

GUIDANCE FOR ADDITIONAL LICENSING OF HOUSES IN MULTIPLE OCCUPATION (HMO)

What is an HMO?

Under the changes in the Housing Act 2004, the following types of building are Houses or Flats in Multiple Occupation:

- 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
- A house which has been converted into bedsits or other non self-contained accommodation and is let to three 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 or toilet) and which is occupied by three or more tenants who form two or more households
- A building which is converted into self contained flats, but the conversion did not meet the standards of the 1991 Building Regulations, and less than two thirds of the flats are owner occupied

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 are treated as their only or main residence, and the same will apply to properties which are used as domestic refuges.

For what definition of what constitutes a “household” please see the glossary at the end of this document.

Why do some HMOs need to be licensed?

HMOs often have poorer physical and management standards than other privately rented properties.

The people who live in HMOs are often amongst the most vulnerable and disadvantaged members of society. As HMOs are the only housing option for many people, the government recognises that it is vital that they are properly regulated.

Licensing is intended to make sure that:

- Landlords of HMOs are fit and proper persons and/ or employ managers who are.
- Each HMO is suitable for occupation by the number of people allowed under the licence.
- The standard of management of the HMO is adequate.
- High risk HMOs can be identified and targeted for improvement

Where landlords fail to meet these criteria the Council can intervene to ensure that:

- Vulnerable tenants can be protected.
- HMOs are not overcrowded.

Councils can identify and support landlords, especially with regeneration and tackling antisocial behaviour

Which HMOs need to be licensed?

- **Mandatory HMO licensing PLEASE SEE SEPARATE GUIDANCE FOR MANDATORY LICENSING OF HOUSES IN MULTIPLE OCCUPATION**

Mandatory Licensing of HMOs is required by law, and is operated by all Local Authorities in England and Wales. Mandatory licensing applies to HMOs that are:

- Three or more storeys high, and
- Let to five or more persons who form more than one household who share an amenity such as kitchen, bathroom or toilet

- **Additional HMO licensing**

Additional Licensing is a discretionary power that Councils may decide to use to extend the licensing requirements to HMOs not already covered by mandatory licensing.

Exeter City Council has decided to use this power and, as of 23rd February 2015 an Additional HMO Licensing Scheme covering specific types of HMO will be operated throughout the City.

From that date Additional HMO Licensing will apply to all HMOs in Exeter which are:

Flats or maisonettes in multiple occupation which

- are above, or connected to, commercial premises (shops, offices etc) and which are let to three or more people forming more than one household who share a kitchen, bathroom or toilet

And to:

Certain buildings converted into flats, those being:

- Buildings which have been converted into self contained flats, where the conversion does not meet the standards set by the 1991 Building Regulations, and less than two thirds of the flats are owner occupied. Buildings which have been converted into only two flats will only require a licence if both flats are tenanted.

The 1991 Building Regulations introduced a number of requirements for buildings being converted into self contained flats, particularly in respect of fire separation. If you require further information about the specific requirements and changes introduced in the 1991 Building Regulations, you can read the document in full on www.legislation.gov.uk

Who will need to apply for a licence?

The Council has a duty to licence the person it believes to be the most appropriate person to be the licence holder. In the majority of cases this will be the owner or ONE of the owners if the property is in joint ownership.

If the proposed licence holder lives outside the U.K, local management arrangements must be in place.

In the case of a converted block of flats, only one licence will be required to cover the building. There will not be a requirement for each individual flat to be licensed separately. The licence holder must be the person having control of the building which, in most cases, will be the freeholder, the managing agent or

management company (if one is in place). In the case of multiple freeholders, one would need to be designated as the licensee, the other freeholders being bound by the licence conditions.

Additional HMO Licensing: roles and responsibilities

In cases where the licence holder is also solely responsible for the management of the HMO the licence holder assumes all the duties and responsibilities associated with the management and maintenance of the HMO specified in legislation, including the licence conditions.

In cases where the licence holder is not responsible for the management of all of the flats the 'person having control' of each of the flats will be responsible for the management of their own flats, as above, and must also agree to be bound by the licence conditions.

In these circumstances the licence holder will be responsible for:

- Ensuring that the licence conditions covering the communal areas are complied with
- Making every effort to ensure that landlords of rented flats in the building undertake the necessary gas safety etc checks, keeping copies of certificates for inspection
- Co-ordinating access for inspection by the council
- Arranging and co-ordinating any improvements required following an inspection

The following scenarios are to help decide who should be the licence holder.

