



Ministry of Housing,
Communities &
Local Government

Houses in Multiple Occupation and residential property licensing reform

Guidance for Local Housing Authorities



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Introduction

The private rented sector is an important part of our housing market, with 4.7 million households in England¹. The sector has undergone rapid growth over the last ten years. It is the second largest tenure in England, representing 20 per cent of all households in England

Houses in multiple occupation (HMOs) form a vital part of this sector, often providing cheaper accommodation for people whose housing options are limited. HMOs are known to be commonly occupied by students but there are also a growing number of young professionals and migrant workers sharing houses and flats.

Some HMOs are occupied by the most vulnerable people in our society. These people live in properties that were not built for multiple occupation, and the risk of overcrowding and fire can be greater than with other types of accommodation. We want to support good private landlords who provide decent well-maintained homes and not impose unnecessary regulation. The nature of HMOs means that regulation of this part of the sector is widely agreed to be necessary. However, it is important that this regulation is proportionate and targeted.

Mandatory licensing of HMOs came into force in 2006 and originally applied to properties of three storeys or more with five or more people making up two or more separate households living in them. Licensing has largely been successful in helping to drive up standards and make these 60,000 larger HMOs safer places to live in.

As demand for HMOs increased in the decade since mandatory licensing was first introduced there has been a significant increase in properties with fewer than three storeys being used as HMO accommodation, notably two storey houses originally designed for families and flats. Some have been used by opportunist rogue landlords who exploit their vulnerable tenants, and rent sub-standard, overcrowded and potentially dangerous accommodation. The growth of HMOs has also had an impact on the local community, including where inadequate rubbish storage leads to pest infestation and health and safety problems.

Following extensive consultation, we have acted to combat rogues from being able to operate substandard accommodation for maximum profit by extending the scope of mandatory HMO licensing so that properties used as HMOs in England which house 5 people or more in two or more separate households will in many cases require a licence. This will help ensure they are not overcrowded and do not pose risks to the health or safety of occupiers or blight the local communities in which they are located. To this end we have also clarified the minimum size to be applied to rooms used for sleeping

¹ <https://www.gov.uk/government/statistics/english-housing-survey-2016-to-2017-headline-report>

accommodation in HMOs and added requirements relating to the provision of refuse disposal in licensed properties.

The measures complement those in the Housing and Planning Act 2016 which tackle rogue landlords. They will also operate within the additions brought in by that Act to the enforcement regime, including the financial penalty procedures and banning orders.

This document sets out guidance for local authorities in the implementation of requirements set out in 2018 statutory instruments on the Licensing of Houses in Multiple Occupation.

1. Purpose and scope

1.1 Introduction

This document has been prepared as a guide for local housing authorities to help them understand how to implement the reforms to HMO licensing and should be read alongside The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018, and the Housing Act 2004.

In this guidance, the term “landlord” includes a person managing or controlling an HMO. This will include property or letting agents or anyone in the business of renting out an HMO.

1.2 What is the status of this guidance?

This guidance has been produced for local housing authorities, but will also be of interest to landlords.

This guidance is non-statutory. It does not provide an authoritative interpretation of the law; only the courts can do that.

1.3 What are the extended mandatory HMO licensing requirements?

In April 2018, Parliament approved secondary legislation which reforms the mandatory HMO licensing regime.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018² (‘the Prescribed Description Order 2018’) has the effect of extending the scope of section 55(2)(a) of the Housing Act 2004 (‘the Act’), so that mandatory HMO licensing also applies to HMO properties which are less than three storeys high. The Prescribed Description Order 2018 also deals with the passporting of licences granted under additional³ and selective licensing⁴ schemes into the mandatory licensing regime. This is covered in more detail in chapter 2.

A second statutory instrument, the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018⁵ (‘the Mandatory Conditions Regulations 2018’) amends Schedule 4 of the Act, introducing new conditions that must be included in licences that have been granted under Part 2 of the Act. These are:

- Mandatory national minimum sleeping room sizes; and
- Waste disposal provision requirements.

