

# Guide to HMO Licensing (Houses in Multiple Occupation)

## In West Kent



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## Introduction

Mandatory Licensing for some Houses in Multiple Occupation (HMOs) is being introduced by the Government on 6 April 2006. This is complex legislation and can sometimes cause confusion.

This information pack has been designed to answer most questions and includes some simple flow charts to assist landlords. Please note that these are best used as guides – if you have a property that is outside the scope of the guide, please call us so that we can discuss the matter with you.





Briefly, details of how mandatory licensing will be implemented are as follows:-

- In the first instance, it will apply only to higher risk properties.
- A licence can run for up to 5 years and this can be the expected duration in most cases.
- A licence can be varied or revoked as necessary.
- A licence can only be issued to a “fit and proper person”.
- The licence can stipulate how many persons can live in the property and this number depends on the number of rooms and facilities available (such as kitchens, bathrooms and WCs).
- Each Council will have prescribed standards for the number of persons sharing kitchens, bathroom and WCs. These standards will also contain guidance as to room sizes, fire precautions and standards of fire protection and warning e.g. alarms. It is expected that the Government will introduce some national standards concerning amenities in the near future.
- The Council is required to set a fee for issuing a licence and the Government intends that the fee should cover the Council’s cost of producing a licence.
- The Council is strictly limited as to what conditions can be included in a licence.
- The licence is not intended to be a vehicle by which improvements are carried out, however the Council is expected to ensure that any Category 1 hazards identified under the Housing Health and Safety Rating System are corrected within five years (i.e. the maximum licence period).

This pack also contains information concerning the Housing Health and Safety Rating System.

Please remember that we are here to help with any further advice you may require. If you do have any questions please contact us.

## Contact Information

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# LANDLORD'S GUIDE

## HOUSES IN MULTIPLE OCCUPATION

The Housing Act, 2004 introduces the licensing of Houses in Multiple Occupation (HMOs). It will be compulsory to license larger, higher-risk HMOs. Councils will also be able to license other types of HMO to tackle problems in these smaller properties.

### What is an HMO?

HMO stands for House in Multiple Occupation, which means a building, or part of a building, such as a flat, that:

- Is occupied by more than one household and where more than one household shares – or lacks – an amenity, such as a bathroom, toilet or cooking facilities  
**OR**
- Is occupied by more than one household and which is a converted building –but not entirely self-contained flats (whether or not some amenities are shared or lacking)  
**OR**
- Is converted self-contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulations, and at least one third of the flats are occupied under short tenancies.

The building is occupied by more than one household:

- As their only or main residence
- As a refuge for people escaping domestic violence
- By students during term time
- For other purposes prescribed by the Government.

A household is:

- Families (including single people, couples and same sex couples)
- Other relationships, such as fostering, carers and domestic staff.

### Why does the Government want HMOs to be licensed?

Larger HMOs, such as bedsits and shared houses, often have poorer physical and management standards than other privately rented properties. The people who live in HMOs are amongst the most vulnerable and disadvantaged members of society. As HMOs are the only housing option for many people, the Government recognises that it is vital that they are properly regulated.

Licensing is intended to make sure that:

- Landlords of HMOs are fit and proper people, or employ managers who are.
- Each HMO is suitable for occupation by the number of people allowed under the licence.
- The standard of management of the HMO is adequate.
- High risk HMOs can be identified and targeted for improvement.

Where landlords refuse to meet these criteria the Council can intervene and manage the property so that:

- vulnerable tenants can be protected.
- HMOs are not overcrowded.
- Councils can identify and support landlords, especially with regeneration and tackling antisocial behaviour.

### **Do all HMOs have to be licensed?**

No. Under the new Housing Act 2004 there are three types of licensing:

1. **Compulsory** (required by law) licensing of HMOs for properties that are:
  - Three or more storeys high  
**and**
  - Have five or more people in more than one household,  
**and**
  - Share (or lack) amenities such as bathrooms, toilets and cooking facilities **OR** converted, but not entirely comprising self-contained flats (whether or not there is sharing of amenities)
2. **Additional** licensing of HMOs  
A discretionary power that councils may decide to apply to a particular type of HMO, for example, two-storey properties occupied by three or more students or asylum seekers.
3. **Selective** licensing of other residential accommodation.

