple occupation as defined by sections 254 to 259 of the Housing Act 2004 and it applies to a wide range of housing types and includes:

- A building or a part of a building, which consists of one or more units of living accommodation not consisting of a self-contained flats or flats;
- The living accommodation is occupied by persons who do not form a single household;
- Where two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities;
- Buildings converted into self-contained flats if more than one third of the flats are tenanted and the conversion does not comply with Building Regulations 1991 or subsequent Building Regulations. See sections 254-257 of the Act.

Licence Application Procedure

Before completing an application form for an HMO licence, please ensure that you have read these guidance notes.

Please answer all questions unless directed. The form comprises four main sections:

- Applicant / Licence Holder / manager details and other legal interests in properties; and declaration that other parties have been informed of the licence application (Sections 1 to 10)
- Questions relating to the fit and proper test, questions relating to existing training suitable management arrangements and relating to the occupation of the house prior to the application being made. Sections 11 to 14
- Individual property details. To allow us to apply the correct licence fee and licence conditions and determine number of occupants. Also to allow us to risk assess the property Sections 15 to 41
- The declarations of documents attached to the licence application and the signatures

The completed form should be returned together proof of payment and certificates to the address detailed at the head of this guidance

Apart from times when there are excessive numbers of applications for licences and renewals, in the vast majority of cases we will process your application after a visit to your property. All licences will be issued subject to conditions, some that we are required to issue and some to require that the property complies with national and local standards.

We are required to consult all relevant parties about the conditions of the licence. Mortgagees are consulted to make sure that payments are being made on time. We frequently receive representations from Mortgage companies that their loan does not allow occupation in multiple occupation. Correctly, this is a matter that should be addressed before letting the HMO.

You are allowed a period of representation about the licence conditions, a minimum of 2 weeks, during which any concerns can be considered and hopefully resolved. Where agreement cannot be reached the licence will be issued and you will have the opportunity to make an appeal to the First-tier Tribunal (Property Chamber) (FtT) your rights of appeal will be detailed with the issue of the licence. However, we prefer to come to suitable agreement prior to issue the final notice as appeal to the FtT is expensive for both parties

Once we have processed your application we will enter details of your licence on a public register that the Council is obliged by law to keep. People are allowed to see the register and make copies of information from it. We also have to supply at cost copies of the register upon demand.

We estimate that there are 1800 licensable HMOs within the City, if the Government proceed with their intention to extend licensing there will be a further 600 – 1000 more licensable properties. Most licences expire within an eighteen month period and at this time processing times will be longer.

You should note that:

1. An HMO licence is not transferable. Where a property changes ownership the new landlord must make an application for a licence. No repayment of the licence fee will be made for any un-expired period of the licence and a full fee will usually be required from the new applicant. See the scale of charges.
2. If a licence holder dies during the period of the licence, the licence ceases to be in force from the date of death. For 3 months from the date of death the house

will be treated as if a Temporary Exemption Notice (TEN) (see note 4 below) has been served. At any time during the 3 months a formal application may be made for a TEN. The TEN will be valid for a period of 3 months and will take effect after the initial 3 months ends. It is advantageous therefore to have more than one licence holder.

3. Where a licence holder wishes to alter the terms of their licence, for example there is a change in manager details or a change in occupancy levels, they may apply for a Variation to the Licence.
4. Where a licence holder intends to reduce the occupancy level to 4 persons to avoid licensing, they may apply for a Temporary Exemption Notice (TEN). A TEN is valid for up to 3 months and will be recorded on a public register. In exceptional circumstances a TEN may be renewed for a second period of 3 months.
5. If the number of persons the house can accommodate turns out to be less than the number that the applicant has applied to licence then we cannot give a refund for any higher fee that has been paid
6. It is a criminal offence to make a false statement in an application for an HMO licence, or to fail to comply with any licence condition, or to permit the property to be occupied by more than the permitted number of persons/households.

Fee

The appropriate fee – based upon the numbers you are seeking the licence for, should accompany the application.

The current scale of charges are:

5 person house £750

For every person over 5 persons £25

For every application that is received 2 months after it is due there is a late fee of £150

There are other fees which are detailed on the Council website at www.sheffield.gov.uk/hmolicensing

Housing Health and Safety Rating System (HHSRS)

The Council must be satisfied that the terms of the licence are met and that the HMO is free from serious health and safety hazards, as introduced by the Housing Act 2004. The Council will inspect all properties at least once during the period of the licence, which in most cases will be 5 years. We will make arrangements with you regarding this inspection.

Licensable HMOs

A licensable HMO is a HMO with 5 or more unrelated occupiers sharing facilities (e.g. kitchen, bathroom, WC) and which comprises 3 or more storeys.

Definitions

Definitions detailed below are in the order that they appear in the application form.

1 - Applicant

This may be the property owner, the proposed license holder, the proposed property manager, the person having control of the property or the person managing the property

or somebody acting on their behalf who has completed the application for whatever reason.

2 Licence Holder

The most appropriate person to be responsible for the property and to hold the licence. This will usually be the applicant and will also be the person receiving the rent, whether directly or through another person.

