

Guidance Notes to assist with completing the application for a licence to operate a House in Multiple Occupation under the provisions of the Housing Act 2004

INTRODUCTION

These guidance notes are intended to help you when filling in an HMO Licensing application form. There are two sections to these guidance notes:

Section A

Provides an explanation of the parts of the application that need to be completed depending on the type of licence for which you are applying. It is important that you read this section to ensure you have completed the application form correctly.

Section B

Provides a glossary of words, terms or phrases having a specific legal meaning that may appear in the application. They are listed in alphabetical order.

Once you have completed the application and have the required supporting documentation you should return, by e-mail or post, the application form and scanned documents to: pshousing@eastdevon.gov.uk

WHO CAN APPLY FOR A HMO LICENCE:

In determining a licence application the Council has a duty to award the HMO Licence to the most appropriate person. This will normally be the 'Person Having Control' of the property and will, at the very least, be the person who:

- Receives the rack rent of the premises whether on his own account, or as agent or trustee of another person; or who would receive it, if the premises were let at a rack rent.
- Has the power to let and terminate tenancies;
- Has the power to access all parts of the premises to the same extent as the owner; and
- Has the power to authorise expenditure, up to 25% of the yearly income of the house, for emergency repairs and/or maintenance.

You must complete this application fully and accurately. Please enter N/A to any questions that are not applicable to your application.

The Council requires details of all other people involved in the ownership and/or management of the property covered by this application. Therefore, the application should be completed as follows;

Owner: Part 1, Section 1 - Details of the Property Owner
Part 3 – Declarations

Proposed Licence Holder: Part 1, Section 2 - Details of the Proposed Licence Holder
Part 2 - Property Details (for every property requiring a licence)
Part 3 – Declarations

Manager / Managing Agent:(if appropriate) Part 1, Section 3 - Details of the HMO Manager / Managing Agent -
Manager's Details.
Part 3 - Declarations

Statutory Requirements:

You **must** let certain persons know in writing that you have made this application or give them a copy of it. The persons who need to know about it are: -

- Any mortgagee of the property.
- Any owner of the property to which this application relates (if that is not you) i.e. any freeholder and any head lessors who are known to you.
- Any other person who is a tenant or long leaseholder of the property or any part of it (including any flat) who is known to you other than a statutory tenant or other tenant whose lease or tenancy is for less than 3 years (including a periodic tenancy).
- The proposed licence holder (if that is not you).
- The proposed managing agent (If any) (if that is not you).
- Any person who has agreed that he or she will be bound by any condition or conditions in a licence if it is granted.

You must tell each of these persons –

- your name, address, telephone number and e-mail address or fax number (if any).
- the name, address, telephone number and e-mail address or fax number (if any) of the proposed licence holder (if it will not be you).
- that this is an application for a HMO licence under Part 2 of the Housing Act 2004.
- the address of the property to which the application relates.
- the name and address of the local housing authority to which the application will be made.
- the date the application will be submitted.

You can provide the relevant information to the persons identified above by completing the 'Landlord Licence Notification Form' which enclosed in the application pack.

You do NOT need to return the Notification Form to us.

Section A: Completing The Application Form

PART 1 Application Details

- **Part 1, Section 1: Details of Owner**
You must complete this section as part of the application process.
- **Part 1, Section 2: Details of Proposed Licence Holder** You must complete this section as part of the application process.
- **Part 1, Section 3: Provide Details of Managing Agent/Manager if different from Proposed Licence Holder**
Only complete this section if you employ a Managing Agent to carry out the day to day management of the property.
- **Part 1, Section 4: Details of the Person Having Control of the Property** You must complete this section if the answer to Section 1, Question 1.2 is NO.

PART 2 Property Details

- **Part 2, Section 1: Details of Property to be Licensed** o Floor Plans
You are required to provide floor plans for all new licence applications. You are also required to provide floor plans when applying to vary a licence because the layout of the property has changed from the original application.