Properties that are not subject to HMO licensing could be covered under a selective licensing scheme. This is where the Council may declare that certain areas, for example, where there is low demand for housing and/or anti-social behaviour, are appropriate for selective licensing. This licensing would cover all forms of private rented housing, including HMOs. It is most likely that at first Councils will only introduce licenses for HMOs that fall into the first group. They may introduce the other two types of licensing later.

Please note that licensing only applies to HMOs where rents or other

considerations are payable.

## How will it work?

Anyone who owns or manages an HMO that must be licensed has to apply to the Council for a licence. The Council must give a licence if it is satisfied that:

- The HMO is reasonably suitable for occupation by the number of people allowed under the licence.
- The proposed licence holder is a fit and proper person.
- The proposed licence holder is the most appropriate person to hold the licence.
- The proposed manager, if there is one, is a 'fit and proper person'.
- The proposed management arrangements are satisfactory,
- The person involved in the management of the HMO is competent.
- The financial structures for the management are suitable.

## What does a 'fit and proper person' mean?

The Council will carry out checks to make sure that the person applying for the licence is a fit and proper person. In deciding whether someone is fit and proper the Council must take into account:

- Any previous convictions relating to violence, sexual offences, drugs and fraud.
- Whether the proposed licence holder has broken any laws relating to housing or landlord and tenant issues.
- Whether the person has been found guilty of unlawful discrimination.
- Whether the person has previously managed HMOs that have broken any approved code of practice.

It is advisable for the landlord or manager to be a member of a professionally recognised body, or an approved landlords association that is affiliated to the National Federation of Residential Landlords.

## What is in a licence?

The licence will specify the maximum number of people who may live in the HMO. It will also include the following conditions, which apply to every licence:

- A valid current gas safety certificate, which is renewed annually, must be provided.
- Proof that all electrical appliances and furniture are kept in a safe condition.
- Proof that all smoke alarms are correctly positioned and installed.
- Each occupier must have a written statement of the terms on which they occupy the property, for example, a tenancy agreement.

Councils may also apply the following conditions:

- Restrictions or prohibitions on the use of parts of the HMO by occupants.
- A requirement that the condition of the property, its contents, such as furniture and all facilities and amenities, bathroom and toilets for example, are in good working order
- A requirement for specified works or repairs to be carried out within a particular timeframe.
- A requirement that the responsible person attends an approved training course.

### **How long will it last?**

A licence will normally last for a maximum of five years, although it can be for a shorter period.

### **How much will it cost?**

Landlords will have to pay a fee to cover the administration costs of the licence procedure. This will vary depending on the amount of time and resources that are needed to satisfy all the licensing conditions.

### **Can the Council refuse to licence my property?**

Yes, if the property does not meet the conditions set out above and the landlord or manager is not a fit and proper person.

### **What will happen then?**

If a landlord fails to bring an HMO up to the required standard, or fails to meet the fit and proper person criteria, the Council can issue an Interim Management Order (IMO), which allows it to step in and manage the property. The owner keeps their rights as an owner. This Order can last for a year until suitable permanent management arrangements can be made. If the IMO expires and there has been no improvement, then the Council can issue a Final Management Order. This can last up to five years and can be renewed.

### **Can I appeal?**

You may appeal if the Council decides to:

- Refuse a licence.
- Grant a licence with conditions.
- Revoke a licence.
- Vary a licence.
- Refuse to vary a licence.

You must appeal to the Residential Property Tribunal, normally within 28 days. Details of how to appeal will be available soon.

## **Temporary exemption from licensing**

If a landlord or person in control of a property intends to stop operating it as an HMO or reduces the numbers of occupants and can give clear evidence of this, then he or she can apply for a Temporary Exemption Notice. This lasts for a maximum of three months and ensures that a property in the process of being converted from an HMO does not need to be licensed. If the situation is not resolved, then a second Temporary Exemption Notice can be issued. When this runs out the property must be licensed, become subject to an Interim Management Order, or cease to be an HMO.

