

Appendix 1 - Definitions and explanation of terms

Definition of House in Multiple Occupation (HMO)

An HMO can be summarised under Section 254(2), (3) & (4) of the Housing Act 2004 as: -

- a building or part of a building comprising of one or more units of living accommodation not consisting of a self-contained flat or flats, which is occupied by two or more households who share or lack one or more basic amenities such as a bathroom, toilet or cooking facilities
- a flat occupied by two or more households, who share or lack one or more basic amenities such as a bathroom, toilet or cooking facilities
- a converted building or part of a converted building containing one or more units of living accommodation which do not consist entirely of a self-contained flat or flats and are occupied by two or more households

and where in any of the cases mentioned above, the living accommodation is occupied by persons as their only or main residence and rents are payable or other consideration provided by at least one of the occupiers and the occupation of the living accommodation is the only use of that accommodation

or under Section 257 of the Housing Act 2004: -

- is a building converted into self-contained flats, but does not meet as a minimum standard, the requirements of the Building Regulations 1991 and where less than two thirds of the flats are owner occupied.¹

¹For these purposes, a flat is “owner occupied” if it is occupied: -

- (a) by a person who has a lease of the flat which has been granted for a term of more than 21 years,
- (b) by a person who has the freehold estate in the converted block of flats, or
- (c) by a member of the household of a person within (a) or (b) above.

For more detailed definitions, please refer to Sections 254 – 259 of the Housing Act 2004

Definition of household

A household is defined as persons: -

- who are all members of the same family (including single persons, couples and same sex couples)
- who have other relationships, such as fostering, carers and domestic staff

For a more detailed definition, please refer to Section 258 of the Housing Act 2004.

Occupation as only or main residence

Persons occupying premises as their only or main residence include: -

- asylum seekers and migrant and seasonal workers
- those occupying as a refuge escaping domestic violence
- students during term time
- others as may be prescribed by the government

For a more detailed definition, please refer to Section 259 of the Housing Act 2004.

The mandatory HMO licensing scheme

The Housing Act 2004, introduced a mandatory scheme requiring that certain HMOs must be licensed. An HMO requires a licence when: -

- it has 3 or more storeys
- it is occupied by 5 or more persons forming 2 or more households
- there is some sharing of facilities

When counting the number of storeys, the following are to be included as a separate floor: -

- any basement, attic and mezzanine level if used or constructed wholly or partly as living accommodation*
- where the living accommodation is situated in part of a building above business premises for example a shop or office, each storey comprising the business premises
- where the living accommodation is situated in part of a building below business premises, each storey comprising the business premises
- any other storey that is used wholly or partly as living accommodation, or in connection with and as an integral part of the HMO

*in the case of a basement, it is the only or principal entry into the HMO from the street

Further information about mandatory licences can be found on the [council's website](#) or by calling the council on 020 8359 7454

Definition of Additional Licensing

Section 56(2) of the Housing Act 2004 allows local housing authorities (councils) to designate the area of their district or an area within their district as being subject to an Additional Licensing Scheme. They must be able to show that a significant proportion of HMOs in their area are considered to be managed sufficiently ineffectively as to give rise, or likely to give rise to one or more particular problems for those occupying HMOs or for members of the public. The DCLG paper 'Approval steps for additional and selective licensing designations in England' (Revised February 2010) gives examples of properties being managed sufficiently ineffectively and as a result having a detrimental effect on an area and these include: -

- those whose external condition and curtilage adversely impact upon the general character and amenity of the area in which they are located.
- those whose internal condition, such as poor amenities, overcrowding etc. adversely impact upon the health, safety and welfare of the occupiers and the landlords of these properties are failing to take appropriate steps to address the issues.
- those where there is a significant and persistent problem of anti-social behaviour affecting other residents and/or the local community and the landlords of the HMOs are not taking reasonable and lawful steps to eliminate or reduce the problems.
- those where the lack of management or poor management skills or practices are otherwise adversely impacting upon the health, safety or welfare of the residents and/or impacting upon the wider community.

