

# Houses in multiple occupation



The 2004 Housing Act, introduces the licensing of Houses in Multiple Occupation (HMOs). It will be compulsory to license larger, higher-risk HMOs. Councils will also be able to license other types of HMO to tackle problems in these smaller properties. This will replace Torbay's current registration scheme and is slightly different. This legislation is going to apply nationwide.

## What is an HMO?

HMO stands for House in Multiple Occupation, which means a building, or part of a building, such as a flat, that:

- is occupied by more than one household and where more than one household shares - or lacks - an amenity, such as a bathroom, toilet or cooking facilities
- is occupied by more than one household and which is a converted building - but not entirely self-contained flats (whether or not some amenities are shared or lacking)
- is converted into self-contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulation, and at least one third of the flats are occupied under short tenancies.

The building is occupied by more than one household:

- as their only or main residence
- as a refuge for people escaping domestic violence
- by students during term time
- for other purposes prescribed by the government.

A household is:

- families (including single people, couples and same sex couples)
- other relationships, such as fostering, carers and domestic staff.

## Why does the government want HMOs to be licensed?

Larger HMOs, such as bedsits and shared houses, often have poorer physical and management standards than other privately rented properties. The people who live in HMOs are 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 people, 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 refuse to meet these criteria the council can intervene and manage the property so that:

- vulnerable tenants can be protected
- HMOs are not overcrowded
- councils can identify and support landlords, especially with regeneration and tackling antisocial behaviour.

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## Do all HMOs have to be licensed?

No. Under the new Housing Act 2004 there are three types of licensing:

1. Compulsory (required by law) licensing of HMOs for properties that are:

- three or more storeys high
- have five or more people in more than one household, and
- share amenities such as bathrooms, toilets and cooking facilities.

2. Additional licensing of HMOs

A discretionary power that councils may decide to apply to a particular type of HMO, for example, two-storey properties occupied by three or more students or asylum seekers.

3. Selective licensing of other residential accommodation

Properties that are not subject to HMO licensing could be covered under a selective licensing scheme. This is where the council may declare that certain areas, for example, where there is low demand for housing and/or antisocial behaviour, are appropriate for selective licensing. This licensing would cover all forms of private rented housing, including HMOs. It is most likely that at first councils will only introduce licences for HMOs that fall into the first group. They may introduce the other two types of licensing later.

Please note that licensing only applies to HMOs where rents or other considerations are payable.

Torbay intends to introduce only compulsory licensing in the foreseeable future.

## How will it work?

Anyone who owns or manages an HMO that must be licensed has to apply to the council for a licence. The council must give a licence if it is satisfied that:

- the HMO is reasonably suitable for occupation by the number of people allowed under the licence
- the proposed licence holder is a fit and proper person
- the proposed licence holder is the most appropriate person to hold the licence
- the proposed manager, if there is one, is a 'fit and proper person'
- the proposed management arrangements are satisfactory,
- the person involved in the management of the HMO is competent
- the financial structures for the management are suitable.

## What does a 'fit and proper person' mean?

The council will carry out checks to make sure that the person applying for the licence is a fit and proper person. In deciding whether someone is fit and proper the council must take into account:

- any previous convictions relating to violence, sexual offences, drugs and fraud
- whether the proposed licence holder has broken any laws relating to housing or landlord and tenant issues
- whether the person has been found guilty of unlawful discrimination
- whether the person has previously managed HMOs that have broken any approved code of practice.

It is advisable for the landlord or manager to be a member of a professionally recognised body, or an approved landlords association that is affiliated to the National Federation of Residential Landlords.

## What is in a licence?

The licence will specify the maximum number of people who may live in the HMO. It will also include the following conditions, which apply to every licence:

- a valid current gas safety certificate, which is renewed annually, must be provided
- proof that all electrical appliances and furniture are kept in a safe condition
- proof that all smoke alarms are correctly positioned and installed
- each occupier must have a written statement of the terms on which they occupy the property, for example, a tenancy agreement.

