

HMO INFORMATION PACK



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HMO LICENSING: A Guide for Landlords

What is licensing?

The Housing Act 2004 regulates HMOs through the operation of licensing schemes. Licensing aims to ensure HMOs are adequately managed and risks to occupants reduced.

What is an HMO?

The Housing Act 2004 defines an HMO as a building or part of a building (i.e. flat) which:

- Is occupied by persons not forming a single household and;
- Two or more households occupy and share one or more basic amenities (or lack such amenities);
- Is occupied by more than one household and is a converted building not entirely comprising of self-contained flats;
- Comprises entirely of self-contained flats and the conversion does not comply with the Building Regulations 1991 and less than 2/3 of the flats are owner occupied;
- The HMO is occupied as the only or main residence;
- Rents are payable or other consideration is provided in respect of at least 1 of those occupying the HMO.

What is a single household?

A single household includes members of the same family either by blood, marriage or other recognised means such as adoption or fostering. As an example, four friends sharing a student dwelling will be classed as four individual households and therefore a HMO.

Which HMOs are licensable?

Not all HMOs are subject to licensing. The Housing Act 2004 provides for 3 licensing schemes which regulate different types of accommodation.

Mandatory Licensing: This scheme applies to all HMOs occupied by 5 or more persons comprising of 2 or more households. All local authorities must operate this type of licensing scheme.

Additional Licensing: This scheme may be applied to smaller HMOs which fall outside the scope of Mandatory Licensing. Local authorities have discretion to introduce this type of licensing scheme where it is considered as a necessary means of improving conditions in smaller HMOs. *Not currently in operation in Eastleigh.*

Selective Licensing: This scheme may be applied to any private rented property/housing within a designated area which is affected by low demand and/or anti-social behaviour. Local authorities have discretion to introduce this type of scheme where it is considered necessary. *Not currently in operation in Eastleigh.*

EASTLEIGH BOROUGH COUNCIL OPERATES A MANDATORY LICENSING SCHEME.

Are any HMOs exempt from Licensing?

There are some exemptions from mandatory licensing, these include:

- HMOs which provide accommodation for less than 5 people
- Buildings converted into self-contained flats which do not meet the 1991 building regulations and less than 2/3 are owner occupied
- Buildings managed by educational establishments, Local Housing Authorities, Registered Social Landlords, Police, Fire, Health Authority or regulated by other legislation such as residential care homes etc
- Buildings occupied by religious communities
- Buildings predominantly owner occupied, including residential landlords where the owner occupier (and family members) occupies the building (or flat) with no more than 2 other persons;
- Buildings converted into self-contained flats, where the conversion meets 1991 Building Regulations. Also, other self-contained flat conversions where there is no sharing of bathroom facilities.

When will a landlord need to apply for a licence?

In order to grant a licence, the Council must be satisfied that:

- The dwelling is reasonably suitable for occupation by no more than the permitted maximum number of households or persons;
- The licence holder is a fit and proper person;
- There are adequate management arrangements for the dwelling.

Please note:

Where a property occupied by 5 people has one or more bedrooms that are below the minimum acceptable size, landlords must advise the Council of their intentions with regard to the undersized room(s). This may affect the need to make a licence application for the property.

What are Temporary Exemption Notices?

Temporary Exemption Notices (TEN) are notices which temporarily exempt the dwelling from requiring a licence. These can be issued by the Council if they are satisfied that the person who is to be the licence holder, proposes to take steps to ensure the property no longer requires a licence within a short period of time. Examples of situations that may warrant a TEN are:

- Tenants have given notice that they are leaving within the next 3 months, which will bring the number of occupants down to less than 5.
- Planning permission has been granted and work is underway to convert the property into self contained units, where the building is already vacant.
- Planning permission has been granted and work is underway to convert the property into self contained units, where tenants are still in residence, but the work is due to complete within 3 months.
- Work is underway to convert the basement or attic, in a 3 storey building, from living accommodation into storage to which the tenants have no access, and where work will complete within 3 months.

Please note that giving notice to quit to any tenants, specifically in order to reduce the numbers below 5, is an offence.

Straightforward sale of the property to another person is unlikely to warrant a TEN, as the property will remain a licensable HMO throughout.

