

HMO Licensing – Information for Applicants

Before lodging an application for a licence for a House in Multiple Occupation (HMO), please ensure that you have read the following guidance notes. If you require any further advice regarding the Licensing Scheme or the relevant standards, please contact Private Sector Housing on the above contact details

Background information

- The Housing Act 2004 places a duty on the local authority to licence private rented accommodation that falls into certain categories.
- If an HMO is required by law to be licensed, it is a criminal offence not to do so. In addition, any rent paid on an unlicensed property may be recoverable through legal action.
- You must apply for a licence to the local authority where the property is located.

What is an HMO?

"HMO" means a House in Multiple Occupation as defined by sections 254 to 259 of the Housing Act 2004 and it applies to a wide range of housing types. A building or a part of a building constitutes an HMO if:

- a building or a part of a building, consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- the living accommodation is occupied by persons who do not form a single household;
- 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;
- The building is converted into self-contained flats and more than one third of the flats are tenanted and the conversion does not comply with Building Regulations 1991 or subsequent Building Regulations.
- 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 undertaking a full time course of further or higher education 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.
- Households are defined as comprising families (including foster children, children being cared for) and current domestic employees, single persons or co-habiting couples (whether or not of the opposite sex).

Which properties have to have a licence?

Compulsory licensing applies to larger higher risk HMO's of **3 or more storeys occupied by 5 or more people who constitute more than one household.**

IF YOU ARE IN ANY DOUBT ABOUT YOUR OBLIGATION TO BE LICENSED, PLEASE GET ADVICE.

First application

1. Each application will be determined on its own merits. The applicant must provide RBC with the details specified in the application form together with the appropriate fee.

2. RBC shall licence an applicant (subject to the imposition of any conditions it deems appropriate) if it is satisfied:

- a) The HMO is reasonably suitable, (or could be made so by the execution of works required by a condition) for occupation by the number of persons permitted under the licence having regard to the prescribed standards;
- b) The applicant and all those persons associated with the management of the HMO are fit and proper persons;
- c) The proposed management arrangements for the HMO are satisfactory;
- d) The property is suitable for the number of occupiers stated by the landlord;
- e) The person having control of the house (i.e. receiving the rack rent) is to be the licence holder unless the contrary is shown that a more appropriate person to be the licence holder is a person not having control.

3. Licence Conditions

RBC may require as a condition of granting the application the execution of works within a specified time period to make the property suitable for occupation.

RBC may in addition during the period of the licence impose such conditions relating to the management of the house.

Prescribed standards include the number, type and quality of shared bathrooms, toilets, cooking facilities (amenity standards).

For all conditions, the local authority MUST consider the relationship between its duties under Part 1 of the Housing Act 2004 (Housing Health & Safety Rating System, which replaces the current fitness standards) and imposing licence conditions.

In particular it MUST:

- seek **to identify, remove or reduce** category 1 or 2 hazards by exercise of Part 1 functions, NOT conditions;
- This does not prevent the council from imposing conditions relating to installation or maintenance of facilities or equipment required under “prescribed standards”;
- The imposition of conditions does not prevent use of part 1, enforcement powers.

4. Test for Fitness (For Applicant, Proposed Licence Holder or Manager)

4.1 RBC has a duty to ensure so far as possible that the licence holder and the manager of the licensable HMO are **fit and proper** and that adequate management and financial arrangements are in place. **RBC must be satisfied that the applicant acknowledges, respects and abides by all relevant legislative requirements and has taken and will take all steps to ensure that properties under his/her control and/or management meet the relevant standards at all times.**

4.2. The following factors will be relevant in determining whether the proposed licence holder, and/or manager are a fit and proper person:

