

## Does An HMO Require A Licence?

An HMO needs a licence if it falls into the general category for licensing below. However some types of HMO don't need a licence and some types of premises are excluded from the definition of HMO for licensing purposes and therefore don't need a licence either:

### HMOs which require a licence must be:

- three or more storeys high (see explanatory notes),
- occupied by two or more households, **and**
- have a total of 5 or more people living in the property.

### Premises that are HMOs but do *not* require a licence

1. HMOs where a **Temporary Exemption Notice** (see explanatory notes) is in force
2. HMOs where an **Interim / Final Management order** (see explanatory notes) is in force
3. Any building completely converted into self contained flats

### Premises that are not HMOs for licensing purposes (*Schedule 14*)

1. Buildings controlled or managed by:
  - A local housing authority
  - RSL's (Housing Associations)
  - A Police authority
  - Metropolitan Police Authority
  - A fire and rescue authority
  - A health service body
2. HMO's regulated by other legislation e.g. children and care homes, boarding schools, prisons, bail and probation hostels etc.
3. Buildings occupied by students where the manager is the educational establishment
4. Buildings occupied by religious communities for prayer, contemplation, education or the relief of suffering (*NB This does not apply to a converted block of flats to which s257 applies*)
5. Owner occupied buildings where one or more persons who have (in whole or in part) either of the freehold or a lease of more than 21 years and their household, along with up to 2 other persons (lodgers)
6. Any building occupied only by two persons who form two households

## Explanatory Notes

### ***The definition of 'storey':***

- Include any basement if used wholly or partly as living accommodation and is an integral part of the HMO or it is the main entry into the HMO from the street.
- Include any attic if used wholly or partly as living accommodation and is an integral part of the HMO.
- Include parts of the building being used as a business premises.
- Include any mezzanine floor (half landing) that is not used solely as a means of access, if it is used wholly or partly as living accommodation and is an integral part of the HMO.

**A Temporary Exemption Notice (TEN)** suspends the requirement for a licence because the owner has notified the council that s/he intends to take particular steps with a view to securing that the house will no longer be required to be licensed. Temporary exemption is what it says, temporary. There are no permanent exemptions. The Council can serve a temporary exemption notice (TEN) which will exempt the premises from licensing for 3 months. In certain unusual circumstances it can extend this for a further 3 months. Thereafter there is no power to exempt the premises and the property must be licensed.

Under Section 75, Housing Act 2004, if an HMO requires a licence and does not have one, the landlord's ability to serve notice to quit on tenants with shorthold and assured shorthold tenancies is withdrawn.

**If the licence holder dies** the licence ceases to be in force. The house is automatically given an exemption for 3 months after the licence holder's death. Thereafter the representatives of former license holder may apply for a TEN in the same way as above i.e. up to a maximum of a further 6 months.

An **Interim Management Order (IMO)** lasts 1 year; a **Final Management Order (FMO)** lasts 5 years. These orders are made by the Council and their aim is:

- To protect the health, safety or welfare (*the health and safety condition*) of occupiers or people in the vicinity
- To put in place any other steps to achieve proper management of the premises.

An Order can be made if:

- The property ought to be licensed and there is no prospect of it getting a licence in near future or the licence is to be revoked and won't be granted or
- The health and safety condition is met.

**The health and safety condition:** it is necessary to make the order to protect health, safety or welfare of occupiers or persons having an estate or interest in property or who are in the vicinity (a link to anti-social behaviour measures). (A threat to evict to avoid licensing is defined as a threat to welfare). Additionally there:

- Must be a category 1 hazard and
- Health, safety and welfare of the occupiers would be protected by making the order.

**For more information contact:**

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