1. *I am the sole freeholder of the building I also have control of all the flats. There are no individual leaseholders.*

or

I am the sole freeholder of the building. I also have control of one or more of the flats but one or more of the flats are owned by individual leaseholders.

In the above circumstances the freeholder should come forward as the proposed licence holder

2. *I am sole free holder of the building. I do not have direct control of any of the flats, they are all owned by individual leaseholders.*

The freeholder and leaseholders need to agree on who should apply to be the licence holder and who will be bound by the conditions of the licence.

3. *I have a share of the freehold but no freehold company exists. Which one of us should apply?*

In this case, the joint freeholders must reach an agreement and nominate one of the freeholders to be the licence holder. All other freeholders must agree to be bound by the conditions of the licence and are jointly responsible for ensuring that a licence is applied for and the licence conditions are complied with.

4. *I am a joint freeholder. A freehold company has been created which has control of the property. Who needs to apply?*

In this case, the company secretary is legally responsible for the company and should apply to be the licence holder. The licence will be issued to the 'Company Secretary' rather than a named individual. Joint freeholders if different from the Company Secretary should agree to be bound by the conditions of the licence.

5. A 'Right to Manage Company' (RTMC) has been set up which has control of the property.

Where a RTMC has been set up to manage the property, it is considered that it is has control of the property. In this case, the Company Secretary of the RTMC is legally responsible for the business of the company. The licence will be issued to 'The Company Secretary' rather than a named individual. Any person having a share in the RTMC other than the Company Secretary should agree to be bound by the conditions of the licence.

How to apply for an HMO licence

If you are the person having control of a building that has been converted into self-contained flats you will be required to apply for a licence unless you can provide the Council with documentary evidence that the conversion was undertaken to the standards required by the 1991 Building Regulations. If you do not have the necessary paperwork you will need to contact the Council's Building Control Section in order to obtain copies of any records they may hold.

The application process may vary in certain circumstances, for instance if we need to clarify information in your application form or your application form is incomplete.

If no application is received in respect of a building converted into self contained flats which appears to be licensable, but is not licensed, and supporting documentation cannot be provided when requested, there will be a presumption that an offence has taken place and appropriate enforcement action will be taken (see later).

STEP 1 - COMPLETE AND RETURN THE LICENCE APPLICATION FORM TO THE CITY COUNCIL

- **Additional HMO Licence Application Form**

This form is to be used for HMOs that are buildings converted entirely into self contained flats and for a flat in multiple occupation above commercial premises,.

This form can be downloaded from the City Council's website www.exeter.gov.uk/additionalhmolicensing

If you would like a hard copy of the forms, please contact the Private Sector Housing team.

Complete the application form giving as much information as possible. You must ensure that the form is signed by the proposed licence holder, and any other person or agent who you are proposing to manage the property.

In many cases, it will be appropriate for the licence holder also to be the manager of the HMO. In some cases though, it will be more appropriate and practical for a separate manager to be appointed.

Return the completed form with the full fee (**see the section – How much does a licence cost? on page 6 7 of this guidance document**) to:

Private Sector Housing, Exeter City Council, Civic Centre, Paris Street, Exeter, EX1 1RQ

You can also send the completed full licence application form by e-mail to ce-admin@exeter.gov.uk

STEP 2 – APPLICATION CONSIDERED

Once all the documentation has been received the City Council must be satisfied, relying upon the accuracy of information provided in the application form, that it is appropriate to issue a licence. In order to do this we must be satisfied that:

- The HMO is reasonably suitable for the occupation by the number of occupants/households specified in the application
- The proposed licence holder is the most appropriate person to hold the licence
- Proposed licence holder is a 'fit proper person'
- The proposed manager (if different from the licence holder) is a 'fit and proper person'
- The proposed management arrangements are satisfactory
- The person involved in the management of the HMO is competent

In deciding whether the person proposed to be the licence holder or (as the case may be) the manager of the house is a 'fit and proper person', the local housing authority must be satisfied that s/he has not:

- committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);
- practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
- contravened any provision of the law relating to housing or of landlord and tenant law

PLEASE BE AWARE THAT EXETER CITY COUNCIL WILL WHEN NECESSARY CROSS CHECK APPLICATIONS WITH OTHER LOCAL AUTHORITIES AND THE CRIMINAL RECORDS OFFICE.

IF YOU ARE PROPOSING TO BE A LICENCE HOLDER FOR MORE THAN ONE PROPERTY IN EXETER YOU ONLY NEED TO COMPLETE THE 'FIT AND PROPER' PERSON CHECK ON ONE APPLICATION, PROVIDING A LIST OF THE PROPERTIES YOU ALSO PROPOSE TO LICENCE – ALL OTHER PARTS WILL STILL NEED TO BE COMPLETED FOR EACH PROPERTY

In deciding whether the proposed management arrangements for the house are otherwise satisfactory, the local housing authority must have regard to:

- whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved;
- whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved; and
- whether any proposed management structures and funding arrangements are workable.

