

HMO Licensing

Additional Licensing

Under the 2004 Housing Act, it is possible for local authorities to designate additional licensing schemes in respect of Houses in Multiple Occupation (HMO's). The designation has the effect of applying HMO licensing to all HMO's within a specified area. There is often some confusion as to what constitutes a HMO; for more information on mandatory and additional licensing, please read further down this article. A basic definition of a HMO can be surmised as

- Properties not made up of a single household (i.e. a family) apart from where there are a maximum of two persons in the building
- A building converted into flats where the conversion did not meet the 1991 building regulations and the building is more than one third rented.

House of Multiple Occupancy - Definitions

There are five definitions for a HMO, which can be found in the [Housing Act 2004](#)

The most common method of a property being declared a HMO is S254(2) of the Housing Act 2004. This is defined as follows.

A building or a part of a building meets the standard test if-

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see 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 (see section 259);
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (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; and
- (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.

At this point it is also worth noting that Schedule 14 of the 2004 Housing Act excludes certain properties from being classed as HMO's, which can be seen below.

Any building which is occupied only by two persons who form two households.

Therefore, this can be surmised as a HMO being an entire house or flat which is let to three or more tenants who form two or more households and who share a kitchen, bathroom or toilet .

Is my flat/apartment a HMO?

Just because your property is a self contained flat, this does not necessarily mean it is not a HMO. To examine this, we can look at the self contained flat test as defined below.

A part of a building meets the self-contained flat test if: -

- *(a) it consists of a self-contained flat; and*
- *(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).*

This effectively means that if the flat meets the same requirements as a building for a HMO then the individual flat will be classed as a HMO. For example where there are three unrelated tenants in a flat/apartment, the individual flat would be classed as an HMO. Whether a HMO licence was required would depend on where the property was located, and if additional licensing is in force in that area.

However, there is also the converted building test, which is commonly referred to as **S257 HMO's**.

Section 257 of the 2004 Housing Act states that a converted block of flats will be classed as a HMO if: -

HMOs: certain converted blocks of flats

For the purposes of this section a "converted block of flats" means a building or part of a building which is converted into, and 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-*
- *(i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and*
- *(ii) which would not have been exempt under those Regulations, building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992; and*
- *(b) in the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984 (c. 55).*

This can be surmised as 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. Full definitions of owner-occupation and building standards can be found under [S257](#) of the Housing Act 2004.

To ascertain if S257 HMO's need to be licensed in your area you will need to speak to your local authority, as the designation may vary from area to area. Typically one licence per block of flats will be required, and therefore one application fee but again you will need to check with your local authority. This only applies where there is one owner. Where there is more than one owner; each landlord will be required to make a separate application. Failure to apply for a licence is an offence under Section 72(1)

of the Housing Act 2004 for which a person may be fined up to £20,000. In addition you may be required to repay up to 12 months rent collected during such time that the property was licensed.

Do I need an HMO licence?

Firstly you will need to identify if you are the owner of a HMO. In order to do this, please see our definitions section above. Once you have identified that your property is a HMO, there are three licensing schemes which may affect you.

Mandatory HMO licensing

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. A local authority may impose conditions on these licensed properties such as requirements for them to be occupied by a specified maximum number of occupants, as well as ensuring that there are adequate amenities in place. Additionally landlords will need to be identified as being [fit and proper](#) in terms of their suitability to manage the property. Mandatory licensing is part of the Housing Act 2004 and is in place across the UK.

Additional Licensing

As previously stated, a local authority may declare an additional licensing scheme for all Houses in Multiple Occupation (HMOs) within a specified area of a Town or City. Three months notice must be given by the authority, and all HMO landlords will be under a duty to apply. The scheme will last for 5 years.

If you have a HMO, including [S257 HMO's](#) or those meeting the [standard test](#) then you will have to make an HMO application.

Selective Licensing

This is not covered by this article, but details can be found under [Part 3 of the 2004 Housing Act](#)

Amenity Standards in HMO's

One of the biggest concerns that landlords are likely to have with the implementation of additional licensing is the requirements in relation to the provision and requirements of the amenities.

Amenity standards in HMO's vary depending on the level of occupancy and size of dwelling. For a detailed guide on all types of accommodation please see [here](#). Below we have summarised some common types of properties and the main requirements. Please note that this list is not exhaustive; if you are unsure how your property is classified then please see our [HMO definitions page](#)

HMO with three occupants AND two storeys

- One bathroom with W.C (can be separate or enclosed)
- Extractor fan in kitchen

- Kitchen must be 7m² or greater
- Living room must be 11.5m² or greater
- Grade D LD2 Alarm system
- 30 minute escape route with FD30 fire doors
- Fire blanket in kitchen
- 30 minute fire separation to the basement

However, where the property is classed as low risk, which amongst other things includes a secondary escape route the following amendments can be made: -

- Escape route can consist of close fitting, solid doors
- FD30 fire door from kitchen to escape route

HMO with three or four occupants AND three storeys

- One bathroom with W.C (can be separate or enclosed)
- Extractor fan in kitchen
- Kitchen must be 7m² or greater
- Living room must be 11.5m² or greater
- Grade D LD2 Alarm system
- 30 minute escape route with FD30 fire doors
- Fire blanket in kitchen
- 30 minute fire separation to the basement
- 30 minute fire separation between units of accommodation