If considered appropriate, a TEN will be issued for a period of 3 months and in this time, it will be the duty of the proposed licence holder to ensure that the property no longer requires a licence. In exceptional circumstances, a second TEN may be served providing a further 3 months' exemption. A maximum of 2 TENs may be served in total and, following the expiry of these notices, if the HMO still falls within the licensable criteria, an application for a licence must be made.

What is a fit and proper person?

In deciding if an applicant is a fit and proper person, the Council will make enquiries relating to:

- Any offences involving fraud, dishonesty, violence, drugs or offences listed in Schedule 3 of the Sexual Offences Act 2003;
- Any discrimination practised in relation to sex, colour, race, ethnicity or disability;
- Any contraventions of Housing or Landlord and Tenant legislation;
- Failure to comply with Management Regulations in respect of HMOs.
- Other relevant matters

Consideration will also be given to the following in each case:

- Does any person involved in the management of the property have a sufficient level of competence to do so?
- Are there proposed management structures and funding arrangements in place to manage and maintain the property?

What happens if the applicant is not a fit and proper person?

If the proposed licence holder is not deemed to be a fit and proper person, another person must be proposed as the licence holder. This person must be the most suitable person to hold the licence.

The most suitable person must also qualify to be a fit and proper person i.e., they have not contravened any of the above pieces of legislation.

How long does a licence last?

If a licence is granted by the Council it cannot last longer than 5 years. It will be at the discretion of the Council to determine the length of a licence granted to each HMO.

A licence may be issued for a reduced period for a number of reasons, for example:

- Previous Housing Act 1985 notice(s) served e.g., s189/190, where they indicate cumulative neglect in any of the landlord's properties
- Previous management notice(s) under s372 Housing Act 1985, where this shows serious neglect affecting the tenants' welfare in any of the landlord's properties
- Housing Act 2004, Part 1 notices served, where there are Category 1 hazards that indicate cumulative neglect in any of the landlord's properties
- Non-volunteered premises (i.e. if we have to find properties that need licensing and chase them to make a licence application)
- Serious misrepresentations or errors discovered e.g., after site visit to check application details, in relation to any of the landlord's properties

These issues may impact on the licence period issued for only one property or for a landlord's whole portfolio, depending on the number and seriousness of the issues identified.

The stage 1 payment fee will remain at the same level, regardless of the length of licence that is issued. This is because all of the same processes and checks need to be followed in order to issue the licence. However the stage 2 payment fee will be adjusted pro-rata for the length of licence that is determined to be issued.

Are there conditions attached to a licence?

Minimum mandatory conditions to be included in a licence are:

- To provide annual gas safety certificates;
- To ensure safety of furniture and electrical appliances;
- To install and maintain smoke alarms;
- Carry out a full fire risk assessment
- To provide tenants with a written statement of terms.

The local authority may also attach additional conditions to licences relating to management, use and occupation, condition and contents of the property, etc.

Such conditions may include:

- Restrictions of use and occupation of parts of the property;
- Steps to be taken to reduce anti-social behaviour;
- Timescales and works to comply with HMO standards;
- Attendance at training courses in relation to applicable codes of practice etc.

Can a licence be changed?

The terms set out in a licence may be varied by the Council at any time in the following circumstances:

- With agreement of the licence holder;
- Due to a change in circumstances since the licence was granted.

A 'change in circumstance' would include:

- Change to the property, perhaps extending it to create more units of accommodation.
- Change in legislation since the licence was granted.
- Change of manager, where the licence holder remains the same.

What happens to those who operate an unlicensed HMO?

There are several offences in relation to licensing of HMOs which carry fines on conviction.

If a HMO is operated without a licence, the person having control of, or person managing the dwelling is liable, on conviction, to an unlimited fine.

Breaching licence conditions is an offence and, on conviction, may lead to a fine per condition breached, unless the breach is of overcrowding condition, which is subject to an unlimited fine.

For example, if the licence stipulates the dwelling is to be occupied by no more than 7 people, but the property is found to be housing 8 people, this would be a breach of the conditions. Failure to carry out works specified by the council in the licence would also constitute breach of conditions.

Management Orders: If a property that should be licensed is not licensed, the Council must, in certain circumstances, make an Interim Management Order. This Order will allow the Council to manage the property and collect rent for the property. Rent collected for the property will be used to cover costs of managing the property and to carry out any necessary works. Examples of these circumstances are:

- where there appears to be no reasonable prospect of the property being licensed in the near future
- where there is a risk to the health safety or welfare of occupants or persons in the vicinity
- when a licence has been revoked.