## **Are there any other penalties?**

It is an offence if the landlord or person in control of the property:

- Fails to apply for a licence for a licensable property or
- Allows a property to be occupied by more people than are permitted under the licence.

A fine of up to £20,000 may be imposed. In addition, breaking any of the licence conditions can result in fines of up to £5,000.

## **Rent repayment orders**

A tenant living in a property that should have been licensed, but was not, can apply to the Residential Property Tribunal to claim back any rent they have paid during the unlicensed period (up to a limit of 12 months). Councils can also reclaim any housing benefit that has been paid during the time the property was without a licence.

<b>IS MY PROPERTY AN HMO?</b>	<b>Housing Act 2004</b>
<b>It will be an HMO if it is one of the following:</b>	<b>Section and schedule numbers</b>
<p><b>A shared house</b> lived in by people who belong to more than one family* and who share one or more facilities**.</p>	<p>s254(2) <i>(The 'standard test')</i></p>
<p><b>A house in bedsits</b> lived in by people who belong to more than one family* and who share one or more facilities**.</p>	<p>s254(4) <i>(The 'converted building test')</i></p>
<p><b>An individual flat</b> lived in by people who belong to more than one family* and who share one or more facilities**.</p>	<p>s254(3) <i>(The 'self-contained flat test')</i></p>
<p><b>A building of self-contained flats</b> that do not meet 1991 Building Regulation standards.</p> <p><b>Exemptions:</b></p> <ul style="list-style-type: none"> <li>• If it is occupied by only two people.</li> <li>• If it is occupied by the owner (and their family if any) and one or two lodgers.</li> <li>• If it is occupied by a religious community.</li> <li>• If the occupiers have their main residence elsewhere***.</li> <li>• If no one in the property is required to pay rent.</li> <li>• If the owner or manager is a public body.</li> <li>• If the owner or manager is an educational institution.</li> <li>• A building of self-contained flats if two thirds or more of the flats are owner-occupied.</li> <li>• If the property is part of a guest house or hotel (unless an 'HMO Declaration' is made).</li> </ul>	<p>S257</p> <p>Sch 14, 7 Sch 14, 6(c) Sch 14, 5 s259 s254(2)(e) Sch 14, 2 Sch 14, 4</p> <p>s257(2)(b)</p> <p>s254(2)(d) (s255(1))</p>
<b>SOME OF THESE HMOs MUST HAVE A LICENCE – WHICH ONES?</b>	
<p>An HMO must have a licence if <b>all</b> three of the following apply:</p> <p>a. It is an <b>HMO</b> (see definition of HMO above) and  b. it is <b>three storeys or more</b> (includes basements) and  c. it is occupied by <b>five people or more</b>.</p> <p><b>Exemptions:</b></p> <ul style="list-style-type: none"> <li>• If the whole property is in self-contained flats.</li> <li>• If the basement is in commercial use and there are only two residential storeys above.</li> </ul>	<p>Regulations made under s55</p>
<p>* Family – husband, wife, co-habitee, child, step-child, foster-child, grandchild, parent, step-parent, foster-parent, grandparent, brother, half-brother, sister, half-sister, aunt, uncle, niece, nephew, cousin.  ** Facilities – basic amenities: wc; wash hand basin, shower, bath; cooking facilities.  *** Accommodation used by full-time students while they are studying is taken to be their main residence.</p>	<p>s258</p> <p>s254(8)</p> <p>s259(2)(a)</p>



## Factsheet 2 : The Housing Health and Safety Rating System (HHSRS)

### Introduction

Part 1 of the new Act contains provisions to replace the housing fitness regime set out in the Housing Act 1985. The separate Houses in Multiple Occupation (HMO) fitness test will also be repealed. This is an important reform. The housing fitness standard is based on criteria first introduced 80 years ago and there is wide support for modernisation. The test of fitness is to be replaced with an evidence-based risk assessment process, carried out using the Housing Health and Safety Rating System (HHSRS). HHSRS is a new approach to the assessment of risks to health and safety in residential premises. Local authorities will in future base enforcement decisions in respect of all residential premises on the basis of assessments under HHSRS. This reform will enable local authorities to address more effectively the hazards to health and safety present in the home.