In those very rare cases, where, for example, the proposed licensee is not considered 'fit and proper' or where the property is wholly unsuitable to be an HMO, an application will be refused.

STEP 3 - ISSUE OF LICENCE PROPOSAL

Once the application is complete and the fee paid in full we will in most cases issue a 'Proposal to Grant a Licence'. This is a pack of documents which includes a draft copy of the licence, specifying the number for which the HMO is to be licensed (which may differ from the number applied for if it is clear that there are inadequate facilities for the number sought), together with the proposed conditions, and a statutory Notice of Proposal. Copies of this proposal will be sent to the proposed licence holder, the manager (if a manager is appointed), and any other persons who have an interest in the property. This includes freeholders and leaseholders.

The proposal gives 14 days for interested parties to make representations to us. We are required by law to consider such representations. Where appropriate, we can grant a licence with modification (for example, laying down a different occupancy figure, or applying extra licence conditions). If a representation concerned some sufficiently serious ground for not granting a licence, we could, after investigation and due consideration, refuse to grant it.

STEP 4 - ISSUE OF FULL LICENCE

At the end of the representation period, we will issue the full Licence Pack to you and all interested parties, and the HMO will then be licensed for a period of 5 years. This licensing pack will include laminated copies of your full licence and the licence conditions and a statutory Notice of Decision to Grant a Licence.

HMO register

Once the licence has been issued it will be placed on a public register which will be accessible on the City Council website.

IMPORTANT NOTE: The Housing Act 2004 requires every local authority to maintain a public register of premises licensed as an HMO. The Register will include the following information

- The address of the HMO property
- The name and address of the Licence Holder (***this will be the address given in the application form unless an additional c/o address is provided.***)
- The name and address of the Manager (if different)
- Start and duration of the licence
- Summary of licence conditions
- Number of storeys
- Maximum number of occupants

INSPECTION OF THE PROPERTY

Information that you provide on the application form will be used to programme the inspection of the property. You will be contacted by a member of staff from the Private Sector Housing team to make arrangements to carry out that inspection when it is due.

How much does an HMO licence cost?

The Council charges a one off fee, for a licence lasting 5 years, in order to cover the administration costs of licensing, and the resources needed to inspect licensable properties.

The fee payable for **buildings converted into self contained flats subject to Additional Licensing and flats in multiple occupation in mixed used buildings** is set according to their size. Certain discounts are available.

The following lists the fees and discounts to enable you to calculate the amount that you will need to enclose with your application.

- A flat in multiple occupation in mixed use up to five occupants **£710.00**
(additional £100.00 per occupant thereafter)

When there is more than one flat in multiple occupation, this will be considered as a section 257 HMO and Section 257 HMO fees are applicable.

- Section 257 HMOs

2 flats	£860.00
3 flats	£1010.00
4 flats	£1165.00
5 to 7 flats	£1,320.00
8 to 10	£1,470.00
More than 10	£1,470.00 plus an additional £150.00 per flat

Discounts Available.

- **Single Ownership Discount.**

A discount of £100.00 per licence fee is available if all flats are under one ownership. This discount does not apply where there are fewer than 2 flats.

- **Accreditation/Landlords Association Discount**

A discount of £125.00 per licence fee is available where the proposed licence holder or manager is a member of a recognised Landlord Association **and** has attended training during the past five years

OR where a proposed licence holder or manager is accredited under the AFS Unipol Scheme.

HOW TO PAY

1. **Payment can be made by cheque**
2. ***Payment can be made online via the City Council website – www.exeter.gov.uk/additionalhmolicensing***
3. **If you would prefer to make a card payment over the telephone please call 01392 265193.**

Additional charges

Starting from the 1st April 2015 the HMO Licensing team will be carrying out a programme of proactive street surveys to identify properties that require a licence. If we find a licensable HMO for which an application has not been made, a £300 'finders fee' will be applied to the standard fee.

If you are a landlord, or person otherwise having control of a property that may be licensable, we urge you to contact us as soon as possible.

This £300 uplift on the licence fee for unlicensed HMOs is made in order to cover the additional administrative costs incurred in carrying out proactive street surveys and inspections, and is not to be confused with penalties for failure to apply for a licence, see later.

