

Landlord Licensing and the new Planning Rules for HMOs

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The **Housing Act 2004** introduced a new definition of a **House in Multiple Occupation (HMO)** (a) and introduced two types of licensing:

- (1) **mandatory** licensing (c) of certain types of HMOs, and
- (2) **discretionary** (d) additional (d,a) or HMO licensing schemes, and **selective licensing** (d,b) **where all** rented property within a selective licensing area must be licensed

both of which came into force across England on 6 April 2006.

(a) Definition of a HMO

Under the changes in the Housing Act 2004, if you let a property which is one of the following types it is a House in Multiple Occupation:

- *An entire house or flat which is let to **3 or more tenants who form 2 or more households** (b) and who share a kitchen, bathroom or toilet.*
- *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.*
- *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.*
- *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.*
- *In order to be an HMO the property must be used as the tenants' only or main residence and it should be used solely or mainly to house tenants. Properties let to students and migrant workers will be treated as their only or main residence and the same will apply to properties which are used as domestic refuges.*

(b) Definition of a household

The following are 'households' for the purposes of the Housing Act 2004:

Members of the same family living together including:

- *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)*
- *Relatives living together, including parents, grandparents, children (and step-children), grandchildren, brothers, sisters, uncles, aunts, nephews, nieces or cousins*
- *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.*
- *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.*

Therefore **three friends sharing together are considered three households**. If a couple is sharing with a third person that would consist of two households. If a family rents a single property, that is classed as a single household. If that family had an au-pair to look after their children that person would be included in their household.

- (c) **Mandatory** HMO licensing applies to all privately rented HMOs of **three or more storeys and occupied by five or more people who form more than one household**. Local authorities will be able to impose conditions on licences such as requirements for licensed properties to be occupied by a specified maximum number of occupants, and that there are adequate amenities in place, whilst landlords will need to be identified as being fit and proper in terms of their suitability to manage the property.
- (d) **Discretionary** HMO licensing applies where Local housing authorities have decided to use their discretionary powers under the 2004 Act to widen the remit of licensing to also include other HMOs or even non-HMOs:
- a. *Councils can introduce **additional licensing** of other types of (smaller) HMOs not subject to mandatory licensing. They must however consult local landlords before introducing additional licensing and it must be widely publicised when it comes into force.*
 - b. ***Selective licensing** may be introduced in areas of low demand housing or in areas with significant anti-social behaviour problems. All rented property within a selective licensing area must be licensed, regardless of whether or not the property is an HMO. Again, the local authority must consult local landlords before introducing selective licensing to an area and they must publicise it widely when it is brought in.*

How do I know if I need a licence?

Not all HMOs need a licence but if the local housing authority classes your property as an HMO and if it meets the criteria for licensing you will have to apply for a licence. You will definitely need a licence if:

- Your property has three or more storeys (including habitable attics or basements)
- Your property has five or more unrelated tenants
- Any of your tenants are unrelated to each other

You have the right to appeal against the local housing authority's decision to classify the property as an HMO.

More details here:

<http://www.communities.gov.uk/housing/rentingandletting/privaterenting/housesmultiple>

Safety in HMOs

The safety provisions for local councils come from the Housing Act 2004, Part 1 of the Act gives Local Housing Authorities extensive powers to remedy hazards within residential property. Councils work with local fire services which enforce fire safety legislation.

The **Regulatory Reform (Fire Safety) Order 2005**, now consolidates the fire safety provisions of other legislation under one simplified set of risk based requirements. Risk assessment is now used as the basis for compliance and the responsible person (property manager, landlord or agent) on the premises is held liable in the case of any breach. This means that all HMOs are subject to the requirement of an annual check and risk assessment.

New national guidance for landlords, managing agents, tenants and enforcers is now available. The guidance, **Housing – Fire Safety**, was developed by LACORS, the Chief Fire Officers Association (CFOA) and the Chartered Institute of Environmental Health (CIEH). It provides advice on how to keep residential buildings safe from fire and explains how to carry out a fire risk assessment. See: <http://www.lacors.gov.uk/lacors/upload/19175.pdf>

See Also: Statutory Instrument 2006 No. 372 - The Management of House in Multiple Occupation Regulations 2006:

<http://www.opsi.gov.uk/si/si2006/20060372.htm>

Changes to Planning Regulations for Rental Dwelling Houses and Houses in Multiple Occupation (HMOs).

See - Circular 05/2010

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1528858>

brings into force from 6 April 2010 changes to the Use Classes order, creating a new Use Class (C4) and a redefined Use Class (C3)

Use Class C3 is now split into three parts:

- C3(a) those living together as a single household as defined by the Housing Act 2004 (basically a single family unit)
- C3(b): those living together as a single household and receiving care (care in the community) and
- C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation (HMO).

The occupancy limit for Use Class C3(b) and (c) remain the same at **no more than six people**. Use Class C3(c) applies only where the property is not a HMO, which now comes under the new Use Class C4.

Use Class C4: houses in multiple occupation (3-6 occupants) applies to dwelling houses occupied by **between three and six unrelated individuals** who share basic amenities (for example student houses).

Homeowners with up to **two lodgers** would not be classed as a HMO, so are not classed as C4 Use, but small bedsits would come under C4 (HMO) Use.

The revised legislation has major implications for landlords of residential properties with house sharing – the vast majority of student private rental housing.

Two unrelated working or professional people sharing a house would not be classed as an HMO, but three or more unrelated people sharing a single dwelling will be treated as an HMO and will therefore require the landlord to apply for planning permission for change of use from use class C3 to C4.

Whilst this legislation is not retrospective anyone currently letting a property which meets the C4 criteria or creates a new letting after the 6th April 2010 will be affected.

The revised Use Classes legislation does NOT allow a change of use from use class C3 (HMO) C4 without planning permission but it does allow a change of use from Use Class C4 back to C3 without seeking permission.

Landlords currently letting their properties to students will NOT require change of use planning permission as the legislation is not retrospective, but should they subsequently (even temporarily) let to a single family they will lose the property's C4 status.

There are question marks hanging over these changes: (1) will the new government repeal the rules (David Cameron tabled an early day motion calling for reform before the election) and (2) how vigorously will it be enforced by local authorities. Planning rules enforcement is usually triggered by complaints from neighbours, which was the instigation of certain pressure groups for this legislation in the first place.

Landlords with tenants occupying illegally as a HMO who cause neighbour problems would find that enforcement action is likely to follow.

Links:

http://www.opsi.gov.uk/si/si2010/uksi_20100653_en_1

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1528858>

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