If you have plans of the property you may submit those instead.
- **Part 2, Section 2: Details of Facilities and Management** You must complete all questions in this part of the application.

PART 3 Declarations

- All relevant signatures **MUST** be obtained. Please read all parts of the Declaration Form very carefully, including all explanatory notes.

Supporting Documents and Licencing Fee

- Please use the check list, enclosed with the application pack, to ensure that you have included all supporting documents required as part of the application procedure.
- The licence fee can be paid as per the instructions on the application form. Fee information below.

Licence fees and (relicense fee if there is any material change since last licence)

Numbers of occupants in accommodation Up to 5 occupants = £600

6 or more occupants = £800*

Re-licensing fees (with no material changes)

Up to 5 occupants = £500

6 or more occupants = £700*(* takes into account the additional officer time required to inspect and report on larger properties.)

Other relevant fees

Reminder letters (for missing documents or renewals)

First reminder – free of charge; subsequent reminders (per letter) = £60

Pre-application advice with inspection (each visit) = £150

HMO Licences will be issued depending on compliance, from 1 year up to 5 years.

The licence fee may be varied following consultation with the Private Sector Housing Manager.

Please be aware the licence is not transferable and therefore a new application will be required if the licence holder changes, this will be charged at the above rate and a separate licence will be required for each licensable property.

The Application fee must be included as part of your application.

Section B: Definitions to Help Assist in Complete a HMO Licence Application and Glossary of Legal Terms

Please note that this glossary of legal terms is in alphabetical order.

Agent: An individual appointed by the landlord of a property to carry out some or all of the landlord's duties on his/her behalf. This could be a professional property manager or an associate or relation of the landlord.

Authorised Expenditure: Power to agree that money can be spent on items, work, materials etc. reasonably necessary for the proper management of the property without having to seek approval from a superior, landlord, owner or any other person. That is not to say that approval from some other person should not be sought if it does not cause undue delay having regard to level of the expenditure and the urgency of the requirement.

Basic Disclosure Certificate (CRB Certificate): A certificate issued by the Criminal Records Bureau showing what current convictions, if any, have been recorded against your name.

Building Regulations Approval: A document issued by the local authority which, following the submission of plans and/or specifications, indicates that any work to be done in the property which requires Building Regulation Approval has been assessed by the local authority and approval given to the works proceeding.

Building Regulations/Completion Certificate: A certificate issued by the Local Authority which states that specified building work carried out in the building has been completed to a standard which complied with the Building Regulations in force at the time the work was done.

Certificate of Electrical Inspection: A certificate completed and signed by a competent person indicating the state of the electrical installations, electrical switchgear and accessories and all fixed and portable electrical appliances provided by the landlord. Appliances provided by the landlord include any appliances left by previous tenants and which have not been removed by the landlord.

Charity: An organisation set up to provide help and raise money for those in need.

A Company: An association or collection of individual real persons and/or other companies, who each provide some form of capital.

Companies House Registration Number: A number given to companies and limited liability partnerships when they register at Companies House. It is normally an eight digit number such as 01234567 but the first digits could be replaced with letters for a number of reasons, for instance to indicate the region of registration.

Competent Person: A 'competent person' in respect of gas safety inspections, is defined as a person with the appropriate qualification. Note that simply being Gas Safe registered is not sufficient qualification in itself, as within the Gas Safe registration process there are competencies to carry out and inspect various aspects of gas installation and equipment. Landlords should ensure that the inspection is carried out by a person qualified to inspect the types of equipment installed in the house.

In respect of electrical safety inspections, a 'competent person' is defined as a person qualified to at least the AQA VRQ standard for domestic electrical installations. Such a person should be competent to issue a report with findings showing that the installation has been inspected and tested to BS 7671. The person must also subscribe to an accreditation scheme administered by an approved body.