3 Person Managing the HMO

This is not necessarily the same as the Managing Agent or the Manager. The person managing means the person who is an owner or lessee (tenant) of the premises or who receives the rent for the property or other payments for it from persons who are in occupation as tenants or licensees of parts of the premises. This applies whether the person receives the rent directly or through an agent or trustee. Where the rents or other payments are received through someone who is an agent or trustee not only does it include the owner (or lessee) but it also includes the agent or trustee.

Where the Licence holder does not have day-to-day responsibility for repairs, maintenance or tenant management of the property the person who has this responsibility will be the manager.

4 The person having Control of the HMO

In simple terms this means the person receiving the rent for the property. By this they would collect or arrange the collection of the rent and pay it into their own account. If they collect the rent and pay it into the owners account then the owner would be the person having control.

5 Freeholder of the property

You will usually pay ground rent to this person/company

6 Mortgagee

The mortgagee is the company lending money against the security of the premises. This will be the bank or building society

7 Other persons agreeing to be bound by the licence terms.

We believe that this can only be the freeholder if there is less than 5 years on the lease to run. (If the freeholder does not agree the licence would only run for the outstanding period on the lease.)

8 Any other person with a legal interest

There is occasionally an intermediate leaseholder between the freeholder and the leaseholder. This is likely to increase if the government's plans to extend licensing go through as there are complex ownership models in some of the converted buildings that will require licensing

9 Details of other proposed licence holder or manager

This is available where there is inadequate space in boxes 2, 3 and 4 above

10 Informing Interested Parties

You are required to inform an interested party that you are making the application prior to making the application. Please note that applicants are not required to inform any tenant with an un-expired term of tenancy of less than 3 years. This is the least completed section of the form and we cannot process an application without completion.

11 Fit and Proper Person

We must be satisfied that the person applying for an HMO licence is a "fit and proper person" to hold a licence. The test is applied to any person managing the premises and any director or partner in a company or organisation which owns or manages the HMO. Not all convictions are relevant to a person's prospective role as an operator of an HMO. Please that failure to declare a relevant conviction will be regarded with the conviction as more serious than the conviction itself.

Sections 11, 12 and 13 must be completed separately by any proposed Licence Holder or Manager who is different to the applicant. This may mean that sections 10-12 need to be completed 2 or 3 times with separate declarations being made by any Licence Holder or Manager

In answering these questions, you should also answer for any company for whom you have been involved with.

11 (a) - Spent Convictions

Spent Convictions

This is a detailed and comprehensive matter and it is recommended you seek independent legal advice on the matter but as a general guide.

Under the Rehabilitation of Offenders Act 1974 criminal convictions can become spent or ignored after a rehabilitation period. They do not need to be disclosed. The rehabilitation period varies depending on the sentence or order imposed by the court – not the nature of the offence. Custodial sentences of more than two and a half years can never become spent. All borstal or detention centre sentences are now spent. The periods from the date of conviction are as follows:

Rehabilitation periods for certain types of sentence/disposal under the 1974 Act (as amended by the 2012 Act)		
Sentence/disposal	Rehabilitation period if aged 18 or over when convicted/disposal administered	Rehabilitation period if aged under 18 when convicted/disposal administered
A custodial sentence of over 48 months	Never spent	Never spent
A custodial sentence of over 30 months but not exceeding 48 months	7 years from the date on which the sentence (including any licence period) is completed)	42 months from the date on which the sentence (including any licence period) is completed)
A custodial sentence of over 6 months but not exceeding 30 months	48 months from the date on which the sentence (including any licence period) is completed)	24 months from the date on which the sentence (including any licence period) is completed)
A custodial sentence of up to 6 months	24 months from the date on which the sentence (including any licence period) is completed)	18 months from the date on which the sentence (including any licence period) is completed)
Fine	12 months from the date of the conviction in respect of which the fine was imposed	6 months from the date of the conviction in respect of which the fine was imposed
Community order	12 months from the last day on which the order has effect	6 months from the last day on which the order has effect
Conditional caution	3 months from the date on which the caution was given, or (if earlier) when the caution ceases to have effect	
Simple caution, youth caution	Spent immediately	
Compensation order	On the discharge of the order (i.e. when it is paid in full)	

11 (d) – Enforcement Action

The appropriate enforcement action detailed in Section 5 of the Housing Act 2004 is:

- (a) An Improvement Notice under Section 11 of the Housing Act 2004;
- (b) A Prohibition Order under Section 20 of the Housing Act 2004;
- (c) A Hazard Awareness Notice under Section 28 of the Housing Act 2004;
- (d) Emergency Remedial Action under Section 40 of the Housing Act 2004;
- (e) An Emergency Prohibition Order under Section 43 of the Housing Act 2004;
- (f) A Demolition Order under Subsections (1) or (2) of Section 265 of the Housing Act 1985;
- (g) A premises being in a Clearance Area under Section 289 of the Housing Act 1985.

