



## Licensing of Houses in Multiple Occupation – Guidance for Applicants

The Housing Act 2004 places a duty on Local Housing Authorities to license certain Houses in Multiple Occupation (HMOs).

It is an offence for anyone to let a property that should be licensed but isn't so. This could result in an unlimited fine on conviction, or alternatively, a financial penalty may be issued by the Local Authority up to £30,000. In addition anyone letting an unlicensed property may have to pay back any rent received whilst the property should have been licensed.

### What is an HMO?

An HMO is defined by sections 254 to 259, Housing Act 2004 and it applies to a wide range of housing types and includes:

- a building, or part of a building that is occupied by two or more households and there is some sharing of amenities such as a bathroom, toilet or kitchen
- a converted building which is not comprised entirely of self-contained flats, whether or not there is also sharing (or lack of) amenities
- a building or part of a building that is comprised entirely of self-contained flats and the standard of conversion does not meet the minimum required by the 1991 Building Regulations and at least one third of the flats are occupied under short tenancies

### Which properties need to be licensed?

Generally, all HMOs that have five or more residents in two or more households are required to be licensed.

HMOs consisting only of self-contained flats are not subject to mandatory licensing. 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.

A **'household'** is defined as members of the same family, including unmarried couples who are living together as man and wife (or the equivalent relationship between people of the same sex). Any domestic staff are also included if they are living rent free in accommodation provided by their employer.

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## **What should I do if I believe my property does not need to be licensed?**

If you have been invited to apply for a licence but believe that someone else needs to make the application, or that the property in question does not require a licence please contact us in writing within two weeks to advise of the reason.

## **My property is licensable but I do not want to apply for a licence, what can I do?**

If you do not wish to apply for a licence because you intend to take particular steps with a view to securing that the house is no longer required to be licensed, you 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.

## **Why do I need to provide all this information?**

We need to assess whether the property is suitable for the number of occupants, that you are a 'fit and proper' person and that any management arrangements are adequate.

## **About the Application Form**

There are four sections to the application form. **Do not leave any question blank** – if the question is not relevant or does not apply please mark it 'N/A.' If we need supporting documentation, this is indicated on the form. Please ensure that all information is supplied with your application, as without it, your application will be incomplete. The address of the property and surname should be clearly marked on any additional documentation.

The first section of the application form requires information on the applicant, proposed licence holder and other persons having an interest in the property. Section 2 requires information that will help the Hartlepool Borough Council to determine whether the proposed licence holder and proposed manager are 'fit and proper' persons. Section 3 requires details of the property to be licensed. Finally, the declarations in section 4 need to be completed and signed for the application to be valid.

## **Licence Application Procedure**

Before completing an application for a licence for a House in Multiple Occupation (HMO), please ensure that you have read the following guidance notes.

We aim to acknowledge receipt of your application for a licence within two weeks and to issue a draft licence within eight weeks. If we are unable to determine your application within that time, we will write to you and explain the reason. Your acknowledgement letter is evidence that you have applied for a licence, should your tenants or representatives request to see a copy of your licence.

Unless there are exceptional circumstances, an officer from the Council will visit the property before a draft licence is issued. A pre-licence inspection will be carried out and advice given, where appropriate. Once a draft licence is issued, you are allowed

a period of representation about the licence conditions, during which any concerns relating to the conditions will 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 a Residential Property Tribunal. Your rights of appeal will be detailed with the issue of the licence.

We will send copies of the draft licence and conditions to all interested parties and we will write to them again once the licence has been determined.

Having processed your application, the details of your licence will be entered onto a public register that the Council is obliged by law to keep and provide extracts on request.

Once the licence is issued the Council must be satisfied that the terms of the licence are being met and that the HMO is free from any Category 1 Hazards, as determined by using the Housing Health and Safety Rating System (HHSRS) introduced by the Housing Act 2004. This will involve at least one inspection of the property during the lifetime of the licence.

Licences are normally granted for five years, but may be issued for shorter periods if there are extenuating circumstances. If a licence is to be issued for a shorter period of time, a full explanation will be given.

