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Rental Property Knowledge: a website for Landlords, Letting Agents and Tenants. The site hosts the UK's busiest on-line rental property forum

## Highlights:

The theme of this issue is the Licensing of Landlords and Houses in Multiple Occupation as governed by the [Housing Act 2004](#) and its bundle of measures to be introduced April 2006—[schedule for implementation released](#)

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# The LandlordLOG

## Licensing - The Housing Act 2004

This newsletter will look in more detail at licensing. Licensing is the first part of the Housing Act 2004 to be implemented and will start from late autumn 2005—see [news release](#)

The key points about licensing are:

There will be a change to the house in multiple occupation (HMO) definition so that where more than two unrelated tenants are sharing a property it will now be classed as an HMO.

There will be a mandatory licensing system for all HMOs with three or more storeys AND which have five or more occupants. All such properties will have to have a license.

In addition, local authorities (LAs) can extend licensing to include other HMOs if they think there is a need - say, if a local problem with anti-social behaviour exists or they think the standard of housing justifies it.

## Welcome

Whether we like it or not we are living in an age of increasing bureaucracy —more and more red tape, which governments keep promising to reduce, but invariably it keeps growing.

The Housing Act 2004 is no

In some areas, LAs will be able to license ALL private landlords to ensure

basic standards of management are being met.

Estimates for the cost of licenses vary but the truth is that no one really knows, and anyway each LA will set its own fee. No cap will be set.

However, LAs can only set fees on a cost basis - i.e. they can't profit from it. It's hoped that fees can be paid by instalments, rather than having to pay up front and that landlords who co-operate will pay less than those that don't.

It's probably not worth panicking just yet because, whilst licence applications must be submitted by whatever the implementation date will be, the enforce-



ment provisions won't come into force for another three months. During this period it seems that whilst you should apply for a license,

you won't be subject to the penalties that can be levied.

But watch out! The penalties are heavy. For non-registration there are fines of up to £20,000 plus having to repay rent received whilst unregistered. In addition, you'll not be able to evict using the assured shorthold (Section 21) procedure.

Private landlords will have to comply with the new rules, but college accommodation and housing associations will not be exempt, at least not for quite a while.

exception and some would argue a big step in the direction of big brother style regulation.

Traditionally, the UK has been a country of free and open trade with minimal regulation and unlike Europe, and even the USA, has avoided the need for

licensing, e.g. motor mechanics, builders, estate agents etc.

This looks like a big break in this tradition and has ominous signs for the future when landlords deemed to be unsuitable can be prevented from trading. Perhaps that's a good thing? But it will inevitably add to costs. Editor.

## HMOs and Licensing—How Will the Process Work?

Both HMOs and selective licensing will follow similar procedures.

A license will be given for each property providing the license holder is a “fit and proper” person and the “management standards” are acceptable.

To decide if someone is fit and proper, the LA will look at whether a person has ever committed a fraud offence or been in any serious contravention of housing law.

For HMOs, a property will have to be suitable for the number of people living there - which in turn depends on amenities like loos and bathrooms.

The license will state the maximum number of occupants.

Both HMO and selective licenses will last five years though they can be revoked if the LA believes the property or license holder is no longer suitable, or in the case of selective licenses, the problem that led to selective licenses being imposed has now gone away.

Before it sets up an extended licensing scheme, LAs must consult with interested parties (these don't include tenants!) and apply to the government too (though LAs rated by the Audit Commission as “good” or excellent won't have to ask

the government.)

Licenses will require there to be an annual gas safety certificate, working smoke alarms and safe electrical appliances and furnishings. Conditions may be attached to licenses too.

For example, if an HMO property doesn't have say, enough bathrooms, rather than just not issuing a license, the LA may insist the landlord installs one by a certain date. Failure to do so could result in the loss of license and a fine up to £5,000.

Licensing will also require landlords to take steps to stop or reduce anti-social behaviour at the property.

This won't make the landlord responsible for tenants' behaviour; it just means he cannot ignore complaints from neighbours and will be expected to take some action, though this will be limited to formally warning tenants about their behaviour or reporting them to someone at the LA who can then take further action.