Councils may also apply the following conditions:

- restrictions or prohibitions on the use of parts of the HMO by occupants
- a requirement that the condition of the property, its contents, such as furniture and all facilities and amenities, bathroom and toilets for example, are in good working order
- a requirement for specified works or repairs to be carried out within a particular timeframe
- a requirement that the responsible person attends an approved training course.

### How long will it last?

A licence will normally last for a maximum of five years, although it can be for a shorter period.

### How much will it cost?

Landlords will have to pay a fee to cover the administration costs of the licence procedure. This will vary depending on the amount of time and resources that are needed to satisfy all the licensing conditions. For properties that are already registered under the council scheme there will be "passporting" arrangements.

### Can the council refuse to license my property?

Yes, if the property does not meet the conditions set out above and the landlord or manager is not a fit and proper person.

### What will happen then?

If a landlord fails to bring an HMO up to the required standard, or fails to meet the fit and proper person criteria, the council can issue an Interim Management Order (IMO), which allows it to step in and manage the property. The owner keeps their rights as an owner. This order can last for a year until suitable permanent management arrangements can be made. If the IMO expires and there has been no improvement, then the council can issue a Final Management Order. This can last up to five years and can be renewed.

### Can I appeal?

You may appeal if the council decides to:

- refuse a licence
- grant a licence with conditions
- revoke a licence
- vary a licence
- refuse to vary a licence.

You must appeal to the Residential Property Tribunal, normally within 28 days.

Details of how to appeal will be available soon.

### Temporary exemption from licensing

If a landlord or person in control of a property intends to stop operating it as an HMO or reduces the numbers of occupants and can give clear evidence of this, then he or she 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 runs out the property must be licensed, become subject to an Interim Management Order, or cease to be an HMO.

### Are there any other penalties?

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

- fails to apply for a licence for a licensable property or
- allows a property to be occupied by more people than are permitted under the licence.

A fine of up to £20,000 may be imposed. In addition, breaking any of the licence conditions can result in fines of up to £5,000.

### Rent repayment orders

A tenant living in a property that should have been licensed, but was 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.

The private sector housing team will be happy to answer any of your queries on **01803 208717**.

## IS MY PROPERTY AN HMO?

It will be an HMO if it is one of the following:

**A shared house** lived in by people who belong to more than one family\* and who share one or more facilities\*\*.

**A house in bedsits** lived in by people who belong to more than one family\* and who share one or more facilities\*\*.

**An individual flat** lived in by people who belong to more than one family\* and who share one or more facilities\*\*.

**A building of self-contained flats** that do not meet 1991 Building Regulation standards.

Exemptions:

- If it is occupied by only two people.
- If it is occupied by the owner (and their family if any) and one or two lodgers.
- If it is occupied by a religious community
- If the occupiers have their main residence elsewhere\*\*\*.
- If no one in the property is required to pay rent.
- If the owner or manager is a public body
- If the owner or manager is an educational institution.
- A building of self-contained flats if two thirds or more of the flats are owner-occupied.
- If the property is part of a guest house or hotel (unless an 'HMO Declaration' is made).

## SOME OF THESE HMOs MUST HAVE A LICENCE - WHICH ONES?

An HMO must have a licence if all three of the following apply:

- a. It is an HMO (see definition of HMO above) and
- b. it is three storeys or more (includes basements) and
- c. it is occupied by five people or more.

Exemptions:

- If the whole property is in self-contained flats.
- If the basement is in commercial use and there are only two residential storeys above.

\* Family - husband, wife, co-habitee, child, step-child, foster-child, grandchild, parent, step-parent, foster-parent, grandparent, brother, half-brother, sister, half-sister, aunt, uncle, niece, nephew, cousin.

\*\* Facilities - basic amenities: wc; wash hand basin, shower/bath; cooking facilities.

\*\*\* Accommodation used by full-time students while they are studying is taken to be their main residence.