

Introduction

1.1 What are Houses in Multiple Occupation (HMO)?

The legal definition of "House in Multiple Occupation" is a "house which is occupied by persons who do not form a single household".

The introduction of the Housing Act 2004 has not redefined the definition of an HMO but has made it clearer (so they say).

The Housing Act 2004 now defines an HMO in three key parts, 'house', 'occupied' and 'not a single household'. Definition of a HMO as defined by sections 254-258 of the Housing Act 2004

1.2 Section 254

(1) " For the purposes of this Act a building or a part of a building is a " house in multiple occupation " if:

- a it meets the conditions in subsection 2 ("the standards test")
- b it meets conditions in subsection 3 (" the self contained flat test")
- c it meets conditions in subsection 4 ("the converted building test")
- d an HMO declaration is in force in respect of it under section 255
- e it is a converted block of flats to which section 257 applies

(2) A building meets the standard test if

- a it consists of one or more units of living accommodation not consisting of self contained flats
- b the living accommodation is occupied by persons who do not form a single household (section 258)
- c the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (section 259)
- d their occupation of the living accommodation constitutes the only use of that dwelling
- e rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation
- f two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities

(3) A part of a building meets the self-contained flat test if-

- a it consists of self contained flats; and
- b paragraphs b –f of subsection 2 apply

(4) A building or a part of a building meets the converted building test if

- a it is a converted building
- b it contains one or more units of living accommodation that do not consist of a self contained flat or flats
- c the living accommodation is occupied by persons who do not form a single household
- d the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it

e their occupation of the living accommodation constitutes the only use of that accommodation
f rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation

1.3 Section 257

(1) For the purpose of this section a "converted block of flats" means a building or part of a building which-

a has been converted into, and

b consists of,

self contained flats

(2) This section applies to a converted block of flats if-

a building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and

b less than two thirds of the self contained flats are owner-occupied.

(3) In subsection 2 "appropriate building standards" means-

a in the case of a converted block of flats-

on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulation 1991 and which would not have been exempt under those Regulations

1.4 Section 258

1.5 HMOs: persons not forming a single household

This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254

(2) persons are to be regarded as not forming a single household unless-

a they are all members of the same family, or

b their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purpose of subsection 2(a) a person is a member of the same family as another person if-

a those persons are married to each other or live together a husband and wife (or an equivalent relationship in the case of persons of the same sex);

b one of them is a relative of the other, or

c one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple

(4) For the purposes-

a "a couple" means two persons who are married to each other or otherwise fall within subsection (3) (a);

b "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

- c a relationship of a half-blood shall be treated as a relationship of the whole blood; and
- d the stepchild of a person shall be treated as his child

Occupied means 'lived in' (Silbers v Southwark LBC 1977). Therefore vacant houses cannot be HMOs under the legal definition.

IN SUMMARY

The new legislations, an HMO is a property that is:

Occupied by 3 or more people, forming 2 or more households, sharing amenities eg. Bathroom and kitchen,. OR

Converted into self contained flats, but does not meet the requirements of the 1991 Building Regulations AND at least one third of the flats are privately rented , OR

Occupied by 3 or more people forming 2 or more households in a converted building that is not entirely self contained. Eg basement flat with shared accommodation.

In a maisonette at ground and first/second floor levels

Do all HMO's need to be licensed?

NO. Any HMOs that are self contained flats are exempt for licensing -----

However the Housing Act 2004 say that certain types of larger HMOs must be licensed – This is Mandatory Licensing

Three or more storeys high and are occupied by 5 or more persons who do not form a single household

Other smaller HMOs may be licensed and this is Additional Licensing

Only two storeys high and occupied by 5 or more persons, who do not form a single household

Some properties have habitable basements or attics, these would be included when calculating the number of storeys

1.5.1.1 Adoption

It seems that although there are a set of straight forward rules under the Regulations, the Housing Act has placed the onus back on to each local council in the country to adopt the principles. Although there are set criteria (as laid out above) each will have a different approach on the subject. This therefore leads to controversy on who, what, how Landlords and Agents are to deal with HMO's.

1.6

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1.8 Licensing your HMO

If the property is let to 5 or more persons sharing, then you will have to License the house and pay a fee to the Local Authority. This fee will vary from council to council and will last for five years.