This is covered in more detail in chapter 3

² The order revokes the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (S.I. 2006/371)

³ Section 56 of the Housing Act 2004

⁴ Part 3 of the Housing Act 2004

⁵ <https://www.legislation.gov.uk/ukdsi/2018/9780111167359/contents>

2. Extension of mandatory HMO licensing

2.1 Definition of an HMO covered by mandatory licensing

From 1 October 2018 mandatory licensing will no longer be limited to certain HMOs that are three or more storeys high, but will also include buildings with one or two storeys.

Part 2 of the 2004 Act provides for local housing authorities to license HMOs in their areas if they meet the definition of an HMO prescribed under section 55 of the 2004 Act. The Prescribed Description Order 2018 prescribes the types of buildings that will be subject to mandatory licensing. It revokes and replaces the 2006 order⁶ which applies until that date. From 1 October 2018, mandatory licensing will no longer be limited to certain HMOs that are three or more storeys high, but will also include buildings with one or two storeys.

2.2 The occupation requirement

The Prescribed Description Order 2018 does not change the occupation requirement. For mandatory licensing to apply, the HMO (or Flat in Multiple Occupation) must be occupied by five or more persons, from two or more separate households.

2.3 What buildings are covered?

Regulation 4(c) of the Prescribed Description Order 2018 describes the categories of HMO that are subject to mandatory licensing. They are:

- a) HMOs that meet the standard test under section 254(2) of the Act;
- b) HMOs that meet the self-contained flat test under section 254(3) of the Act but are not purpose built flats situated in a block comprising 3 or more self-contained flats; and
- c) HMOs that meet the converted building test under section 254(4) of the Act.

More detail on these categories is set out below:

a) HMOs meeting the standard test

A building meets the standard test if it is a building in which more than one household has living accommodation (other than self-contained flats) and:

- at least two households share a basic amenity, or
- the living accommodation is lacking in a basic amenity.

Basic amenities are defined as a toilet, personal washing facilities or cooking facilities⁷. The degree of sharing is not relevant and there is no requirement that all the households share those amenities.

⁶ Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (S.I. 2006/371)

⁷ Section 254(8) of the Housing Act 2004

There is no requirement that the building is converted or adapted in any way (although that may indeed be the case). It applies, therefore, to houses whose characteristics resemble those of a conventional house in single occupancy, but which is an HMO by virtue only of its use, for example 'shared' houses as well as the more traditional bed-sit type HMOs.

b) HMOs meeting the self-contained flat test that are not purpose-built flats situated in a block comprising three or more self-contained flats

The self-contained flat test mirrors the standard test except that it applies to flats. For the purposes of licensing, a flat meets the self-contained flat test if it is occupied by 5 or more people forming more than one household and the flat lacks a basic amenity or more than one household shares a basic amenity (all of which are in the flat) e.g. a bathroom, toilet or cooking facilities. This includes flats above and below commercial premises, and flats in converted buildings.

Such flats are only required to be licensed if they are not purpose built flats situated in a block of three or more self-contained flats.

Purpose-built is not defined in the regulations and therefore takes its ordinary and natural meaning, i.e. the building was designed and constructed for a particular use.

A purpose-built flat situated in a block comprising three or more self-contained flats is not subject to mandatory licensing even if that flat is in multiple occupation.

c) HMOs meeting the converted building test under s 254(4) of the Act

A building meets the converted building test if it is a building that has been converted and in which one or more of the units of living accommodation is not a self-contained flat⁸. It does not matter whether the building also contains self-contained flats.

A converted building is a building (or part of a building) where living accommodation has been created since the building (or part) was constructed.⁹ Thus a house converted into bed-sits may meet the test, but so could a family house, where only a part of it has been converted to provide separate living accommodation. Such buildings may also meet the standard test, if there is any sharing of facilities between two or more households.