It is possible to appeal decisions made by the Council with regards to the licence issued or conditions imposed and full details will be provided at the relevant stages.

## **Renewal of Current Licence**

If you are applying to renew an existing licence, you must ensure this is submitted at least two months before your current licence expires. This is so that we have adequate time to process your application to ensure that there are no gaps in coverage.

## **Transfer of Licence**

If there is a change in ownership a new application must be made as it is not possible to transfer a licence. Where there is no change in ownership and the application is made to vary the licence by appointing a new licence holder or manager there will be no charge unless the variation is for an increase in the number of permitted occupants.

# EXPLANATORY NOTES

## SECTION 1

### **Applicant** (Question 1.10)

This may be the property owner, the proposed licence 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.

### **Proposed Licence holder** (Question 1.1)

The proposed licence holder should be the most appropriate person to be responsible for the property and to hold the licence. The proposed licence holder should be able to authorise, organise and pay for essential repairs. This person would normally be the owner but it may be a manager or the person having control. The Licence Holder may be a company which is a limited company, limited liability partnership, registered charity or trust. If the company is un-incorporated, an individual must be named as the Licence Holder.

### **Owner** (Question 1.2 and 1.3)

Means person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple of the premises whether in possession or in reversion. This includes also a person holding or entitled to the rents and the profits of the premises under a lease of which the un-expired term exceeds 3 years.

### **Person having control of the property** (Question 1.4 and 1.5)

This means the person who receives the rack rent of the property or who would be in a position to receive it if the premises were let at a rack rent. Rack rent is defined as the rent which is not less than 2/3rds of the full net rental value of the premises. The person having control includes not only the person who receives the rent in this way on his own account but also someone who receives it as agent or trustee for another or someone else.

### **Person managing the property** (Question 1.6 and 1.7)

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 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.

## SECTION 2 – FIT AND PROPER PERSON ASSESSMENT

The Local Authority must consider evidence whether the proposed licence holder or manager and any person associated, or formerly associated, with them is a fit and proper person and must have regard to evidence supplied in questions 2.1 and 2.2 of the application form when making the determination.

We will confirm details supplied in this application form with existing information held by other council departments, e.g. Housing Benefits, Council Tax. We may also approach other organisations, such as other Local Authorities, the Police, Fire & Rescue Service and the Office of Fair Trading for information and confirmation.

The Local Authority may check with the Disclosure and Barring Service whether the applicant has any relevant convictions, however, not all convictions are relevant to a person's prospective role as an operator of an HMO.

**Please note that it is a criminal offence to knowingly supply information, which is false or misleading, for the purposes of obtaining a licence. If we subsequently discover something, which is relevant and which you should have disclosed, or which has been incorrectly stated or described, your licence may be cancelled or other action taken.**

### **Unspent Convictions** (Question 2.1 a))

As this is a detailed and comprehensive matter it is recommended you seek independent legal advice. The following should be used 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.

The following sentences become spent after fixed periods from the date of conviction:-

Sentence	Rehabilitation Period
1. Prison sentences of 6 months or less, including suspended sentences and detention in a young offender institution	7 years (3 ½ years if 17 or younger when convicted)
2. Prison sentences of more than 6 months to 2 and a half years, including suspended sentences and detention in a young offender institution	10 years (5 years if 17 or younger)
3. Fines (even if subsequently imprisoned for fine default), compensation, probation (for convictions on or after 3 February 1995), community service, combination, action plan, curfew, drug treatment and testing and reparation orders	5 years (2 ½ years if 17 or younger)
4. Absolute discharge	6 months

5. Conditional discharge or bind-over, probation(for convictions before 3 February 1995), supervision, care orders	1 year or until the order expires (whichever is longer)
6. Attendance centre orders	1 year after the order expires
7. Hospital orders (with or without a restriction order)	5 years or 2 years after the order expires (whichever is longer)
8. Referral Order	Once the order expires

### **Appropriate Enforcement Action (Question 2.1 d) ii)**

Appropriate enforcement action refers to action taken to deal with a Category 1 hazard under the provisions of the Housing Act 2004, as determined using the Housing Health and Safety Rating System which may be:

- a) serving an improvement notice (section 11);
- b) making a prohibition order (section 20);
- c) serving a hazard awareness notice (section 28);
- d) taking emergency remedial action (section 40); or
- e) making an emergency prohibition order (section 43).