Two storey building converted into self contained flats

- 30 minute escape route with FS30S Fire doors, i.e. flat doors
- Well constructed close fitting doors within the flat
- 30 minute separation between each flat and to the basement
- Fire blanket in kitchen
- Grade D LD2 detector to common escape route, linked to a heat detector inside the entrance hallway of each flat, plus an independent Grade D detector giving LD3 coverage
- Fire extinguisher on each floor on the common escape route

Please see our section on [additional licensing and S257 HMO's](#) to see if your converted building will be subject to additional licensing

Three or four storey building converted into self contained flats

- 30 minute escape route with FS30S Fire doors, i.e. flat doors
- Well constructed close fitting doors within the flat
- 30 minute separation between each flat and to the basement
- Fire blanket in kitchen
- Grade A LD2 detector to common escape route, linked to a heat detector inside the entrance hallway of each flat, plus an independent Grade D detector giving LD3 coverage
- Fire extinguisher on each floor on the common escape route

Please see our section on [additional licensing and S257 HMO's](#) to see if your converted building will be subject to additional licensing

Management of HMO's

There are extra pieces of legislation that apply to the management of House of Multiple Occupation (HMO's), which applies whether the properties are subject to any form of licensing or not. If you are unsure if your HMO is a licensable property then please see our [HMO definitions page](#).

The primary piece of legislation that applies specifically to HMO's in addition to the Housing Act 2004 is the [The Management of Houses in Multiple Occupation \(England\) Regulations 2006](#) for England, or [The Management of Houses in Multiple Occupation \(Wales\) Regulations 2006](#) for Wales.

The Management of HMO Regulations 2006 sets out a number of provisions including

- **Duty of manager to provide information to occupier**

This provision details that the manager's name, address and any telephone contact number are made available, and displayed at the HMO

- **Duty of manager to take safety measures**

The primary part of this clause is concerned with ensuring that all means of escape from fire in the HMO are kept free from obstruction and maintained in good order. It also goes on to state that any fire fighting equipment and fire alarms are maintained in good working order.

- **Duty of manager to supply and maintain gas and electricity**

This clause states that a gas and periodic electrical report must be supplied to the Local Authority within seven days of it being requested, with the periodic electrical report being no older than five years. It is worth noting that some local authorities will not accept periodic electrical reports with Code 1 or 2 faults showing, as per information from the Electrical Safety Council.

- **Duties of occupiers of HMO's**

As the title suggests this legislation also places responsibility upon occupiers of HMO's which amongst other things includes allowing the managers of HMO's to carry out their duties, and not to hinder these duties. A key part of placing some responsibility onto the tenants is ensuring that they have been given adequate instruction initially to know how to comply with their obligations

- **Meaning of 'person having control' and 'person managing'**

The definitions of persons managing and the person having control may be different from your assumptions. For the avoidance of doubt, we suggest you check [S263 of the Housing Act 2004](#).

The Management of HMO Regulations 2006 states that 'these Regulations apply to any HMO in England/Wales other than a converted block of flats to which section 257 of the Act applies.' However, an additional provision was made in 2007 titled [The Licensing and Management of Houses in Multiple Occupation \(Additional Provisions\) \(England\) Regulations 2007](#) for England, and [The Licensing and Management of Houses in Multiple Occupation \(Additional Provisions\) \(Wales\) Regulations 2007](#) for Wales, which includes the above duties in S257 HMO's

Implementation of additional HMO licensing

Additional Licensing Scheme - Cathays, Cardiff

Cardiff County Council has confirmed the designation of an additional licensing scheme in respect of Houses in Multiple Occupation (HMO's) covering the Cathays Community Ward. The designation has the effect of applying HMO licensing to all HMO's in Cathays Community Ward from 1st July 2010.

What do I need to do?

If your property falls within the additional licensing remit you will need to submit an application for a licence by the 1st July 2010. You will need to: -

- Provide a criminal conviction certificate from Disclosure Scotland. This can be completed [online](#) Alternatively paper forms are available.
- Provide a passport photo
- Submit your application form along with the appropriate licensing fee of £500
- Enclose relevant certification, such as a periodic electrical report, fire alarm servicing certificate, emergency lighting certificate, fire extinguisher certificate and gas safety certificate.

Failure to apply for a licence is an offence under Section 72(1) of the Housing Act 2004 for which a person may be fined up to £20,000. In addition you may be required to repay up to 12 months rent collecting during such time that the property was unlicensed.

Cardiff County Council are likely to request an on-site visit, which would be prudent to attend as works required may be discussed and there are differing options depending on the risk of your HMO.

At the time of writing, the application forms for additional HMO licensing have not been released, but pre-registration can be made with private sector housing.

This article was produced by [CPS Homes](#), specialists in lettings and sales in Cardiff. CPS Homes offer a variety of services including expert advice on HMO legislation. For further advice please contact John Pinn on 02920 443815 or john@cps homes.co.uk. More information on HMO legislation please see our [HMO page](#).