

# Mandatory Licensing of Houses in Multiple Occupation

## A General Guide for Landlords and Managing Agents

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### 1. Introduction

The legal minimum standards for all HMO's are set out in the [Housing Act 2004](#) and national regulations. The [HMO Management regulations](#) cover the legal duties for the day to day running of HMO's.

The Council, under the Housing Act 2004, is required to administer the mandatory HMO licensing scheme in the City of Sunderland with a duty to inspect and improve HMO's.

With effect from 1 October 2018 mandatory licensing will no longer be limited to certain HMO's that are three or more storeys high but will also include buildings with one or two storeys.

Therefore, all HMO's having 5 or more occupants living in 2 or more households who share facilities i.e. kitchen, bathroom will require a licence.

### 2. What is a HMO?

The current definition of a house in multiple occupation can be found in section 254 of the Housing Act 2004 (as amended). The definition covers many different types of properties.

Amenities mean a toilet, personal washing facilities, or cooking facilities. The degree of sharing is not relevant and there is no requirement that all the households share those amenities.

In order to be a HMO the property must be used as the tenants' only or main residence. This includes properties let to students and migrant workers and also properties used as domestic refuges.

The definition covers many different types of properties including:

- 1) A house which has been converted entirely into bedsits or other non-self-contained accommodation and which is let to 3 or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities.
- 2) A converted house which contains one or more flats which are not wholly self-contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by 3 or more tenants who form two or more households.
- 3) A building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies.

### **3. What is a household?**

A household is defined in the Act as being members of the same family living together including:

- 1) Couples married to each other or living together as husband and wife (or in an equivalent relationship in the case of persons of the same sex).
- 2) Relatives living together, including parents, grandparents, children (and step-children), grandchildren, brothers, sisters, uncles, aunts, nephews, nieces or cousins.
- 3) Half-relatives will be treated as full relatives. A foster child living with his foster parent is treated as living in the same household as his foster parent.
- 4) Any domestic staff are also included in the household if they are living rent-free in accommodation provided by the person for whom they are working.

### **4. Planning Permission and HMO Licensing**

In its capacity as local planning authority Sunderland City Council has imposed what is known as an Article 4 Direction which took effect in December 2013. This remains effecting the Barnes, Hendon, Millfield, St. Michael's and St. Peter's Wards of the City. The effect of the Article 4 Direction is that planning permission is required to change the use of a dwelling house (a family house/single occupancy privately rented house) to HMO accommodation occupied by up to six persons. A larger capacity HMO would require planning permission in any event.

If you require clarification on any aspect of Planning regulations or to seek clarity on the areas of Sunderland affected by the Article 4 Direction then you are advised to contact the Development Management team directly on 0191 520 5555 or by visiting the Sunderland City Council's website (<https://www.sunderland.gov.uk/planning-building>)

You are required by the Housing Act to apply for a licence in relation to HMO that is subject to mandatory licensing, but your HMO licence application if successful **does not grant or give the required consent** that may be required from Sunderland City Council in terms of planning permission and/or Building Regulations approval.

In the event where a property is required to be licensed as a HMO under the Housing Act 2004, but the correct planning permission is not granted it is proposed that a shorter licence period may be applied (please see section 6 - how long will my licence last, for further information).

## **5. Exemptions from the definition**

Certain types of properties are exempted from being defined as HMO's and these include:

- 1) A property where the landlord and their household lives with up to two tenants;
- 2) Buildings which are occupied entirely by freeholders or long leaseholders;
- 3) Buildings which are owned or managed by a public body (such as the NHS or Police), a local housing authority or a registered social landlord;
- 4) A building where the residential accommodation is ancillary to the main use of the building, for example, religious buildings, conference centres etc.;
- 5) Buildings which are already regulated (and where the description of the building is specified in regulations), such as care homes, bail hostels etc. (domestic refuges are not exempt).

## **6. How long will the Licence last?**

Housing Act 2004 Section 68(4) provides that a licence may be granted for a maximum of 5 years. Licences will be granted for this period where landlords have been found to be compliant with previous licence conditions, maintained good property standards and demonstrated good management standards.

If the Council has evidence to suggest that management arrangements or property conditions are not entirely satisfactory, or where the Council has taken intervention against a landlord which does not warrant refusal to grant a licence, or where concerns are raised by the police or other statutory enforcement agency, or it is identified that the property does not have the correct planning classification, Sunderland City Council may consider alternative arrangements.

## **7. The HMO Licence application process**

An application form must be completed in full and submitted with the supporting documentation and certification together with the appropriate fee. Further information on this can be found at <https://www.sunderland.gov.uk/article/13674/HMO-licensing>

**Before making an application for a licence for a House in Multiple Occupation (HMO), please ensure that you have read the Guidance for Landlords on HMO Standards in Sunderland.**

If the application is incomplete you will be notified of this and what you must do to rectify this situation including the time frame in which this must be done by. After this time period, your application will be deemed to have not been made in accordance with the requirements specified by the Council and as such an application for a licence had not been duly made in respect of the property. It would then be viewed that the property would be operating without a licence (please see Section 9 below regarding what happens if I fail to apply for a licence?).