11j Families, friends and businesses

We need to make sure that licence holders and managers have not been involved with families, friends or businesses that have bad records regarding the questions asked in Section 11a to 11i. Where the answer to Section 11j is yes you will be required to give further details in Section 13

14 Suitable management arrangements

We need to ensure that there are adequate management arrangements in place. Usually they will be, and unless we know to the contrary an application will proceed without further information. The two instances where we do need more information are to find out what arrangements there are if the licence holder (with no manager) or the licence holder and manager are more than 2 hours from Sheffield. In addition, we also need to know what arrangements are in place if the licence holder is not the owner

17 Type of premises

- (a) **Detached.** A single dwelling which is free standing from any other structure except its own outbuildings.
- (b) **Semi detached.** A dwelling which shares a structural party wall with one other dwelling forming a pair which are free standing from any other structure except their own outbuildings.
- (c) **Terraced.** A dwelling forming part of a group of three or more dwellings linked by side party walls in a linear layout, excluding those defined as end terrace. Crescent layouts would be included.
- (d) **End terrace.** A dwelling at the end of a terrace of dwellings which therefore shares a side party wall with one other dwelling only.
- (e) **Back to back terrace.** A dwelling forming part of a group of three or more dwellings linked by side and rear party walls in a linear layout.
- (f) **Grouped Design.** A dwelling which shares a party wall with one or more other dwellings set out in a non linear layout such as a cluster or around a courtyard. Entrances will normally be private.
- (g) **Residential block.** A dwelling in a block, as defined in field 11, which is entirely designed for residential or related use.
- (h) **Mixed use block.** A dwelling in a block, which contains a mix of units designed for both residential and non-residential use.

18 Self-Contained Flats

HMOs consisting only of self contained flats are not subject to mandatory licensing unless taken together with any floors containing commercial use the numbers of storeys is three or greater and the numbers of occupants includes 5 or more. However, if there is a self- contained flat in the same HMO as non self-contained accommodation it has to be licensed as part of the HMO. Accommodation occupied by 3 individuals sharing bathroom or kitchen facilities is not self-contained.

19 Converted

This includes a change from single family accommodation to shared accommodation.

21 Commercial use

We need to know what type of business is associated with the building an HMO is in. Fire risks (and others too) vary considerably dependent upon the type of business below.

22 Ground level

This is the ground level at the principal entrance to the premises, usually at the front of the premises. This is level 0. The first level below this, if used in connection with the accommodation would be -1 and the first level above ground level is +1.

23 Details of internal fixtures

It is necessary to show intended occupation differently to actual occupation at the time the application is made. In addition, there are a number of clarifications under this head as follows:

- **Household** - A single household can be regarded as members of the same family, or persons living together as husband and wife (or in an equivalent relationship in the case of persons of the same sex). 5 students (unless they are all related and living together as a family) will usually be 5 households
- **Number of Separate Letting Units** – if occupants would normally appear listed on a tenancy agreement they would be a separate letting unit unless occupiers form a single household, which would itself be one letting unit.
- **Single Household** - A single household can be regarded as members of the same family, or persons living together as husband and wife (or in an equivalent relationship in the case of persons of the same sex).
- **Habitable Room** – a Bathroom is not a habitable room but a bed-sitting room containing cooking facilities, a living room and dining room are.
- **Sinks** - are kitchen sinks.

22 Storeys

A storey includes:

- Any basement used wholly or partly as living accommodation: that has been constructed, converted or adapted for use wholly or in part as living accommodation: that is being used in connection with and as an integral part of the HMO or it is the only or principal entry into the HMO from the street.
- Any attic used wholly or partly as living accommodation: that has been constructed, converted or adapted for use wholly or partly as living accommodation or is being used in connection with an integral part of the HMO.
- Each storey comprising business premises either above or below the living accommodation, but excluding businesses in basement areas

24 Electrical safeties

If there is an existing electrical safety certificate then a copy of this should be enclosed with the application but if there is not this will not stop the house being licensed.

28 - Gas Safety

Gas appliances must be safe and tested and certificated in accordance with the Gas Safety Installations and use regulations 1998. At the time of preparing these notes this is the extent to which you will be signing the declaration at Section 42

32 - Furnishings

All upholstered furniture provided with rented accommodation must comply with the Fire and Furnishings (Fire Safety/Amendment) Regulations 1993. This means that all furnishings provided within the tenancy must have passed cigarette and match ignition tests and the filling materials have passed the flammability tests. If your furniture complies it should have a label attached permanently with the lining giving details as appropriate

The Licence holder's responsibility is for any furniture supplied by them or left in the property by the previous tenants and given as part of the new tenancy.

37 Appliances

We are required to put conditions in the licence that the Licence Holder keeps electrical appliances in a safe condition. We cannot see any other way of a landlord achieving this other than to periodically have the appliances in the house PAT tested. Any appliance with a plug is considered to be a portable appliance.

Example Plan

This is an example plan that will be acceptable for HMO licence applications. It is to show existing facilities only. The plan may be hand drawn providing it is clear and roughly in proportion. This plan is not intended to show the fire standards that will apply to these properties.