Failure to License the property may result in prosecution a fine of £20,000, and is a criminal offence. You will not be able to serve notice to quit on tenants and you may have to pay back ALL the rent collected, back to the date it should have been licensed!!! BE WARNED

This would also give rise to the landlord not being a "Fit and Proper Person"

1.9 What is a Fit and Proper Person?

This is a key condition of obtaining and keeping a license – but what does it mean?

Owners or managers under Mandatory or Selective Licensing Schemes must apply. The Local Authority must grant a License IF it is satisfied that:

The HMO is reasonably suitable (etc)
The Licence holder would be a fit and proper person.

The criteria in deciding where the person is fit and proper:

The Local Authority must have regard to the statutory criteria set out in Section (66 (2) and have regard to any other facts or matters which it considers to be relevant

Matters to which the Local Authority must have regard:

Any offence involving fraud, or other dishonesty, or violence or drugs or in Section 3 of the Sex Offences Act 2003

Practiced unlawful discrimination of the law in connection with the carrying out of any business

Contravened any provision of the law relating to housing or landlord and tenant law – Illegal eviction etc.

Acted other than in accordance with any code of practice for the management of HMO's

Associates

The Local Authority may take into account evidence of any of the above conduct by a person "associated or formerly associated with", the proposed licence holder or manager "whether on a personal, work or other basis", if relevant.

Any "Spent" convictions cannot be taken into account. However, a lack of conviction may not mean that the incident was not relevant.

Managers:

Assumption: the person having control of the property is the most appropriate person to hold the licence. i.e.: the person who receives the rents.

The proposed manager, if not the licence holder, and all other persons involved in the management must also be fit and proper

The Decision

If the Local Authority is not satisfied – IT MUST REFUSE and make an Intermediate Management Order instead. Any proposed reasons to be given in advance. There are 14 day to make representations and the Right to appeal to the Residential Property Tribunal (RPT).

1.10 Local HMO Requirements

It is therefore highly recommended that you speak to the individual Environmental Health & Trading Standards Dept. in your Local Authority first before buying a property for letting as an HMO. If you already own one make sure that you are up to date with the new requirements.

2. Risk Assessment

Objective

Part 1 of the Housing Act replaces the Housing Fitness Standard set out in the Housing Act 1985 by the Housing Health and Safety Rating System (HHSRS) as the basis for local authority intervention to tackle unacceptable housing conditions. The principle behind the HHSRS is that a dwelling should provide a safe and healthy environment for the occupants and any visitors. This is to be achieved over time by refocusing the basis for Local Housing Authority (LHA) intervention on the severity of health and safety hazards in the home, assessed under HHSRS. The 24 broad hazards that can be assessed under HHSRS have replaced the previous fitness criteria. It is generally accepted that, in practice, this criteria bears no clear relationship to the hazards in a property.

The HHSRS:

Provides an inspection tool for surveyors. As well as looking at the defects on a dwelling, it enables their effects on the health and safety of potential vulnerable occupants to be assessed.

This point was not addressed under the previous fitness standard.

Generates hazard scores that provide a basis upon which Local Authority may determine the most appropriate enforcement action.

Poor management and the presence of unscrupulous landlords can also increase health and safety risks for tenants even when the HMO is in an acceptable state of repair. Responsible landlords are less likely to exploit vulnerable or disadvantaged tenants and good management practice such as regular inspections can also reduce risks. Health and safety issues can also arise because of the occupancy profiles associated with HMO use. The behavior of tenants with alcohol or drug dependencies, or mental health problems can increase the risk of death or injury to both themselves and other tenants, accentuating the need for responsible and responsive management.

The Housing Health and Safety Rating System (HHSRS) will apply to any unit of residential accommodation and to all landlords, and will be the principal tool in assessing physical conditions in HMOs under the licensing system.

Licensing will ensure proper enforcement of the HHSRS in the highest risk HMOs. Aside from physical standards in HMOs, the other main elements of reform will focus on the management competency and the 'fitness' of those managing or providing HMO accommodation.

2.1

2.2 Housing Health & Safety Rating System (HHSRS)

The Housing Act 2004 has introduced a new way to assess the condition of homes in England & Wales. Within the Act, the Housing Health & Safety Rating System is a risk assessment approach to assess hazards to health and safety in dwellings, and on which remedial and enforcement action can be taken if necessary.

The HHSRS provides a method of grading the severity of threats to health and safety in any dwelling. A dwelling can be a:

House
Self-contained flat
Non self contained flat
Bedsit

The key structure of the system is that a dwelling, including the structure and associated outbuildings and garden, yard and/or other amenity space, and means of access, should provide a safe and healthy environment for occupants and, by implication, for any visitors.