The council are to have regard to any codes of practice approved under Section 233 of the Housing Act 2004 and consider what other courses of action other than the introduction of Additional Licensing may be open to it.

Guidance as to “fit and proper persons”

In deciding whether or not to grant a licence, Section 64(3)(b) of the Housing Act 2004 requires that the council must be satisfied that the proposed licence holder or proposed manager is a ‘fit and proper’ person.

Where the council consider that there has been a serious breach or repeated breaches of a licence condition or the licence holder is no longer a fit and proper person and that the management of the house is being carried on by persons who are not in each case fit and proper persons to be involved in its management, the licence may be revoked (Section 70(2)(a),(b)&(c)).

In determining whether management arrangements are satisfactory the council must take into consideration whether: -

- The person or persons proposed to be involved in the management of the house are suitably competent.
- Any other person proposed to be involved with the management of the house is a fit and proper person.
- Whether any proposed management and funding arrangements are suitable.

In making a decision as to what a fit and proper person is, the council will take the following into consideration;

- Whether the person has committed an offence involving fraud, dishonesty, violence, drugs or sexual offences;
- Practiced unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;

- Contravened any provision of the law relating to housing or of landlord and tenant law for example, running an unlicensed HMO or a conviction for a category 1 hazard under Part 1 of the Housing Act 2004, or relating to the management of property or harassment; or
- Acted otherwise than in accordance with any applicable code of practice approved under Section 233 of the Housing Act 2004

The council will consider the weight of convictions and the nature of the contraventions. A technical or administrative breach of the management regulations or a minor and isolated low risk incident may not affect a person's fit and proper status particularly where mitigating circumstances can be proven. The council will take into account any convictions where there has been a verdict by a court of law and contraventions acting contrary to a rule or order and not fulfilling an obligation, promise or agreement. With respect to criminal offences, the council can only have regard to unspent convictions.

A landlord with a criminal record for unlawful eviction for harassment of tenants for example, would not be considered to be a fit and proper person. Multiple offences over longer periods of time are also likely to be a matter for consideration.

The council will also take into account 'persons associated or formerly associated' with the proposed licence holder or manager. This may have a bearing on whether or not the proposed licence holder or manager can be regarded as a fit and proper person. This is so that a situation in which a person who could be regarded as a fit and proper person cannot act as a front for someone else who is not.

If a person is found not to be a fit and proper person, this will usually remain the case for a period of 5 years. However, if a licence application is re-submitted at any time during that period, the council will reconsider the case. The council will in so doing, have regard to its policy and the applicant will need to provide sufficient evidence that they are now a fit and proper person.

Exemptions to licensing under the Additional Licensing Scheme

The Housing Act 2004 specifies properties which are not HMOs for the purpose of the Act. Examples of properties which, in certain circumstances will not require a licence under the proposed scheme include: -

- a house which is occupied by a religious community
- where no person is required to pay any rent
- the owner is a public sector body e.g. the police or National Health Service
- a building which is occupied solely or principally by persons who occupy it for the purpose of undertaking a full-time course of further or higher education at a specified educational establishment or at an educational establishment of a specified description, and where the person managing or having control of it is the educational establishment in question or a specified person or a person of a specified description.
- the owner is a registered social landlord

- properties whose occupation is regulated by other legislation e.g. care homes, children's homes and nursing homes

For further information on properties excluded from the definition of HMO and the circumstances in which they can be considered to be exempt, please refer to Section 254 and Schedule 14 of the Housing Act 2004.

Although a property may be exempt from licensing, other parts of the Housing Act 2004 will apply to residential accommodation and set out minimum standards. The Housing Health and Safety Rating System applies to all residential premises and is found in Part 1 of the Act.