Local authorities will need to establish whether the property meets one of these tests to determine whether the HMO is required to be licensed.¹⁰

The majority of HMOs that will be subject to mandatory licensing for the first time from 1 October 2018 will most likely come under the standard test.

2.4 Converted blocks of flats – section 257 HMOs

Mandatory licensing does not apply to converted blocks of flats which are otherwise known as section 257 HMOs. These are subject to management regulations¹¹ and local housing

⁸ Section 254(4).

⁹ For the definition of "converted building" see section 254(8).

¹⁰ The type of tenancy agreement is not a consideration in determining whether a property is a HMO.

authorities have the discretion to make them subject to additional licensing where they are problematic. However, individual flats within such converted blocks will require a mandatory HMO licence if they meet the standard test described in 2.3 (b) above.

2.5 Additional HMO licensing

If the local housing authority believes that there are problems such that there is a need to license certain HMOs not subject to mandatory licensing (such as section 257 HMOs or purpose built flats situated in a block comprising three or more self-contained flats) it can designate a specific area as subject to additional HMO licensing. This must be introduced in line with the statutory requirements under Part 2.

2.6 Implementation

Landlords

The Prescribed Description Order 2018 comes into force 1 October 2018. This provides time for landlords to prepare for the changes and obtain a licence. Landlords of HMOs that fall under the new definition will be committing a criminal offence if they fail to apply for a licence or a temporary exemption by 1 October 2018.

The Mandatory Conditions Regulations 2018 include transitional provisions to allow time to comply with the new rules. Paragraph 2.6 contains further details about the transitional period.

Local Housing Authorities

Under s 55(5) of the Act, local housing authorities have a duty to effectively implement mandatory licensing in their district. This means that they must promote licensing in their area and accept and process applications before 1 October 2018.

We expect local housing authorities to have the framework in place to process and issue licences in advance of this date and to encourage early applications from landlords who are due to become subject to mandatory licensing.

Local housing authorities must also ensure that all applications for licences are determined within a reasonable time.

Local housing authorities have a statutory duty to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 Housing Act 2004 (housing conditions) functions that ought to be exercised by them in relation to HMOs for which they have received a licence application.¹²

It is important that local authorities make landlords fully aware of the requirements. We expect local authorities to carry out active promotion of the extended mandatory licensing regime. Local housing authorities will have their own processes and policies in relation to

¹¹ The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

¹² Section 55 (5) of the Housing Act 2004

communications and advertising. This may include advertising in the local press or having dedicated pages on their own website. We also expect local authorities to provide guidance to landlords on the new licensing requirements.

Local housing authorities are under a duty to grant the licence if they are satisfied that:

- (a) the house is reasonably suitable for occupation for the maximum number of households or persons specified in the application or decided by the authority (or that it can be made so suitable by the imposition of conditions);
- (b) the proposed licence holder is the most appropriate person to be the licence holder and is a fit and proper person to be the licence holder;
- (c) the proposed manager of the house is the person having control of the house or an agent or employee of that person and is a fit and proper person to be the manager of the house; and
- (d) the proposed management arrangements for the house are otherwise satisfactory.

If a licence is granted before October 2018 in respect of an HMO that will newly be subject to mandatory licensing from that date, the period for which the licence is granted should begin on 1 October 2018 – the date from which the HMO is required to be licensed under the Prescribed Description Order 2018.

In the circumstance where an unlicensed HMO which is currently subject to selective licensing makes an application prior to 1 October 2018, the local housing authority should grant a mandatory HMO licence to begin from 1 October 2018.

2.7 Transitional Provisions

Both the Prescribed Description Order 2018 and the Mandatory Conditions Regulations 2018 make transitional provision to allow local authorities and landlords time to comply with the new rules and enable the smooth transition to the new regime:

Properties currently licenced under Part 2 (mandatory or additional licensing):

- The existing licence is valid and its conditions will apply until the date the licence expires.
- The extended mandatory licensing conditions (minimum sleeping room sizes and waste disposal requirements) will apply from the renewal of the existing licence.