It should be borne in mind that all properties contain hazards, for example stairs, electrical outlets etc. and it is not possible (or desirable) to remove all hazards. The emphasis should be to minimise the risk to health as appropriate.

What are the hazards?

Dampness, excess cold / heat
Pollutants e.g. asbestos, carbon monoxide
Lack of space, security or lighting or excessive noise
Poor Hygiene, sanitation, water supply
Accidents – fall, electric shock, fires, burns, scalds
Collisions, explosions, structural collapse

Damp and mould growth caused by rising or penetrating damp should be seen as a high priority
Condensation mould should be addressed by better ventilation and ambient temperatures

Asbestos and such like need to be removed from the property by specialist firms
Carbon Monoxide detectors should be installed

Security measures should be put in place, such as 5 lever locks on main entrance doors, security lighting with PIR detectors

Better provisions for waste products, food. Provisions for storage of cleaning agents away from food storage and preparation areas.

Constant supply of clean hot and cold water
Safeguard against trips or falls due to uneven surfaces, worn carpets etc.
Safeguard against electric shock by having the installation tested by an NICEIC contractor
Safeguard against fires by installing smoke detectors as standard, fire extinguishers and blankets in kitchens.
Safeguard against structural collapse by regular and routine maintenance throughout the letting
(Above information extracted from Asset Skills essential information for landlords and agents)

The Owner, Landlord, or Management Agent will be responsible for making changes to the property. Failure to comply will local authority notices can carry a penalty of up to £5,000

Therefore as management agents we have to "Self Assess" a property to determine whether the property has hazards that may cause a health or safety risk to tenants. Should potential hazards be found we would inform you to correct them prior to acting as agents. We would refer you to "B" overleaf regarding our position.

The Effect of the Defect could cost lives not just your pocket

It is therefore the Landlord's responsibility to ensure that the property is made available for letting in a safe condition and in compliance of the above regulations prior to the marketing of the property. Although we do not purport to be experts in this field, we have suitable knowledge of potential defects. It is recommended that you seek advice from qualified contractors on all aspects.

3. Categories of Houses in Multiple Occupation

Not all HMOs are treated alike!

The various categories of HMO are listed below and, depending on your local authority, each 'category of HMO' will be required to meet different levels of fire safety etc...

However, it must be stressed that the inclusion of a particular class of premises in the list, e.g. guesthouse, does not mean that it is necessarily an HMO. It is the circumstances of the occupancy (i.e. temporary stay) that will determine this.

3.1 Category A - bedsits

Houses occupied as individual rooms, bedsits and flat-lets which are considered to have a number of rooms for exclusive occupation, not necessarily behind one door, with some sharing of amenities usually bathroom and/or toilet and maybe kitchen. In such a house, each occupancy would be separately rented.

3.2 Category B - student accommodation

Houses occupied on a shared basis. These properties would normally be occupied by students where, activities, the occupiers might live as a single household unit but for others do not. Usually the house would be let to a defined group and not individuals.

Although most common amongst students it is increasingly found by groups of people coming together in the house who share certain amenities as they wish but have certain individual facilities such as bedroom

3.3 Category C - houses let in lodgings

Houses described as "houses let in lodgings" i.e. catering for lodgers on a small scale, not living as part of the main household normally with a resident owner/occupier.

3.4

3.5 Category D - 'hostels and guest houses'

Houses generally referred to as "hostels", "guest houses", and "bed and breakfast accommodation".

They will provide accommodation for people with no other permanent place of residence.

This category would include hotels, guesthouses and bed and breakfast establishments used by Local Authorities to house homeless persons whose only financial support is in State Benefit.

3.6 Category E - 'Old peoples homes etc...'

Houses that are hostels and require registration under the Registered Homes Act 1984. The homes provide board and personal care for the persons in need of such care due to old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder.

Unlike Category D houses these houses would provide permanent accommodation for people with nowhere else to go; this would be their only home and would include a level of support not normally present in Category D accommodation which only provides a home for the time being.

3.7 Category F - 'Rooms with no common areas'

Houses, which by conversion, contain dwellings that are self-contained and behind one access door off a common area. There would be no sharing of amenities with occupiers of other dwellings

3.8 If your property falls in more than one category?

There is no clear boundary between each of these categories and a house (or even part of a house) might move between categories over a period of time.

