

Guidance notes

Before lodging an application for a licence for a House in Multiple Occupation (HMO), please ensure that you have read the following guidance notes. If you require any further advice regarding the Licensing Scheme or the relevant standards, please contact Private Housing

In these notes “the Act” means the Housing Act 2004, unless otherwise stated, all references to sections etc are to sections in the Act. Part 2 of the Act introduces a mandatory scheme to licence HMOs with 3 or more storeys occupied by 5 or more people comprising two or more households.

Meaning of HMO

“HMO” means a house in multiple occupation as defined by sections 254 to 259 Housing Act 2004 and The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.

An HMO licence is required if all of the following apply:

- it has five or more occupiers comprising two or more separate households, regardless of number of storeys
- it is a house or self-contained flat but is not a purpose-built flat situated in a block comprising three or more self-contained flats
- some or all of the occupants share amenities such as bathrooms, toilets or cooking facilities
- at least one of the occupants pays rent (or the accommodation is linked to their employment) \square it is the occupiers' main residence
- it is not an exempt property, namely:
 - Buildings or part of buildings, occupied by no more than two households each of which comprise a single person
 - Buildings occupied by a resident landlord 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
 - Student Halls of Residence, where the educational establishment has signed up to an Approved Code of Practice
 - Buildings regulated otherwise than under the Act, such as care homes, bail hostels etc
 - Building entirely occupied by freeholders or long leaseholders

Operating a licensable HMO without a licence is an offence which can be dealt with by a financial penalty or a conviction in court.

Definitions

From 1 October 2018, mandatory licensing is no longer limited to HMOs that are three or more storeys high, but includes buildings with one or two storeys.

The Person in Control of the HMO is the person who is entitled to receive the majority of the rent from the tenants and may be the owner, or the owner of a long lease on the property

The Person Managing an HMO must either be the person in control of the house or be an agent or employee of the person having control of the house, and be a fit and proper person to be the manager. The manager has day to day responsibility for the HMO and the authority to act on behalf of the person in control. The manager may receive a fee or commission from the person in control of the house or receive a percentage of the rent.

A Person Bound by Conditions is any person who has responsibility for compliance with one or more of the conditions in the licence, and may be an agent or employee of the licence holder if the licence holder is a company.

HMO Register – Disclosure of Licence Holder’s name and address

Section 232 of the Housing Act 2004 and Statutory Instrument 2006/373 which provides for a public register and regulation 11 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006 prescribe the information which must go in that register. This includes the licence holders name and address but does not include the telephone number or email address of the licence holder.

Regulation 11 of SI 2006/372 states that the following particulars are prescribed for each entry in a register established and maintained under section 232(1)(a) of the Act in respect of a licence granted under Part 2 (HMOs) or 3 (selective licensing) of the Act which is in force—

- (a) the name and address of the licence holder;
- (b) the name and address of the person managing the licensed HMO or house;
- (c) the address of the licensed HMO or house;
- (d) a short description of the licensed HMO or house;
- (e) a summary of the conditions of the licence;
- (f) the commencement date and duration of the licence;
- (g) summary information of any matter concerning the licensing of the HMO or house that has been referred to [the First-tier Tribunal] 1 or to the [Upper Tribunal] 2 ; and
- (h) summary information of any decision of the tribunals referred to in subparagraph (g) that relate to the licensed HMO or house, together with the reference number allocated to the case by the tribunal.

Whereas a name and address is personal data, section 35 of the Data Protection Act 1998 provides that personal data is exempt from the non-disclosure provisions where disclosure is required by or under any enactment.

The licence holder is advised that there is no requirement for the address given to be their home address and a business address can be used instead. Where a business address is given, the section 40(2) DPA exemption applies as there would be no reasonable expectation that this personal data (home address) would be disclosed in light of the choice given to give a business address instead.

Completing the Form

Guidance on completing the application form

Part 1. Licence Holder etc details

1.2 The licence holder will normally be the “person in control” of the HMO, which is the person who receives the rent and is often the owner. However, the licence holder can also be the “person managing” the HMO who manages the HMO on behalf of the owner. The Council has a duty to grant the licence to the most appropriate person, and may insist on a change if the proposed licence holder is not a fit and proper person, or is not suitable for example because they live outside the UK or lack the capacity to adequately manage the HMO.

If the proposed licence holder is a company or similar body, give the official registered or principal address. You should then state who is managing the HMO – this should be the person who represents the licence holder and will be responsible for compliance with the HMO management regulations and the licence conditions.