There are also circumstances in which the Council has the power to make an interim management order, by applying to the First Tier Tribunal (Property Chamber), but these circumstances are not linked to mandatory HMO licensing.

Additionally, tenants residing in an unlicensed HMO cannot be issued with a Section 21 'notice seeking possession' under the Housing Act 1988 to evict them from the property. This is an offence and landlords may be prosecuted in such cases.

Rent Repayment Orders: An application may be made to the First Tier Tribunal (Property Chamber) for a Rent Repayment Order if a landlord has committed the offence of operating a licensable HMO without a licence. If this is granted, the property owner/manager receiving rent payment has to repay the amount received during the time in which the HMO has been operating without a licence, up to a maximum of 12 months.

The council may make this application where rent has been paid through Housing Benefit, but it is also possible for tenants to apply for a Rent Repayment Order to recover rent paid over the same period of time.

How much does a licence cost?

The fee for a HMO licence is taken in 2 stages.

- First payment – to be made when application is submitted.
- Second payment – is only payable where an application has been processed and the decision is made to grant a licence. The licence will then only be issued and sent out once the second payment is received.

Visit the Council's website to view the current Fees & Charges.

This second payment will be increased for any additional units of accommodation over 5 (at set rate per unit). Each application will be charged on the specific factors of the individual case.

The second payment may also be eligible for a discount as a result of the following circumstances:

- When block applications are made on the same day, by portfolio landlords;
- If the proposed licence holder and any manager is a member of a Council recognised landlord or letting agent association

HMO licence fees will be reviewed periodically and may increase as a result. Any increase in fees will be publicised before coming into force.

Additional Information

Additional information on licensing is available from the [Government Website](#) or on Eastleigh Borough Council's [website page on HMO licensing](#).

GUIDANCE: Completing section 9 of the application form

Fit & Proper Person Test

If you have answered 'yes' to any of the questions asked in section 9 of the application form, you will need to provide additional information on the page immediately following the questions. This guidance explains the type of information that you need to provide, in relation to each question. The letters below (a, b, c, etc) relate directly to the questions in section 9.

- a) Please state which person/persons has/have the unspent conviction(s) and what offence it is/they are in relation to. Please also provide the date of the offence(s), date of any court hearings and the address of the court hearing the case(s).
- b) Please specify the type of discrimination i.e., sex, race, colour, ethnic or national origin, disability. Please give the date of the court or tribunal hearing and the address of the court hearing the case(s).
- c) If a works notice was not complied with, please specify the type of notice that was not complied with, the date on the notice and the address to which it related e.g., Housing Act 1985 section 372, dated 1st April 2005 for number 1 Any Street. If landlord and tenant law was contravened, please explain how, the date of the occurrence and the address to which it relates, e.g. illegal eviction of tenants on 1st April 2005, from number 1 Any Street. Please give dates of any court hearings, address of the court hearing the case(s) and details (including dates) of any judgements made against the proposed licence holder.
- d) Please give the address of the property concerned and the date on which the order was made. Please also confirm whether the control order is still in force.
- e) Please give the address of the property or properties where a licence has been refused and the date of the decision.
- f) Please give the address of the property where licence conditions were breached and the date of the breach. Please also state which condition was breached, if known.
- g) Please state what action the licence holder has taken that is not in accordance with the Approved Code of Practice for Management. Please also give the date of the action and the address of the property that this action relates to.
- h) Please give the address of the property concerned and state what action/proceedings were taken by the local authority, including the dates and details of any works carried out in default.
- i) Please give the address of the property and type of order that has been made, including the date the order was made.

GUIDANCE: Providing Proof of Suitable Management Arrangements

Before an HMO licence can be issued, the Council must take a number of issues into account. Apart from the fit and proper person checks and establishing that the property is suitable for multiple occupation, the following issues must also be considered:

- Whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved
- Whether any proposed management structures and funding arrangements are suitable (*Section 66, Housing Act 2004*)

If the landlord/manager is not competent and/or the proposed management and funding arrangements are not suitable, then the council cannot grant a licence. However, some minor management failures will not necessarily mean that the landlord/manager is not competent, and a licence may be issued with conditions.