Properties currently licensed under a selective licensing scheme that will be subject to mandatory licensing from October 2018:

- Existing licence is passported and has effect as if issued under Part 2. Its current Part 3 conditions will apply until the date the licence expires.
- On renewal of the licence the property will now be subject to conditions under Part 2 mandatory licensing.
- The extended mandatory licensing conditions (minimum sleeping room sizes and waste disposal requirements) will also apply from the renewal of the existing licence.

If at the time the licence is renewed and the licence holder is not compliant with a condition related to sleeping room size the local housing authority must provide notification specifying the condition or conditions and a period of up to 18 months within which the licence holder must become compliant – more detail is included in chapter 3 below.

Existing licence holders coming under the extended scope of mandatory licensing

Some landlords who already have a licence under additional or selective licensing schemes will have properties that now come under the extended scope of mandatory HMO licensing. Such landlords do not need to reapply for a licence until their existing licence expires because:

- HMO properties which are currently licensed under an additional licensing scheme are already licensed under Part 2 of the 2004 Act.
- Article 5 of the Prescribed Description Order 2018 makes the necessary legal provisions for properties which are currently licenced under a selective licence scheme to be passported into the mandatory HMO scheme from 1 October 2018. Their existing licence therefore remains valid under the mandatory regime and they should not be charged any additional fees. There is no requirement on the local authority to inspect the property (unless inspection is part of the licence issued under the selective licensing scheme). However, the local authority should provide

necessary information about future requirements that will need to be met under Part 2 of the 2004 Act.

Upon expiry of the current licence the landlord will need to apply for a licence under Part 2 of the Act.

Only the existing licence conditions will need to be enforced up until expiry of the current licence.

Until the new licence with new conditions is issued an authority would have no grounds to take action against an existing licence holder that is not compliant with new standards. However, the local authority would still be able to take action against the licence holder if they are in breach of the existing licence conditions which included minimum room size conditions.

We expect local authorities to provide guidance to landlords on the types of conditions they will be legally obliged to meet if their HMO is required to be licensed under Part 2 (mandatory or additional licensing). Local authorities have the power to impose conditions in relation to management, use and occupation¹³ and the condition and contents¹⁴ of a HMO.

¹³ Section 67 (1)(a)

¹⁴ Section 67 (1)(b)

3. New mandatory licence conditions

3.1 Mandatory conditions

Section 67(1) of the 2004 Act provides that a local housing authority may impose conditions relating to the management, use and occupation of a licensed HMO. Under section 67(3) it is mandatory for the local housing authority to include certain conditions in HMO licences. The mandatory conditions are specified in Schedule 4 of the 2004 Act and relate to the provision of smoke and carbon monoxide alarms; gas safety and the safety of electrical appliances and furniture. Schedule 4 conditions apply to all licensed HMOs (under both mandatory and additional schemes).

The Mandatory Conditions Regulations 2018 amend Schedule 4 of the Act, introducing the following new conditions:

- Mandatory national minimum sleeping room sizes (See paras 3.3 – 3.10); and
- Waste disposal provision requirements (See paras 3.11).

3.2 Who will the new conditions apply to?

The new conditions will apply to HMOs which are required to be licensed under Part 2 of the 2004 Act from 1 October 2018. The condition will not apply to existing licences issued before 1 October 2018, until the current licence expires.

The minimum size for sleeping accommodation does not apply to charities providing night shelters or temporary accommodation for people suffering or recovering from drug or alcohol abuse or mental disorders.

3.3 Minimum sleeping room sizes

From 1 October 2018 local housing authorities must impose conditions as to the minimum room size which may be occupied as sleeping accommodation in the HMO. A room smaller than the specified size must not be used as sleeping accommodation, and communal space in other parts of the HMO cannot be used to compensate for rooms smaller than the prescribed minimum. The purpose of this condition is to reduce overcrowding in smaller HMOs. The standards adopted are similar, but not identical to, those relating to overcrowding in dwellings under section 326 of the Housing Act 1985.