Part 2. Information about the interest in the property

2.2 A flat is a dwelling, which is a separate set of premises, whether or not on the same floor

2.3 Owner, in relation to the premises

- (a) means a 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; and
- (b) includes also a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds three years

Part 3. Information about the property - (not mandatory for renewal applications made before the expiry of an existing licence)

- 3.10 Persons are to be regarded as not forming a single household unless they are all members of the same family. A person is a member of the same family as another person if those persons are relatives (parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, or cousin) or other persons living together who are married or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex)
- 3.12 The standard of fire protection required will vary with each property. The form asks about certain equipment but it does not necessarily mean that you will have to provide this if it is missing.

Fire Escape Routes will be shown on the sketch plan of the property. If you have a full Automatic Fire Detection System you should provide details of what training you have given the occupants of the property. In other cases it will be adequate to provide information such as a leaflet that are available from www.firekills.gov.uk.

Fire Warning signs such as fire exit signs are only appropriate in properties over 4 storeys

- 3.13 Upholstered furniture supplied with rented accommodation must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988(as amended). This means that all cover materials must have passed cigarette and match ignition tests and the filling materials must have passed flammability tests. You should check to see that your furniture has a label permanently attached to the lining or underside giving the appropriate details.
- 3.14 Under the Gas Safety (Installation and Use) Regulations 1998 the landlord must have an annual gas safety check on all gas appliances by a Gas Safe registered gas installer.

A regular and appropriate inspection of the electrical wiring installation is required to ensure that the health and safety of your tenants is not compromised. The landlord is required to provide certification that any appliances provided by the landlord, have been examined by a competent person who has confirmed that they are functioning properly and are safe. An electrical installation certificate is required. Competent electricians must be approved by the NICEIC, ECA, BRE

Certification Ltd, British Standards Institute, ELECSA Limited, or NAPIT Certification Ltd. Your electrician will recommend the frequency of inspection appropriate to your property.

3.15 Planning Permission may be required in relation to your HMO if there are more than 6 tenants. If you are not sure whether permission or approval is required for the property for which you are seeking a licence, contact the Council's Planning Department planning@wokingham.gov.uk. Where permission or approval has already been obtained, please enclose a copy with your application.

Part 4. Licence Fee

The matters that a local authority can take into account when setting a locally determined fee were clarified in the case of R (on the application of Hemmings (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015]. A fee to cover the costs of managing and enforcing the licensing regime can be charged in addition to the "fee on application" to cover the costs of processing the application. However, if the licence is not granted following the application, the fee to cover the costs of managing and enforcing the licensing regime will be refunded. The "fee on application" to cover the costs of processing the application will not be refunded, unless the application was made in error of the house was found not to require a licence.

After an HMO Licence is granted, refunds will only be granted in exceptional circumstances at the Council's discretion, as the fees are calculated to cover the Council's costs, which have already been incurred. Even if the HMO ceases to be licensable during the licence period and the licence is revoked, there is no pro rata refund as costs have already been incurred by the Council.

Registered charities are exempt from paying HMO Licence fees.

For fees and payment details, please refer to [Fees and payments \(wokingham.gov.uk\)](http://wokingham.gov.uk)

Part 5 Licence holder test of fitness and compliance with management conditions

The local authority must be satisfied that the person applying for an HMO licence is a "fit and proper person" to hold a licence. The same test applies to any person managing the premises and any director or partner in a company or organisation, which owns or

manages the HMO. The local authority may approach other authorities such as the police authority, Fire & Rescue Service, Office of Fair Trading, etc., to check whether the applicant has any relevant convictions. We may require your cooperation in obtaining DBS information in confirmation of the above.

5.1 If you do have any convictions you are required to declare, these should not be sent with the application form but should be sent under separate confidential cover. Unspent convictions may be convictions for which the rehabilitation period has not been completed, or convictions, which are excluded from the Act (i.e. never spent). Not all convictions would be relevant to a person's prospective role as an operator of an HMO, for example motoring offences would not be relevant but a conviction for fraud or theft could be since the operator would be in a position of trust. If you are unsure about any matter, please contact us.

5.4 The appropriate enforcement action described in section 5(2) of the Act means:

- 1) Serving an Improvement Notice under section 11
- 2) Making a Prohibition Order under section 20
- 3) Serving a Hazard Awareness Notice under section 28
- 4) Taking Emergency Remedial Action under section 40;
- 5) making an Emergency Prohibition Order under section 43;
- 6) making a Demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);
- 7) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.

5.7 "Works in default" - provisions of housing legislation which enables enforcement action in respect of a repair or improvement notice to be taken by local housing authorities either with or without agreement and which provides for the recovery of related expenses.

For any further enquiries, please contact environmental.health@wokingham.gov.uk