Remember that the responsibility of enforcing the HMO legislation falls to the Local Authority and it is the HMO housing team.

In addition, it has been known for different officers from the Local Authority to categorise and treat the same property (or identical properties) differently.

For example, one property was required to use fire safety doors on only the front and internal kitchen doors. Another officer when viewing the property insisted on fire doors on all rooms in the property.

4. Legal aspects of letting HMOs

The following two Acts of Parliament deal with all aspects of the letting (not just HMOs). All other Acts and Regulations come under these Acts.

Consumer Protection Act 1987
Health & Safety At Work Act 1974

Therefore, if you feel that the Furniture, Gas, Electric, Water and structure of the property are sound, and it comes to light that there are defects, you will fall foul of these Acts, so there is no escaping the fact that all areas of the property, whether structural or fittings, must be in safe working condition.

The consumer in this circumstance is deemed to be the Tenant.

There is plenty of guidance available for Gas (see [section 4.3](#)), but little is advice for electrical equipment and wiring which came into force in January and February 1995 respectively.

4.1 Furnishings

Two acts apply to the furnishings of HMOs (Houses in Multiple Occupation)

Fire and Furnishing (Fire) (Safety) Regulations 1988

Fire and Furnishings (Fire) (Safety) (Amendment) Regulations 1993

The Regulations apply to all upholstery and upholstered furnishing, loose fittings; permanent or loose covers, which we will refer to as "Furniture" in this article, but the technical criteria, are beyond the scope of this article.

You cannot give, sell, lend or supply in any other way Furniture that does not comply with the Regulations.

Labels must be attached to the Furniture to say that the article complies.

If no label is visible, it will be deemed NOT to comply and must be removed from the property. In certain circumstances, if document can be produced to confirm the article complies, this may be acceptable. On mattresses, if there is no label, there may be a BS number, this should be BS7177 and is acceptable.

4.2 Electrical requirements

Plugs Sockets etc (Safety) Regulations 1994

Electrical Equipment (Safety) Regulations 1994

Low Voltage Electrical (Safety) Regulations 1990

The first set of regulations applies to the electrical wiring installation in the property, while the second deals with plugs, sockets and flexible leads to the domestic appliances supplied with the property as part of the furnishings or fittings.

You are required to ensure that people and domestic animals are adequately protected against danger of physical injury or other harm that might be caused by electrical contact, direct or indirect.

The installation and all electrical equipment should be tested by an approved and qualified contractor on a regular basis (every five years) or earlier if alterations have been carried out in the meantime.

If the incoming mains is not protected by an RCD (Residual Current Device) or 'circuit breaker' to protect against potential electric shocks, one must be fitted if you install an electric shower.

On an upgrade of the wiring it is advisable that a new consumer be installed to cope with the high demand in such a property.

The incoming gas main must be earthed not more than 1 metre inside the building – Equipotential Bonding.

Gas and water pipes need to be "Cross Bonded" or supplementary bonded. That is having a continuous earth bonding to all gas and water pipes back to the main earth conductor of the distribution board.

The consequences for not making adequate provisions to ensure the safety of such installations and equipment could be very serious and is a criminal offence.

My advice and company practice is to instruct an approved and qualified electrician to undertake an electrical safety check on the property. A report is then issued and any defects will then need to be

rectified before a tenancy commences. You will be required to submit a test certificate to the local authority for the gas and electric supplies.

Plan for regular (perhaps annual) checks, as damage by tenants or alterations on the property can affect the property condition.

4.3 Gas requirements

Gas safety (Installation and Use) Regulations 1998 and amendments

These Regulations makes it a legal obligation to ensure that ALL gas appliances, whether fixed or portable, be maintained and checked every 12 months. A record should be kept of these checks and any maintenance undertaken.

The appliances should be checked and maintained only by qualified CORGI ACOPS registered installers. The checks also apply to flues, pipe work and ventilation.

Information must be supplied to the tenants of such checks and any previous maintenance work records must be made available to them.

A copy of the Gas Safety Certificate MUST be given to tenants at the commencement of the Tenancy.

Any breach of the Regulations could result in prosecution - with fines now up to £60,000 and/ or even imprisonment for severe non-compliance where death or injury is caused.

4.4 General Product Safety Regulations 1994

The "Catch All" Regulations came into force in October 1994, implementing a European Council

Directive in 1992: Any product supplied to a consumer (in this case the tenant) must be safe. A dangerous product is defined as one that that is not safe. Only antiques are exempt.