- i. Any available information regarding any convictions involving violence, drugs, fraud or other dishonesty that the applicant may have;
- ii. Any available evidence that the applicant has practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or connection with, the carrying on of any business;
- iii. Any complaint or court proceedings (whether or not resulting in a conviction) against the applicant involving the contravention of any provision of housing or landlord and tenant law. This includes (but is not exclusive to) the following:
 - The Management of Houses in Multiple Occupation Regulations 2006 and any subsequent Management Regulations;
 - Notices under sections 189 and 190 of the Housing Act 1985 and enforcement notices under the Housing Act 2004;
 - Prosecution under section 198A of the Housing Act 1985 for failure to comply with repair notices;
 - Prosecutions for offences under Part 1, 2, and 3 of the Housing Act 2004 Works and management notices under sections 352 and 372 respectively of the Housing Act 1985;
 - Prosecution under section 376 of the Housing Act 1985 for failure to comply with works or management notices;
 - Gas Safety (Installation and Use) Regulations 1998;
 - Prosecution for harassment or unlawful eviction under the Protection from Eviction Act 1977;
 - Any civil proceedings for an injunction or damages taken against the applicant as landlord in relation to the letting of a property;
 - Non-compliance with any management conditions imposed in respect of an HMO.
- iv. Any person associated or formerly associated with the proposed licence holder or manager (whether on a personal, work or other basis) has done any of the things set out above.

4.3 In considering what weight should be given to any factor in 4.2 above relevant to a particular application, RBC shall have regard to:

- Whether the applicant has a history of persistent mismanagement and/or delay in complying with statutory notices relating to works and/or management of the properties under his control and whether it has been necessary for the city council to do works in default;
- The circumstances of the complaint or offence, the date when it occurred, any penalty or damages imposed on the person concerned and any evidence of recurrence;
- Whether there have been multiple offences or complaints or a series of offences or complaints over a period of time against the applicant;
- Any mitigating circumstances of the offence or complaint;
- The attitude of the applicant in relation to the offence or complaint.

5. Arrangements for fire safety

Every HMO must have adequate fire precautions including provisions for

- a) Detection and giving warning in case of fire;
- b) Escape from the building;
- c) Fire fighting equipment.

A risk assessment should be carried out by or on behalf of the applicant to establish both the risk of fire occurring and the risk to people in the event of fire. This would apply to everyone who may be in the HMO (residents, staff and visitors) and should take adequate account of

any one with special needs. This assessment will show whether the existing fire precautions are adequate and what changes need to be made. If you have carried out a risk assessment, please enclose a copy with your application. All fire safety provisions should comply with the relevant Regulations and/or British Standards.

- If your house has been fitted with a mains interlinked smoke alarm system, single point smoke detectors or battery operated smoke detectors, the system should be checked and serviced at least once every year. Either a specialist contractor or NICEIC/ECA electrician should carry out the check;
- If your house has been fitted with an emergency lighting system, the system should be checked and serviced at least once every year;
- Fire doors provide a vital part of a properties protected escape route in the event of fire. Doors should be fully self-closing and all latches should connect without resistance. Each door should close squarely and lie flush against the rebates of the frame. Intumescent strips and cold smoke seals must be undamaged and form a good seal between the edges of the door and the frame;
- Half hour fire resisting materials enclosing meters, pipes etc. in the common exit route should be undamaged;
- Walls, ceilings and partitions should be undamaged and capable of providing the appropriate fire resistance.
- All upholstered furniture provided with rented accommodation must comply with the Furniture and Furnishings (Fire Safety) (Amendment) Regulations 1993. This means that all materials must have passed cigarette and match ignition tests and the filling materials must have passed flammability test. If your furniture complies it should have a label attached permanently with the lining giving details as appropriate

6. Arrangements for gas and electrical safety

- Under the Gas Safety (Installation and Use) Regulations 1998 the landlord must have an annual gas safety check on all gas appliances by a Gas Safe registered gas installer.
- Ensure that every fixed electrical installation is inspected and tested at intervals not exceeding five years by a person qualified to undertake such inspection and testing. Obtain a certificate from the person conducting that test, specifying the results of the test. Supply that certificate to the local authority within 7 days of receiving a request in writing for it from the local authority. Only electricians approved by the NICEIC or ECA are considered competent for this purpose.

7. Suitability for Multiple Occupation (s.65)

- RBC **cannot** be satisfied that a house is reasonably suitable if it fails to meet standards prescribed by Regulations.
- RBC may decide a property is not reasonably suitable for occupation by a maximum number of households or people even if it does meet prescribed standards for occupation by that number of households or persons.