3.4 What is the minimum sleeping room size?

The minimum sleeping room sizes to be imposed as conditions of Part 2 licences are:

- 6.51 m² for one person over 10 years of age
- 10.22 m² for two persons over 10 years of age
- 4.64 m² for one child under the age of 10 years

It will also be a mandatory condition that any room of less than 4.64 m² may not be used as sleeping accommodation and the landlord will need to notify the local housing authority of any room in the HMO with a floor area of less than 4.64 m².

Any area of the room in which the ceiling height is less than 1.5m cannot be counted towards the minimum room size.

In addition local housing authorities are required to impose conditions specifying the maximum number of persons over 10 years of age and/or persons under 10 years of age who may occupy specified rooms provided in HMOs for sleeping accommodation.

The standards are designed to ensure consistency of approach on minimum room sizes used for sleeping within HMOs, and so give certainty for landlords, tenants and local authorities on the absolute minimum standards that are acceptable.

The mandatory room size conditions will however be the statutory minimum and are not intended to be the optimal room size. Local housing authorities will continue to have discretion to set their own higher standards within licence conditions, but must not set lower standards.

3.5 How should local authorities assess the minimum room size condition?

Local authorities may decide to request details of room sizes that are used for sleeping accommodation as part of a mandatory HMO licence application. They may also choose to inspect properties. The approach they take is at their discretion and our expectation is they will make an assessment of required resources and devise their own policies and procedures to ensure compliance with the condition.

However, the approach that the local authority chooses to implement for the renewal of licences should be considered in the light of the recent case of *R (Gaskin) V Richmond upon Thames London Borough Council*¹⁵. The case ruled that on renewal of HMO licences the local authority was not entitled to demand more information than that detailed in Schedule 2 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006¹⁶. It is likely that the local authority will need to inspect the property to ensure effective compliance with the minimum room sizes.

3.6 What are the sanctions for breaching minimum room sizes?

A licence holder commits an offence if, without reasonable excuse, the licence holder breaches the licence by:

- knowingly permitting the HMO to be occupied by more persons or households than is authorised by the licence;

¹⁵ [2017] EWHC 3234 (Admin)

¹⁶ <http://www.legislation.gov.uk/uksi/2006/373/schedule/2/made>

- failing to comply with a condition of the licence such as a prohibition against occupation as sleeping accommodation.

If convicted for such an offence the licence holder is liable to an unlimited fine. The local housing authority may impose a financial penalty of up to £30,000 as an alternative to prosecution. Local housing authorities should consider this within their compliance and enforcement policies and devise a proportionate process for dealing with landlords in breach. A reasonable period for compliance must be allowed in certain circumstances (see 3.7 and 3.8).

The conditions related to room size and occupancy will not be breached by temporary arrangements, such as visitors sleeping overnight on an occasional basis, who are not to be treated as occupying the room. However, where for example, the tenant has moved a friend in permanently, the landlord should rectify the issue, since the tenant will be in breach of the tenancy agreement. The local authority will need to consider the circumstances in determining whether a landlord is permitting the overcrowding and therefore is in breach of the occupancy levels within the licence.

3.7 What is unknowingly permitting a breach?

This may arise where the landlord is unaware that there is a breach of the minimum sleeping room size requirements; for example, where a tenant has given birth to a child since moving into the HMO and the landlord was unaware that the tenant was pregnant.

The local housing authority must allow a reasonable period (of up to 18 months) for the overcrowding to be remedied before it prosecutes the landlord for breach of the licence condition. The landlord must be notified that they are deemed to be in breach and this notification must specify the length of time they have to remedy the breach.

3.8 Transitional provision for licences issued for the first time under the extended provisions

Local housing authorities are required to give landlords time to comply with the new room size standards in respect of the first licence granted on or after 1st October 2018 (whether or not the HMO was licenced immediately before that date).