Licence fees are not refundable for unused licence periods. The only situation where a refund may be given is where it can be demonstrated that the property was not an HMO and that a fee was charged for a licence which was not/is not required.

What standards will apply to my HMO?

As a landlord or freeholder of any HMO (regardless of whether it is a licensable HMO), there are number of standards and regulations you will need to comply with. During our inspection we will have regard to all of the following standards or enforcement measures:

Prescribed standards for HMOs

All HMOs must have amenities such as heating, washing facilities, kitchen facilities and toilets. The number and type of amenities required will depend on the type and size of the house and the level of occupancy.

For fire precaution standards for the different types of HMO go to www.exeter.gov.uk/firesafety

In deciding whether an HMO is suitable for occupation by the proposed number of persons or households, the Council must have regard to Regulations made under the Housing Act 2004. These are: The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 as amended by the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.

The Council's own standards for amenities and room sizes can be found here:

www.exeter.gov.uk/roomsizes

www.exeter.gov.uk/amenitystandards

Management Regulations

All HMOs, whether licensable or not, must comply with HMO Management Regulations. These impose duties on both the person having control of the HMO and in some cases, the person occupying.

There are two distinct sets of Management Regulations depending on the type of HMO concerned. These are.

- **Statutory Instrument No 372 (2006) – The Management of Houses in Multiple Occupation (England) Regulations 2006**

This set covers HMOs that contain shared accommodation such as house sharers, bedsits, hostels and other non self contained accommodation. These types of HMOs are defined under Section 254 of the Housing Act 2004.

- **Statutory Instrument no 1903 (2007) – The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007**

This set covers HMOs that are buildings converted into self contained flats, as defined under section 257 of the Housing Act 2004.

Further information about both sets of Regulations can be found here
www.exeter.gov.uk/managementregulations

Licensing conditions

When a licence is issued for an HMO, it will contain a schedule of conditions, which the licence holder and manager must comply with. These conditions will vary according to property type, but typically will require the licence holder to:

- If there is a gas supply to the building, produce to the City Council annually, for their inspection, a gas safety certificate obtained in respect of the property within the last 12 months*
- Keep electrical appliances and furniture made available to tenants in a safe condition
- Supply to the City Council, on demand, a declaration as to the safety of electrical appliances and furniture**

- Ensure that smoke alarms are installed in the house and keep them in proper working order***.
- Supply to the City Council, on demand, certificates from a competent person showing that the HMO's fire warning system has been installed and/or maintained and /or tested by him and that it is in proper working order***
- Supply to the City Council, on demand, a declaration as to the condition and positioning of such smoke alarms***
- Ensure that all landlords with flats in the building supply their tenants with a written statement of the terms on which they occupy it (a standard Tenancy Agreement containing clauses which amongst other things impose reasonable duties and responsibilities on occupiers will satisfy this requirement). Include within the statement a requirement that the occupier:
 1. comply with the Manager's reasonable written instructions for the storage within the property of refuse and household waste; and
 2. presents the property's refuse containers on refuse collection days at the specified location on its boundary for emptying by the Council
- Display the following in a prominent location within the HMO:
 1. the HMO licence;
 2. the licensee's name, address and contact telephone number
 3. instructions relating to refuse and recycling

* the requirement to produce gas safety certificates only relates to rented flats within the building

**declarations must be made in respect of each rented flat within the building by the person having control of each flat

***applies to all flats regardless of tenure

Housing Health and Safety Rating System (HHSRS)

As with all residential properties, HMOs are subject to the HHSRS which is a risk based scoring system we use to assess whether there are deficiencies in a dwelling/occupancy/unit that present a hazard to the occupants. The system covers 29 prescribed hazards, which cover a range of different issues such as excess cold, damp, fire and electrical safety, trips and falls, food hygiene, collision and entrapment etc.

Where a sufficiently serious hazard is identified in a dwelling, the Council has a duty to take action to remedy it and can serve a statutory Improvement Notice requiring that specified works are carried out to remove it. In extreme cases, where there is imminent risk to the safety of the occupants, the Council may take immediate remedial action or even prohibit all or part of a building for habitation if necessary. The City Council imposes a charge where it has to resort to the service of a Statutory Improvement Notice on a landlord. More information can be found about the HHSRS www.exeter.gov.uk/hhsrs

Documentation Required

WE WILL ASK TO SEE THE FOLLOWING DOCUMENTS (FOR COMMON PARTS AND TENANTED FLATS ONLY) WHEN AN INSPECTION OF THE PROPERTY IS CARRIED OUT. YOU DO NOT NEED TO SEND ANY DOCUMENTS IN WITH YOUR APPLICATION.