A licence holder may appeal to the Residential Property Tribunal Service (RPTS – www.rpts.gov.uk) if the licence holder disagrees with the grant or refusal of a licence, or with the conditions applied (s.94).

Please note:

This document is a brief summary of some of the legal requirements for licensing. All references are to the Housing Act 2004. You should take your own legal or professional advice.

HMO Licensing – Filling in the Forms

The application consists of four parts designed to make it easy for you to provide us with the information we need.

Part I: Landlord information

This part is for you to give us details of you as landlord. If you have more than one property, **a separate form will be required for each property.**

You can photocopy the partially completed form and attach it to details of each of your properties. *Please, however, insert **the relevant property address** at the top of the form, and **date and sign** the declaration at the bottom separately for each individual property. There are separate boxes for these items on the form.*

Part II: Property details

We will initially assess the property from the information that you provide on the application. We will try and determine whether your property appears to be well managed and reasonably free from hazards which might put the occupiers at risk. We therefore need as much information from you as possible to help us to process your application quickly, and to determine our schedule of inspections. Answering “No” or “Not known” to an individual question will not determine the outcome of your application, so please answer as truthfully and accurately as possible as it is an offence to supply any information that is false or misleading.

Please note that reasonable fire precautions may vary considerably between different types of property.

These forms attempt to give you the opportunity to clearly describe the property, the nature of occupation and the facilities provided.

There is no reference to room sizes in the application form. However, if when we inspect we find that rooms are used in such a way that they cause a hazard to the occupier or create statutory over-crowding, we will take appropriate action which might include variation of the licence and/or service of notices under Part 1 of the Housing Act 2004.

For example, in a bed sitting room containing cooking facilities, there should be sufficient space to contain the occupier's possessions, room for a bed and room to get into and out of it, a table and chair(s) for eating, a source of heating that does not cause a risk of burns or fire when it is in use, and room to safely use the cooking facilities.

Part III: Proposed Licence Holder information

This part is to be filled in if the proposed licence holder is a different person from the person having control of the house. For the purposes of section 64(3)(b), the Council must assume unless the contrary is shown, that the person having control of the house is a more appropriate person to be the licence holder. It is considered that the person having control of the house is the person who receives the rack-rent for the premises (whether on his own account or as an agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent. “Rack-rent” is defined under the act as rent which is not less than two thirds of the full net annual value of the premises.

Part IV: Person managing information

If the landlord manages the property, there is no need to complete this part.

If a third party manages your property for you, that person should complete this part and submit it as part of the complete application. Again, a photocopy is acceptable, *as long as the declaration is separately produced, dated and signed for each property.* Please make sure this is attached to your application, as otherwise it will not be possible for us to process it.

Part V: Declarations

This part is to be signed and dated by all parties to the application.

Please read the notes contained within the application form as to who the relevant persons are that need to know that you have made an application for an HMO licence. If it is not applicable to you, please indicate so in the space provided.

Property inspections

Some properties will be inspected before licences are granted: others may already be well known to us and we may decide that inspection is not necessary at this time. We do not have to inspect a property before we give a licence.

We **must** ensure that we inspect all licensed properties within a reasonable time and ensure that they are free of category 1 and 2 hazards as defined in Part 1 of the Housing Act 2004. We will probably inspect most properties fairly quickly, depending on the rate at which applications are received. Many will be inspected before the licence is granted, depending on our work schedule and the information you give us. We may also inspect if we receive a request for assistance (complaint) from an occupier or other interested party. We hope that the information given will help us to appropriately prioritise statutory inspections.

Please remember that when we do inspect, we will require supporting evidence of the information you have provided in your application or have been required to maintain under the terms of your licence, such as copy current gas certificates, fire certificates, electrician's inspection reports, evidence of furniture safety compliance, tenancy agreements, etc.