Under paragraph 1A(4)(c) Schedule 4 of the 2004 Act the local housing authority must, when granting the licence, give the landlord notice of the room size condition with which it considers that the landlord is not complying. In the notice the local housing authority must specify a period within which the landlord must take action to comply with the condition. The council cannot bring enforcement action before that period elapses. The maximum period that the local housing authority may specify is 18 months; however, a local housing authority may choose to shorten this time if it is reasonable.

3.9 Transitional provision under Part 2 – Mandatory and Additional licensing

It is acknowledged that the majority of local housing authorities will already have minimum sleeping room sizes as a condition in their Part 2 licence. However, there may be some local housing authorities that do not include minimum room sizes in their HMO licences.

The new minimum room size conditions apply to all Part 2 licences. That includes HMOs that are required to be licensed under additional licensing provisions as well as the mandatory licensing regime.

Existing licence conditions remain valid and the local authority is not required to vary the conditions of any existing Part 2 licence (whether granted pursuant to mandatory or additional licensing requirements). However, at the time a licence is renewed the local housing authority must impose the new conditions within Part 2 licence conditions.

Until the new licence with new conditions is issued an authority would have no grounds to take action against an existing license holder that is not compliant with the new standards.

If at the time the licence is renewed the licence holder is not compliant with a condition related to room size the local housing authority must provide notification specifying the condition or conditions and allow the licence holder a period of up to 18 months to comply.

3.10 Transitional provision under Part 3 – Selective Licensing

The new conditions only apply to Part 2 licensing and are therefore not relevant to Part 3 selective licences. For HMOs currently licensed under Part 3 who are subject to mandatory licensing on renewal after October, their new licence will be issued under Part 2 provisions and contain mandatory licence conditions, including the new conditions.

If at the time the licence is renewed the licence holder is not compliant with a condition related to room size the local housing authority must provide notification specifying the condition or conditions and allow the licence holder a period of up to 18 months to comply.

3.11 Waste disposal

All licences issued after 1 of October 2018 will need to include a condition requiring the compliance with the council's storage and waste disposal scheme (if one exists). A licence holder's failure to comply with the scheme is a breach of the licence and a criminal offence.

From 1 October 2018, local authorities will be required to impose a mandatory condition concerning the provision of suitable refuse storage facilities for HMOs. Local authorities will be aware that HMOs, occupied by separate and multiple households, generate more waste and rubbish than single family homes. Some local authorities have made specific provision under their function as the local waste authority for landlords of HMOs to ensure there are appropriate facilities for storing rubbish their properties generate.

All licensed HMOs will need to comply with the scheme issued by the local authority (if one exists) for the storage and disposal of domestic refuse pending collection. A licence holder's failure to comply with the scheme is a breach of the licence and a criminal offence.

This condition must be included in all HMO licences (mandatory or additional) granted or renewed after commencement of the Mandatory Conditions Regulations 2018 on 1 October 2018.

Local authorities should be mindful that HMOs are residential properties, and as such, they should provide a comprehensive and frequent waste collection service for such households which is free at the point of use; this includes HMOs which are occupied by students. Accordingly, it would not be appropriate for local authorities to levy commercial waste charging on such residential properties, or seek to impose such charging via any scheme or direction.

We acknowledge that some local waste authorities may not have a scheme for storage facilities at HMOs and whilst this new condition does not mean local authorities have to put one in place, they may wish to consider reviewing their waste policies in the light of these new provisions.

ANNEX A: Links to legislation

Primary Legislation

The Housing Act 2004

<https://www.legislation.gov.uk/ukpga/2004/34/contents>

The Housing Act 2004: Explanatory Memorandum

<http://www.legislation.gov.uk/ukpga/2004/34/notes/contents>

Secondary Legislation

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

<http://www.legislation.gov.uk/uksi/2018/221/made>

The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018

<http://www.legislation.gov.uk/uksi/2018/616/contents/made>

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006

<http://www.legislation.gov.uk/uksi/2006/373/contents/made>

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

<http://www.legislation.gov.uk/uksi/2007/1903/contents/made>