In order to prove that you/your manager are competent and that you have suitable management structures and funding arrangements in place, you may need to provide copies of certain documents, as explained below. Failure to provide evidence of competence and/or suitable management and funding arrangements may delay your application being processed and may result in additional costs being added to your licence fee.

On receipt of the relevant paperwork, the council will determine whether a licence can be issued (with or without conditions) or whether there are significant management failures that mean that a licence cannot be issued. If a decision is made that a licence cannot be issued, you will be contacted by the Council to advise of the reasons for the decision and to explain what you should do next.

Matters that will be considered

Providing documents in support of each of these aspects will help to reduce delays to your application being processed or any additional costs being added to your licence fee.

Are persons involved with the property management competent?

- Evidence of compliance with mandatory conditions (see section 16 of the application form)
- Certificate of attendance at relevant landlord training course
- Evidence of suitable management structures and funding arrangements (see below)

Are there suitable management structures in place?

- Evidence of compliance with mandatory conditions (see section 16 of the application form)
- Copy of current, signed tenancy agreement for property in question. Should not include any unfair terms
- Declaration that inventories are used and a copy of a current, signed inventory for property in question
- Repairs procedures – details of agreement in place between landlord and tenants for property in question (this may be in the tenancy agreement).
- Complaints procedures – Declaration of how complaints from tenants/neighbours etc, about issues relating to the house and/or tenant behaviour.
- Planned programme of site visits/inspections

Are there suitable funding arrangements in place?

- Evidence of compliance with mandatory conditions (see section 16 of the application form)
- Deposits – Information on length of time between tenants leaving and deposits being returned. Explanation of what deposit deductions may be made for and whether written reasons and receipts are provided.
- Repair procedures – details of agreement in place between landlord and tenants for property in question (this may be in the tenancy agreement).

Other Matters

- Compliance with any approved code of practice made by Government, in relation to HMO management (none in place at present).
- Compliance with any code of good management practice issued by Eastleigh Borough Council (none in place at present).

GUIDANCE: Code of Good Management Practice

1. Conduct

The landlord agrees to conduct business with regard to the property and the tenancy in a courteous, reasonable and equitable manner and to promptly answer any queries and issues raised by the tenant and/or the local authority.

2. Inventories

The landlord agrees to ensure that an inventory is signed by both parties at the beginning of the tenancy (or as soon as practicable afterwards) and to give the tenant the opportunity both to carry out a joint inventory inspection at the outset and the end of the tenancy. Additionally, the tenant should be given the opportunity to discuss the inventory at the end of the tenancy.

3. Deposits

From 6 April 2007, all deposits (for rent up to £25,000 per annum) taken by landlords and letting agents for Assured Shorthold Tenancies in England and Wales, must be protected by a tenancy deposit protection scheme. Information on tenancy deposit protection is available from the Ministry of Housing, Communities and Local Government website <http://www.communities.gov.uk>.

4. Repairs and maintenance

The landlord agrees to carry out repairs within a time period appropriate to the severity of the problem, keeping as far as is practicable to the guide timescales given below. The landlord agrees to uphold, as far as practicable, all undertakings given on work to be completed prior to the tenant moving in, to consult the tenant when planning other major maintenance work during the tenancy and to give reasonable notice (except in emergencies) and details of any work, servicing or testing to be carried out. The landlord agrees to set up effective monitoring arrangements to check the condition of the building and installations.

Guide to repair timescales once a fault has been reported

- Emergency repairs – **24 hours** (Affecting health or safety e.g., major gas or electrical fault, blocked WC)
- Urgent repairs – **5 working days** (Affecting material comfort e.g., hot water, heating, roof leak)
- Other repairs (non-urgent) – **20 working days**

5. Landlord's access to property and other statutory requirements

The landlord agrees to comply with all statutory obligations under housing and landlord and tenant legislation, associated regulations, Codes of Practice and British Standards. This includes the legal requirement to gain access to the property (for inspection, repairs, monitoring or other relevant reasons) only by prior arrangement with the tenant/s and having given at least 24 hours notice (except in emergencies).

6. General management

The landlord agrees to take reasonable steps to minimise any nuisance, alarm, harassment or distress that may be caused to neighbours by the way the property is used. The landlord agrees to offer occupiers of the immediately neighbouring properties a contact telephone number, address, or e-mail address to report any problems; to ensure that 'To Let' or 'Let' boards are not left up long term; to keep the external appearance of the property in a reasonable condition and to make reasonable arrangements for the storage and disposal of refuse.