### Current Housing Act fitness regime

The current housing fitness standard was introduced by the Local Government and Housing Act 1989, which inserted a new s604 in the Housing Act 1985. A dwelling is unfit if, in the opinion of the local authority, it fails to meet one or more of the requirements set out in paragraphs (a) to (i) of s604(1) and by reason of that failure is not reasonably suitable for occupation. The requirements constitute the minimum deemed necessary for a dwelling house or HMO to be fit for human habitation. If a local authority identifies a property as unfit it has a duty to take action. Under Part XI of the 1985 Act local authorities also have powers to require works to render an HMO fit for the number of occupants.

### Housing Health and Safety Rating System (HHSRS)

Action by authorities will be based on a three-stage consideration: (a) the hazard rating determined under HHSRS; (b) whether the authority has a duty or power to act, determined by the presence of a hazard above or below a threshold prescribed by Regulations (Category 1 and Category 2 hazards); and (c) the authority's judgement as to the most appropriate course of action to deal with the hazard.

The Act contains new enforcement options which are available to local authorities. The choice of the appropriate course of action is for the authority to decide, having regard to statutory enforcement guidance.

### The system of assessment

The purpose of the HHSRS assessment is not to set a standard but to generate objective information in order to determine and inform enforcement decisions. The technical guidance is contained in the package published in November 2004 as the "Housing Health and Safety Rating System: Guidance (Version 2).

HHSRS assesses twenty nine categories of housing hazard, including factors which were not covered or covered inadequately by the housing fitness standard. It provides a rating for each hazard. It does *not* provide a single rating for the dwelling as a whole or, in the case of multiply occupied dwellings, for the building as a whole.

A hazard rating is expressed through a numerical score which falls within a band. There are 10 bands. Scores in Bands A to C are Category 1 hazards. Scores in Bands D to J are Category 2 hazards.

The hazards that can be assessed are those associated with or arising from:

<b>Damp/mould growth (2)</b>	<b>Radiation</b>	<b>Noise</b>	<b>Fire</b>
<b>Excess heat/cold (2)</b>	<b>Uncombusted fuel gas</b>	<b>Hygiene (2)</b>	<b>Hot surfaces</b>
<b>Asbestos</b>	<b>VOCs</b>	<b>Food safety</b>	<b>Entrapment</b>
<b>Biocides</b>	<b>Crowding &amp; space</b>	<b>Water supply</b>	<b>Explosions</b>
<b>Carbon monoxide etc</b>	<b>Intruders</b>	<b>Falls (4)</b>	<b>Ergonomics</b>
<b>Lead</b>	<b>Lighting</b>	<b>Electrical</b>	<b>Structural</b>

The HHSRS assessment is based on the risk to the *potential occupant who is most vulnerable to that hazard*. For example, stairs constitute a greater risk to the elderly, so for assessing hazards relating to stairs they are considered the most vulnerable group. The very young as well as the elderly are susceptible to low temperatures. A dwelling that is safe for those most vulnerable to a hazard is safe for all.

### **The enforcement framework**

The courses of action available to authorities where they have either a duty or a power to act are to:

- serve an improvement notice requiring remedial works;
- make a prohibition order, which closes the whole or part of a dwelling or restricts the number of permitted occupants;
- suspend these types of notice;
- take emergency action;
- serve a hazard awareness notice;
- make a demolition order\*
- declare a clearance area\*

\*(available for Category 2 hazards only in prescribed circumstances);

The HHSRS hazard rating is based on the most vulnerable potential occupant. But authorities will be able to take account of the vulnerability of the actual occupant in deciding the best course of action.

The Act retains the powers available to authorities to act in default and prosecute lack of compliance. It also enables them to charge and recover charges for enforcement action.