Appropriate enforcement action also includes action taken under the provisions of the Housing Act 1985 as follows:

- f) making a demolition order (section 265 (1) or (2); or
- g) declaring a clearance a clearance area (section 289 (2)).

## **SECTION 3**

### **Number of Households/Individuals for which licence is required (question 3.9)**

The number of households/individuals currently in occupation may not be the maximum number that the property could accommodate. You should consider this number carefully as this will be specified on the licence (after consideration). Should this number be exceeded the licence holder will be in breach of the licence.

**Please note that all children should be included in the number of individuals.**

### **Furniture and Furnishings (question 3.29)**

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.

## **SECTION 4**

### **Other persons who need to be informed**

You are obliged to let certain persons know that you have made this application. We will send copies of the draft licence and conditions to all interested parties and we will write to them again once the licence has been determined.

## HMO LICENSING FEES

Licence fees must be charged in two parts. The first part is for making and processing an application and the second part is for the ongoing administration of the licensing scheme. The fees are set out in table 1.

We are required to set licence fees in two parts. The first part is for making and processing an application and the second part for the ongoing administration of the licensing scheme.

Part 1 of the licence fee must be made at the time that you make your application and we will invoice you for part 2 of the fee once the licence is issued. Should you wish to pay the full fee at the time of making the application a discount of £30 will be applied. Should your application be refused, we will refund the second part to you (less £30).

If you are unsure about the fee level due you should contact us before submitting your application. Failure to pay the correct fee may delay the processing and issuing of your licence.

**Table 1 - HMO Licence Fees**

<b>Number of Lettings</b>	<b>Part 1 Fee</b>	<b>Part 2 Fee</b>	<b>Total Cost</b>	<b>Cost if paying in full at time of application</b>
5 Lettings	£475	£310	£785	£775
6-10 Lettings	£525	£360	£885	£855
11-15 Lettings	£580	£410	£990	£960
16-20 Lettings	£630	£470	£1100	£1070
21-30 Lettings	£680	£520	£1200	£1170
31-35 Lettings	£740	£570	£1310	£1280

In the event that any applications are made for properties greater than 35 lettings, we would charge £50 extra for the part 1 and part 2 fee per additional letting.

### **Additional Charges**

If an application is made to vary the licence to increase the number of occupiers an additional fee may be charged. Please contact us to discuss this first to ensure that the house will be suitable for the increased number of occupiers.

## IMPORTANT

**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 allow the property to be occupied by more than the permitted number of persons/households.**

**Please note the following:**

1. A licence issued under part 2 of the Housing Act 2004 is not transferrable

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 unexpired period of the licence and a full fee will be required from the new applicant.

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 TEN (Temporary Exemption Notice – see note 4 below) has been served. This is known as the “Initial Period”. At any time during the Initial Period a formal application may be made for a TEN. The TEN will be valid for a period of 3 months and will take effect when the “Initial Period” ends.
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”.

The application will be an application to “Vary a licence”. A fee may be payable if there is an increase in the number of permitted occupants

A variation of the licence will not be granted until the full fee has been paid.

It is important to note that it is an offence to change the terms of the licence without the agreement of the Council. This could lead to legal proceedings being instituted against both the licence holder and manager (if different) and an unlimited fine upon summary conviction.

4. Where a licence holder intends to take steps to ensure that the property is no longer licensable, 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.

**The completed form should be returned to:**

Housing Standards  
Public Protection  
Development, Neighbourhoods and Regulatory Services  
Civic Centre  
Victoria Road  
Hartlepool, TS24 8AY  
Tel: 01429 523705  
Email: [privatesectorhousing@hartlepool.gov.uk](mailto:privatesectorhousing@hartlepool.gov.uk)