GUIDANCE: Landlord Guide to Fire Risk Assessment in HMOs

The Regulatory Reform (Fire Safety) Order 2005 (RRO) came into force on 1st October 2006. It is enforced by the Fire and Rescue Service. It consolidates much of their previous fire safety legislation into one document, but also provides some new duties and responsibilities for various parties, including landlords. This includes a duty to carry out a fire risk assessment in HMOs.

You are being asked by Eastleigh Borough Council to complete a fire risk assessment for each of the properties that you submit a mandatory HMO licence application for, at present. However, the duty to carry out a fire risk assessment is not restricted to mandatory licensable HMOs, so you must carry out this process for all HMOs that you own.

Responsibility for complying with the Order

This responsibility lies with the 'responsible person' as defined in the Order. In relation to any premises which is not a workplace, this means,

- “(i) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking...., or
- (ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or undertaking.”

The responsible person will be the property owner in most cases, unless there is a manager who is in control of the business of operating the HMO. If there is more than one responsible person for the building (e.g. in premises with parts owned by different people), all must take reasonable steps to co-operate and co-ordinate with each other.

What you need to do

If you are the responsible person, you must carry out a fire risk assessment which must focus on the safety in case of fire of all 'relevant persons'

Relevant persons means:

- (a) any person (including the responsible person) who is or may be lawfully on the premises; and
- (b) any person in the immediate vicinity of the premises who is at risk from a fire on the premises

The assessment should pay particular attention to those at special risk, such as disabled people, those who you know have special needs, and children. You must also include consideration of any dangerous substance likely to be on the premises.

In relation to licensed premises (including HMOs), the significant findings of the fire risk assessment, the actions to be taken as a result of the assessment and the details of anyone especially at risk, must be recorded.

Other duties that you will need to comply with

- You must appoint a 'competent person' to carry out any of the preventive and protective measures required by the Order. A 'competent person' is someone with enough training and experience or knowledge and other qualities, to be able to implement these measures properly. You can nominate yourself for this purpose.

- You must inform occupants and contractors working in the premises, etc of the relevant risks to them and provide them with information about who the nominated competent person is and about the fire safety procedures for the premises.
- You must co-operate and co-ordinate with other responsible persons who also have premises in the building, inform them of any significant risks you find and how you will seek to reduce/control those risks which might affect the safety of people in their part of the building.
- You must provide the employer of any person from an outside organisation who is working in your premises (e.g. building contractor, electrician, etc) with clear and relevant information on the risks to those employees and the preventive and protective measures taken. You must also provide those employees with appropriate instructions and relevant information about the risks to them.
- You must consider the presence of any dangerous substances and the risk this presents to relevant persons from fire.
- You must establish a suitable means of contacting the emergency services and provide them with any relevant information about dangerous substances.
- You must ensure that the premises and any equipment provided in connection with firefighting, fire detection and warning, or emergency routes and exits are covered by a suitable system of maintenance and are maintained by a competent person in an efficient state, in efficient working order and in good repair.

What is a fire risk assessment?

It is an organised and methodical look at your premises, the activities carried on there and the likelihood that a fire could start and cause harm to those in and around the premises.

The aims of the fire risk assessment are:

- To identify the fire hazards
- To reduce the risk of those hazards causing harm to the lowest level that is reasonably practicable
- To decide what physical fire precautions and management arrangements are necessary to ensure the safety of people in your premises if a fire does start.

Fire risk assessments should be regularly reviewed ideally at least annually. If you think that your fire risk assessment is no longer valid or there has been a significant change in your premises that has affected your fire precautions, you will need to review your assessment and if necessary, revise it.

Further guidance on Fire Risk Assessments

- Hampshire Fire & Rescue: [website fire risk assessment guidance](#)
- Ministry of Housing & Communities and Local Government: [website on fire risk assessments for sleeping accommodation](#)
- LACORS (Local Authorities Co-ordinators of Regulatory Services) Housing Fire Safety guidance. A link to which is provided on the Council's [HMO website page](#).

If you require any further information on fire risk assessments, you should contact Hampshire Fire and Rescue Service who are the enforcing body of the Regulatory Reform (Fire Safety) Order 2005