Gas supply - If you provide any gas appliances you must have an annual inspection carried out by a competent person (an engineer recognised by Gas Safe as being competent to undertake such testing). This is required by the Gas Safety (Installation and Use) Regulations 1998.

Electrical Installation - All electrical installations must be inspected by a competent person every five years (e.g. an engineer recognised by the Institute of Electrical Engineers as being competent to undertake such testing) and shown to be safe. The certificate will state when the next inspection is required.

Electrical Appliances - If you provide any 'portable' electrical appliances (i.e. fridge, freezer, microwave oven, kettle, heater etc) these should be inspected annually by a competent person (e.g. an engineer recognised by the Institute of Electrical Engineers as being competent to undertake such testing) unless all the appliances are under one year of age.

Energy Performance Certificates.

Energy Performance Certificates are required in respect of self contained flats which are rented out.

You should be aware that from April 2018 it will be illegal, in most cases, for you to rent out a property with an energy rating of F or G. (As of April 2016 your tenants can request energy efficiency improvements to your property, which you can't refuse).

Furniture Safety

If you provide any furniture to which the Furniture and Furnishings (Fire) (Safety) Regulations 1988 apply (i.e. beds, sofas, arm chairs, curtains etc) they must comply with the Regulations. At application stage you will be asked to confirm this.

You can find out more about these regulations at this website www.legislation.hmso.gov.uk

The penalties in relation to HMOs and Licensing

It is an offence if the landlord or person in control of the property:

- Fails to apply for a Licence for a licensable property
- Allows a property to be occupied by more people than are permitted under the Licence
- Breaches a condition of the licence
- Breaches a provision in the Management Regulations for HMOs

Fine

A fine of up to £20,000 may be imposed if a licensable HMO is allowed to operate without a licence . In addition, breaches of any of the Licence conditions or Management Regulations can result in fines of up to £5,000 (Level 5 on the standard scale).

Rent Repayment Orders

A tenant living in a property that should be licensed, but which is not, can apply to the Residential Property Tribunal to claim back any rent they have paid during the unlicensed period (up to a limit of 12 months). Councils can also reclaim any housing benefit that has been paid during the time the property was without a licence.

Restrictions on termination of tenancies

Landlords cannot use the grounds laid out in Section 21 of the Housing Act 1988 to obtain possession where an HMO is licensable but not licensed

Temporary exemption from Licensing

If a landlord or person in control of a property intends to stop operating it as an HMO to reduce the numbers of occupants and can give clear evidence of this, they can apply for a Temporary Exemption Notice.

This lasts for a maximum of three months and ensures that a property in the process of being converted from an HMO does not need to be licensed.

If the situation is not resolved, then a second Temporary Exemption Notice can be issued. When this Notice runs out the property must be licensed, become subject to an Interim Management Order, or cease to be an HMO.

Houses in Multiple Occupation - Report an Unlicensed House in Multiple Occupation

We are working hard to identify Houses in Multiple Occupation across the city to ensure they meet the appropriate standards in terms of fire safety and amenities, and that they are adequately managed.

We actively examine Council Tax and Housing Benefit records and the electoral register to identify licensable but unlicensed HMOs and this has brought a large number of properties to our attention. However, we also need the support of local residents and businesses if we are to obtain a true picture of the actual number and location of HMOs in the city

If you suspect any HMO in the City is operating without a licence please report it to the Private Sector Housing team on 01392 277888.

GLOSSARY

The '**Accreditation / landlord Association discount**' applies to:

- landlords who are members of a recognised landlord association and who have attended a landlord training course within the last 5 years;
- landlords whose properties have been approved under the AFS/Unipol accreditation scheme.

The '**common parts**' of an HMO means:

- the entrance door to the HMO and the doors leading into each unit of living accommodation;
- staircases, passageways, corridors, halls, lobbies, porches, balconies, steps, etc. that are used by occupiers to gain access to the entrance doors of their living accommodation;
- front approach paths and rear yards and gardens.

A '**household**' is where all the persons are members of the same family. A person is a member of the same family if:

- those persons are married to each other or live together as husband or wife (or in an equivalent relationship in the case of persons of the same sex); or
- one of them is a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin of the other; or
- one of the persons is a relative of one of the couples.

A 'household' can consist of a single person.

A '**self-contained flat**' is a separate set of premises:

- which forms part of a building;
- either the whole or a material part of which lies above or below some other part of the building; and
- in which all three basic amenities (a toilet, bath or shower and wash hand basin with hot and cold running water, and proper food preparation and cooking facilities) are available for the exclusive use of its occupants.