It is not a requirement, but it would be good practice (and make it easier at inspection) if you developed a "dossier" for your property which could contain your supporting information. If you have had professional fire precaution work done, provision of a detailed estimate/plan of work would be helpful. Similarly, if any electrical work is done under Part P, for example, retaining a copy of the plan of work and receipted invoice will provide evidence of good management and maintenance.

The Licence

The council will acknowledge receipt of your application, and then assess the information on it. Based on that information, we can grant a licence for the number of occupiers that you can request; change the numbers on the basis of the information you have given; or refuse to grant a licence. In most cases, if we feel that the property does not merit a licence, we will arrange to inspect the property before making a final decision. We would generally expect to make a decision about whether or not to licence a property within 6 weeks of receiving the completed application form and the licence fee.

The Licence can be granted for up to five years. In some cases, if we grant a licence but require you to do work to bring your property up to a particular standard, we may grant the licence for a shorter period. Where works are required, we will normally have inspected the property before that decision and will of course need to inspect the property again within the time table stated to ensure compliance.

A licence is personal to the person(s) or organisation stated on the document. If for any reason, the name stated on the licence ceases to be valid, the licence will cease or will need to be varied and a new application will need to be made. If the property is sold by a licensee and it continues to be an HMO requiring a licence, the licence will cease and the new owner must apply. Where the licence was given to a married couple changes could include death or divorce. Where a partnership is the licensee, dissolution of the partnership for whatever reason will also terminate the licence or if appropriate will need to be varied. Other changes could also affect the validity of the licence, and we would urge licensees to contact us if they are in any doubt.

Renewal of licence/variation applications

1. Renewal of a licence must be applied for every five years, on or before expiry of the licence.
2. The applicant must on renewal provide details of any changes in the particulars entered in the register in relation to the house and must pay the appropriate fee. Any application will be determined on its own merits.
3. The provisions of paragraphs 3, 4 and 5 under 'First application' shall be applied to any application for renewal and to any application for variation where the proposed variation is a change of owner or manager.

Revocation of a licence

1. RBC may revoke a licence if it considers that:
 - a) The licensee or the person managing the house is no longer a fit and proper person
 - b) There has been a serious breach of the conditions relating to the management of the house.
2. RBC may revoke a licence if works to make the house suitable for occupation permitted by the licence are not carried out within a specified time. In deciding whether to revoke, RBC shall apply the same standards as were applied at the beginning of the period of the licence.

For the purposes of this guidance note formal cautions shall be treated as though they were convictions.

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 a licensable 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 a licensable HMO.

Licence Fees

For the first licence a basic fee of £630.00 is payable to cover the costs of licensing. This includes one 'Test of Fitness' assessment. A fee of £777.00 is payable in respect of Assisted applications or Undeclared HMO's. Assisted applications include applications that require substantial assistance from Council Officers and circumstances where incomplete applications are submitted that require additional officer time to resolve.

For renewals a basic fee of £559 is payable to cover the cost of licensing. This includes one 'Test of Fitness' assessment.

Should more than one 'Test of fitness' assessment be required on an application, an additional fee of £74 will be applied to cover the cost.

A reduction of £74 per additional application, will be applied where an applicant owns more than one licensable HMO dwelling as the 'Test of fitness' part of the assessment will need to be undertaken once only.

Payment

Payment can be accepted by cheque, postal order, credit/debit card or banker's draft. The Council only accepts Visa, MasterCard, Switch, Delta and Maestro. There is a charge of 1.65% for using a credit card. Please do not send cash in the post. Cheques should be made payable to Runnymede Borough Council.

You are required to submit payment of the fee with your application; otherwise it will be considered incomplete and cannot be processed.

A person commits an offence if he supplies any information to the local housing authority in connection with any of their functions under Parts 1 to 4 of the Housing Act 2004 and the information is false or misleading, and he knows that it is false or misleading or is reckless as to whether it is false or misleading.

A person who commits this offence is liable on summary conviction to a fine not exceeding £5,000

NOTE: INCOMPLETE APPLICATIONS MAY BE RETURNED TO YOU FOR COMPLETION AND MAY NOT BE REGARDED AS HAVING BEEN MADE UNTIL SUFFICIENT INFORMATION IS PROVIDED