Temporary Exemption Notice

A landlord or person in control of an HMO can apply for temporary exemption to licensing but has to satisfy the council that they are taking particular steps to ensure either that the building will cease to be an HMO or that it is one that is no longer subject to licensing. The council does not have to grant the exemption.

The person applying needs to demonstrate to the council that they are genuinely taking steps to ensure the building will cease to be licensable. Such steps could include obtaining planning permission for conversion of the HMO into a single occupancy dwelling or entering into a contract for the sale of the building with vacant possession for use other than as an HMO. Simply a proposal to, or the act of, putting a HMO on the market for sale or reducing the number of occupants will not normally be sufficient for a council to agree to issue a Temporary Exemption Notice.

Temporary exemption can only be granted for a maximum of three months, although in exceptional circumstances it can be renewed for a further three months on further application to the council. After the notice has expired, the property must either be licensed or cease to be an HMO. If the HMO cannot be licensed at this point, the council can take control of the management of the property by making a Management Order.

Management Orders

If the council are unable to grant a licence or the licence is revoked, they must make an *Interim Management Order*. The council (or their appointed service provider) then take over the management of the HMO and collect the rents and have responsibility for the tenancies and upkeep of the property. The ownership of the HMO does not change. The Order can last for up to twelve months although it may be revoked earlier because it has been possible to grant a licence.

At the end of twelve months, if the council are still unable to grant an HMO licence, they must make a *Final Management Order*, and will continue to have the responsibility for managing the property. A *Final Management Order* normally lasts for five years, although again, it may be revoked before that.

A relevant person can appeal to the First-tier Tribunal - Property Chamber (Residential Property) against: -

- a decision to make a management order
- the terms of an order
- a decision to revoke an order
- a refusal to revoke an order

Rent Repayment Orders

As well as making an interim Management Order, the council can also apply for a Rent Repayment Order (RRO) in some circumstances.

An RRO is an order made by the First-tier Tribunal - Property Chamber (Residential Property) on application by the council. Under this order, the council can recover housing benefit it has paid in respect of the HMO during any period when it ought to have been licensed, but was not. The maximum the council may claim is twelve months of housing benefit, during any period that the building was not licensed.

The housing benefit is recovered from a landlord, even if he or she did not directly receive the benefit. Before making an application to the Tribunal the council must give details of the intended proceedings. There is a right to make representations to the Tribunal in respect of the proposed order, including why it should not be made.

An occupier (or former occupier) may also be able to apply for a rent repayment order in respect of "rent" paid (less any housing benefit). The circumstances in which this can happen are limited.

Revoking an HMO licence

If a building is licensed as an HMO, the licence will be expected to run until the licence expires. If, however, the building is no longer operated as an HMO which requires a licence, a request that the council revokes the licence can be made. The council has the power to revoke licences at the licence holder's request but does not have to do so.

The council may also revoke the licence where : -

- there has been a serious or persistent breach of licence conditions
- the licence holder is no longer considered to be a fit and proper person and that the management of the house is no longer being undertaken by fit and proper persons.

Before revoking the licence, the council must inform the landlord and the other relevant persons that it intends to do so and must allow a minimum period of 14 days for representations to be made. The council cannot issue its final decision unless it has considered any representations made. If it does revoke the licence the landlord has a right of appeal against that decision. If a licence has been revoked because of a breach of conditions, or other reason connected to the fitness of the licence holder, and the HMO is

required to be licensed, the council will make an interim management order unless it is able to agree the grant of a new licence.

Housing Health and Safety Rating System

The housing health and safety rating system (HHSRS) is a risk based evaluation tool that helps councils identify and protect against potential risks and hazards to health and safety from any deficiencies identified in the home. It was introduced under the Housing Act 2004.

The assessment method focuses on the hazards that are present in housing. Tackling these hazards will make housing healthier and safer to live in.

The council has various powers to deal with any hazards identified by an assessment under the HHSRS and in some cases it must exercise them. The council must decide upon the most appropriate action that it can take to remove or at least minimise any hazards.