Failure to comply with any of the Regulations may result in prosecution

4.5 HMO Regulations

Housing (Management of Houses in Multiple Occupation) Regulations 2006

Section 234 of the Housing Act 2004 makes provisions for the person(s) having control of the property.

The person in control of the property, namely, the Owner, Agent or whomsoever has certain duties to keep the property in safe, clean and good standard of repair. These are such areas as the water supply and drainage; common parts; windows and ventilation; means of escape from fire and disposal of refuse and litter.

The Regulations require the person in control to display a Notice containing the name, address and contact telephone of that person.

Non compliance under this Section may constitute that the person is not a "Fit and Proper Person" and therefore a License may be revoked.

The person overall in control of the property is the **LICENSE HOLDER**

The general running of the property is the responsibility of the MANAGER

They may be one of the same or you could find that the manager is NOT the License Holder and any litigation would be direct to the say (the landlord, if he/she was the License holder).

5. General Requirements for HMO properties (having regard to HHSRS)

Remember, not all HMOs are required to meet the full list of requirements.

Please check with your local authority about which regulations apply to your property, especially before purchasing or working on a property.

Detailed specifications will be provided to the Landlord following an inspection appropriate to each individual HMO.

Landlords are advised not to carry out any work until they have received the schedule of works from the Environmental Health & Trading Standards Dept. in the Local Authority giving detailed specifications.

Under the new guidelines a consultation process is compulsory with the Fire Authority following an inspection of each individual HMO and precedes submission of the schedules to allow for amendment if so required.

5.1 Doors

The provision of purpose made fire doors with intumescent strips and smoke seals around the doors to all high risk areas, such as kitchens, bedrooms, electric meter cupboards. Fire door blanks must be used in existing door frames. These must be edged in hardwood.

5.2 Floors

6mm Plywood or high density hardboard floor covering to all suspended timber floors.

5.3 Ceilings

Upgrading or renewal of old lath and plaster ceilings or otherwise defective ceilings to provide adequate fire resistance.

Vertical separation and horizontal separation of flats must be at least 1 hour fire resistance and 1/2 hour fire resistance within the flat.

Polystyrene and other hazardous ceiling coverings to be removed (Artex) etc.

5.4

5.5

5.6 Loft Hatches

Upgrading of hatches and provision of bolts to secure them shut

5.7 Staircases

Under drawing of soffits to provide 1 hour fire resistance.

Infilling of under stairs area to deny the facility for storage

Adequate headroom clearance between the string of the staircase and ceiling

5.8 Partitions

Construction or reconstruction of partitions to meet the appropriate separation requirements

5.9 Storage

No storage within the protected Means Of Escape (MOE)

Cupboards within the MOE (Means of Escape) route to be emptied and locked shut or removed

No gas or electric cookers or portable heating appliances, including gas water heaters, within the protected MOE (Means of Escape) route.

5.10 General

No portable LPG (butane gas) appliances in the premises

No gas meters within the protected MOE (Means of Escape) route

Electrical installation to comply with current standards (16th Edition) of the Electrical Installers Code. Work to be carried out only by a NICEIC or ECA accredited contractor

Gas installation should be inspected at least once in every twelve months and a Landlords safety certificate issued by a CORGI registered installer for ALL gas appliances and installations.

5.11 Fire Fighting Equipment

To be provided to cover protected MOE (Means of Escape) route and kitchens

5.12 Fire Warning System

The installation of independent, mains operated smoke alarms in all rooms & common areas such as halls and landings, with heat detectors in kitchens which must be inter-linked for 2 storey HMOs.

The installation of an electrically operated automatic fire detection system in HMOs of 3 storeys or more, with manual call points on each landing and exit point.

This system is commonly known as a L2 system. This system will need to be installed by an electrician qualified in this field and an annual service agreement drawn up with a suitable firm. Names, addresses and telephone numbers of at least two key holders are required in case of false alarms.

5.13

5.14 Emergency Lighting

The installation of emergency lighting in bed and breakfast (hostel) type HMOs and in other HMOs if considered necessary.

Under the process of risk assessment emergency lighting may be compulsory in means of escape areas or high-risk areas.

5.15 Signs and Notices

The provision of signs and notices to alert occupiers of fire doors, fire exits and electric cables etc. Also the name, address and telephone number of the “manager” of the property.

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