For further information, please contact:

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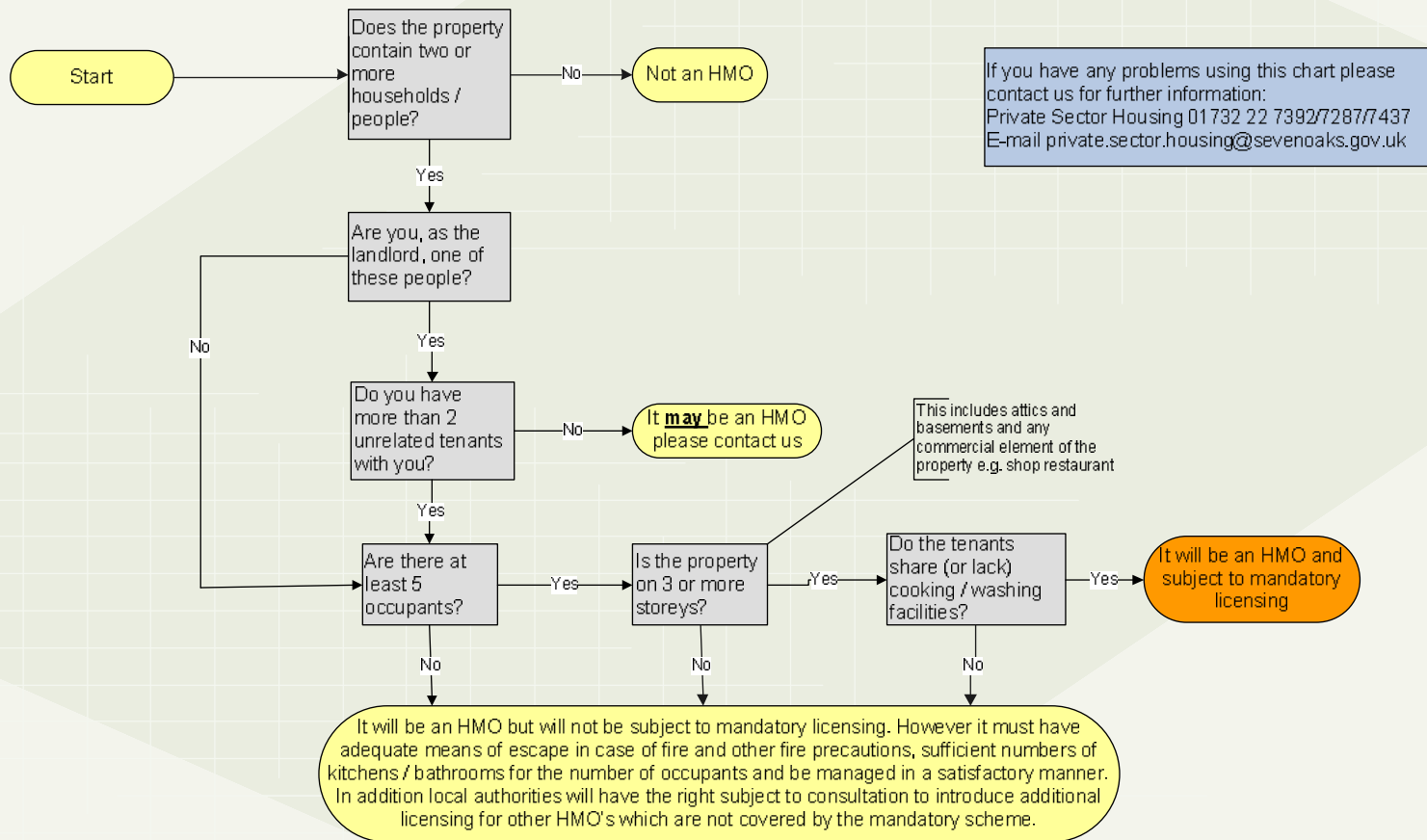
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A

## Guide to HMO (Houses in Multiple Occupation) Is your property an HMO? Is it Licensable?

Use this sheet if your property is a house shared by tenants, a house converted into bedsits, or accommodation above commercial premises. If your property is a block of flats, or a house converted into flats see sheet B



**B**

## Guide to HMO (Houses in Multiple Occupation) Is your property an HMO? Is it Licensable?

Use this sheet for blocks of flats and properties converted into self contained flats or a mixture of flats and bedsits.  
If your property is a house, see sheet A