## **8. Documentation required with the HMO Licence application**

- 1) A current (within 12 months) Gas Safety Certificate (CP12) issued by a Gas Safe registered engineer (where gas is used in the house).
- 2) A current (within 12 months) PAT certificate for any electrical equipment supplied to the tenants that is more than a year old.
- 3) A copy of the current (within 5 years) electrical installation condition report. The report must be produced on the recognised form (British Standard 7671). The inspection must be carried out by an authorised competent person who is a member of an approved scheme (e.g. NICEIC or ECA) and deem the electrical installation to be in at least a “satisfactory” condition.
- 4) A plan of the premises. This plan should be used to identify the bedrooms and the number and location of amenities within the house (toilets, wash hand basins, showers, baths, sinks, fridges, cookers, hobs etc.). It need not be to scale but must indicate room dimensions in meters squared (m<sup>2</sup>). It should also show the position of any smoke/heat detectors/alarms and any fire doors installed in the house.
- 5) A current (within 12 months) and satisfactory fire alarm test certificate for the premises carried out by a competent engineer in accordance with BS 5839 and where appropriate emergency lighting test certificate.
- 6) Example of tenancy agreement or licence to be used for the property including the terms that the tenants occupy the property and clauses for dealing with/managing anti-social behavior caused by the tenants/occupants of the property or their guest/associates;

If the documents are not provided the application will be deemed invalid and will not be processed.

## **9. Fees**

Applications should be accompanied by a fee set by Sunderland City Council. The fees are reviewed each year and relate to the cost of processing the initial HMO application form and then the ongoing cost of running and administering the HMO licensing scheme.

As of 1<sup>st</sup> November 2020, the total Licence fee payable for a mandatory licenceable HMO with 5 occupants is **£828.28**. Properties with more than 5 occupants pay an additional fee dependent upon the number of occupants as set by table A below.

**Table A.**

<b>Number of Occupants</b>	<b>Additional charge</b>
<b>5 occupants</b>	<b>0</b>
<b>6-9 occupants</b>	<b>31.22</b>
<b>10-12 occupants</b>	<b>62.44</b>
<b>13-18 occupants</b>	<b>93.66</b>
<b>19 - 24 occupants</b>	<b>124.88</b>
<b>25 - 30 occupant</b>	<b>156.1</b>
<b>31- 36 occupants</b>	<b>187.32</b>
<b>37 + occupants</b>	<b>Fee to be determined upon enquiry</b>

Thus, the total cost of an application for a 7 occupant property for example would be

$$£828.28 + £31.22 = £859.50$$

Due to recent case law the Courts have instructed Local Authorities to collect the fee associated with a HMO licence application in 2 parts.

Part 1 is the initial assessment of the application to determine whether the application would be successful and inspection costs in assessing the property compliance with the required standards. If the application is deemed successful, the second part of the fee which must be paid prior to grant of the licence are the costs of the ongoing administration and enforcement / compliance with the licensing scheme and associated legislation.

This means that although the licence fee is set at £828.28 plus associated room charge as based on Table A above the part 1 fee required by Sunderland to process the application is £547.54. If the licence application is successful, the remainder of the fee must be paid in order to complete a duly made application and for a licence to be issued. Please see illustration below for a 5 bedroom and a 7-occupant property: -

	<b>5 Occupant HMO</b>	<b>7 Occupant HMO</b>
Standard fee	£828.28	£828.28
Additional bedroom based on Table A	£0	£31.22
Total fee required to complete the application	£828.28	£859.50
Part 1 of the fee to process the application	£547.54	£547.54
Part 2 of the fee to complete the application, if successful	£280.75	£311.96

If the application is unsuccessful you will be notified of the reasons why the application has failed and given a period of time to put the matters right. If the application is not put right it will be deemed that the application has not been duly made and the part 1 fee retained for the processing of that unsuccessful application. A new application including the part 1 fee would have to be resubmitted or it would be treated that you have not applied for a licence.

## 10. What happens if I fail to apply for a Licence?

If you own or are in control of a HMO it is your responsibility to ensure you have made a full and valid licence application.

It is a criminal offence to let a property that is required to be licensed without applying for a licence. There is a range of sanctions that could be applicable depending on the individual circumstances. These sanctions range from a civil penalty which can be levied by the Council up to a maximum of £30,000 or a Criminal prosecution in the Magistrates Courts of an individual or company where the Magistrates have the power to impose a potentially unlimited fine.

In addition to the actions taken by the Council an application to First Tier Tribunal (Property Chamber) could be made by the tenants of the property for a Rent Repayment Order for any period where an unlicensed property is being privately rented. This could mean a landlord having to repay up to 12 months of rent to the tenants in addition to any Civil penalty of fine imposed by the Courts. Failure to have a HMO licence in place also prevents the owner or landlord of the property from taking any no fault eviction proceedings under Section 21 of the Housing Act 1988 to recover possession on expiry or termination of assured shorthold tenancy.

## 11. Right of Appeal

If a landlord feels that the Council has made a decision that is unfair they should contact us by writing initially to the case officer dealing with the licence application so that we can explain the reasons for the decision and hopefully resolve the problem. If the landlord still feels that the Council has acted unfairly by

- 1) Refusing to grant a licence
- 2) Imposing certain conditions on a licence
- 3) A decision to vary a licence
- 4) A decision to revoke a licence

The landlord can appeal to the First-tier Tribunal (Property Chamber) (FTT) using the contact details below. The FTT is an expert, independent tribunal that acts in the same way as the County Court to confirm, vary or overturn the Council's decision.

### **First-tier Tribunal (Property Chamber) Northern Region**

1<sup>st</sup> Floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester, M1 4AH

Email [rpnorthern@justice.gov.uk](mailto:rpnorthern@justice.gov.uk)

Telephone 0161 237 9491

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