LAs won't be able to use license conditions, to deal with health and safety hazards.

So, whilst it's possible an LA may assess an HMO license application *at the same time* as doing a health

and safety inspection, the HMO application would depend only on the person applying being a fit and proper person, the management of the building being acceptable and the property being suitable for the number of occupants.

If an LA cannot issue a license it must step in to manage the property itself.

Landlords will have the right of appeal to special Residential Property Tribunals on any aspect of a licensing decision.

Live in landlords should note that if the landlord is permanently resident but there are only 2 lodgers, it will NOT count as an HMO.

Also, landlords letting to whole families should note that foster children and domestic employees are counted as being related. So if you let to a wealthy family of four who employ two live in au pairs then it won't count as an HMO!

For more detailed information see:

- [Legal Briefing](#)
- [Leaders' Guide](#)
- [ODPM](#)

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## What about Existing HMO Registration Schemes?

Some LAs already run registration schemes for HMOs.

It looks like these will be “passport” as part of “transitional arrangements” which means that whatever registration is in place will continue for up to three years after licensing is introduced.

Some of these “pre-existing HMO registration schemes” have lower standards than is proposed under the new rules.

Where this is the case, the

LA will be able to continue with the lower standard but landlords will ultimately have to meet the new HMO standard within three years of the grant of the license.

Many of these existing schemes include types of properties which would not otherwise be included in the mandatory system – for example two storey properties and even flats.

It seems bizarre that the government, having spent lots of time carefully defining what will be included

under mandatory licensing will now allow LAs to continue with such existing schemes.

After all, the point of additional and selective licensing is to give LAs powers to be able to license properties that were being poorly managed or because of anti-social behaviour.

And yet, it seems these existing schemes can continue without actually having to consult anyone!



*“Some LAs already run registration schemes for HMOs.”*

## What Information will I have to give?

You will have to give over lots of information about yourself and also information on interested parties, like the name of your mortgage lender.

Details about the property will include the number of rooms, what they are used for, the number of house-

holds and occupants, details of fire precautions, certificates of gas safety and information on electrical and furnishings safety.

Application forms will also ask if the applicant has ever been the subject of an enforcement notice.

A public register of licenses will be kept. Details on what will be publicly available are sketchy at the moment, but it is to be hoped that landlords will not have to give their home address - a service address or a PO Box may be sufficient

*“You will have to give over lots of information about yourself and also information on interested parties, like the name of your mortgage lender.”*

## Book Review: Housing Rights Guide 2005-6 by Geoffrey Randall

**H**ousing Rights and legislation for landlord or tenant is like two sides to the same coin—information for one is just as relevant for the other.

**Shelter**, the housing charity for the homeless, produce a range of titles on Residential Tenancy matters which are professionally researched, written and produced.

With these titles you can

rely on them to be legally accurate and up-to-date with the latest legislation.

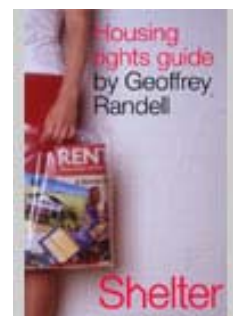
Housing Rights Guide 2005-6 by Geoffrey Randall includes the major legislative changes brought in by the Housing Act 2004, the Civil Partnership Act 2004 and the Homelessness Act 2002.

Whilst written primarily for tenants seeking to know their rights and housing advisors, the interested land-

lord will gain many insights into the law and their tenant’s rights by reading this guide.

Covering matters such as ASTs, discrimination, eviction procedures, squatters, rent officers, repairs, overcrowding, licensing, long leaseholders, relationship break-ups etc.

Concise and well written.



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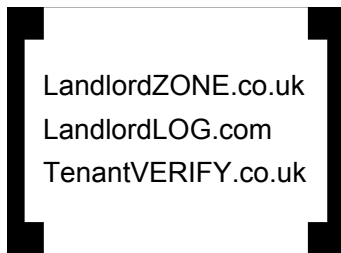
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