Approved Bodies currently include:

BRE Certification Limited; NICEIC Certification Services Limited; British Standards Institution; NAPIT Registration; ELECSA Limited; or anyone approved by the Building Regulations Advisory Committee (BRAC), an organisation sponsored by the Department for Communities and Local Government (DCLG) for the purposes of Part P of The Building Regulations. The Council may wish to be satisfied that a person inspecting domestic electrical installations has the required competencies to produce Periodic Inspection Reports (PIRs).

In respect of fire detection and warning systems and emergency lighting systems, a 'competent person' is defined as a person qualified as for electrical safety inspections described above or having an appropriate qualification in fire safety engineering.

Control Order: A Control Order is similar to a Management Order (see Management Order) but made under Section 379 of the Housing Act 1985.

County Court Judgment: A legal decision handed down by the County Court. Judgments for monetary sums are entered on the Register of County Court Judgments, which is checked by Credit Reference Agencies to assess the creditworthiness of individuals.

Create Tenancy: To let a property (or part of a property) to a tenant under the terms of an agreement or without further reference to a superior landlord.

Emergency Lighting: A system of battery-powered lights complying with British Standard (BS 5266) Part 1 or equivalent where the battery is continuously trickle charged from the mains supply. The lights are located on the fire escape route and are designed to operate if the primary lighting sub-circuit fails.

Enforcement Notice: See Statutory Notice

Fire Detection and Warnings System: A system of smoke and/or heat detectors and sounders properly designed and installed to comply with one of the following British Standards: BS 5839 Part 1 L2 or BS 5839 Part 6.

Fit and Proper Person: In deciding whether someone is 'fit and proper', the Council must take the following into account: any previous convictions relating to violence, sexual offences, drugs and fraud, immigration offences ; 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, and whether the person is insolvent or bankrupt.

Freeholder: means the same as owner, i.e. the person entitled to sell the property.

Formal Caution: see Simple Caution.

Furniture and Furnishings (Fire) (Safety) Regulations 1988: Regulations which require that all upholstered furniture which is offered for sale, for hire or provided in furnished privately rented accommodation must comply with certain standards of fire safety.

Fire Safety Risk Assessment: A careful examination of what could cause harm to occupiers/persons in relation to fire, so that the landlord can determine whether enough precautions have been taken or whether he/she should do more to prevent harm. This is usually in the form of a written document.

Habitable Room: A room capable of being used for everyday activities. Such rooms would include all living accommodation and sleeping accommodation but would exclude kitchens, bathrooms, conservatories porches etc, and unconverted basements.

House in Multiple Occupation (HMO): An HMO is a building, or part of a building, such as a flat, which:

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; or;

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); or;

is converted self-contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulations and at least one-third of the flats are occupied under short tenancies.

The building also has to be occupied by more than one household as their only or main residence, or as a refuge for people escaping domestic violence, or by students during term-time, or for other purposes prescribed by the government.

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

A single person or members of the same family living together;

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.

Under the Housing Act 2004, three friends sharing together are considered to be three households. If a couple are sharing with a third person that would consist of two households. If a family rents a property, this constitutes a single household. If that family had an au-pair to look after their children, that person would be included in their household.

Note: People that live in the same place, but who are not connected in the ways described above, are not counted as a single household. So, for example, a group of five students or friends count as five households, even if they live at the same address.

Joint Owner(s): Two or more people who share ownership of a property.

Landlord: A person who has the legal right to let and terminate tenancies in a property. This could be by virtue of their being the freeholder, being a leaseholder with rights to let or as the result of some form of agreement with the freeholder. If no manager is appointed, then the landlord will also be the manager.

Landlord's Gas Safety Records: A form completed and signed by a properly qualified and competent person indicating the state of repair and appropriateness of the gas installation and appliances. The report must cover the whole of the installation and all gas appliances, including necessary venting requirements.

Lease: See Tenancy.

Leasehold: Control of the property is granted to the leaseholder by virtue of a lease. The owner of a property can agree to grant control of the property to some other person or body for a specific period of time at an agreed rent. The leaseholder acquires the rights and obligations as set out in the lease agreement, usually to the same extent as the freeholder.

Letting(s): The number of units of accommodation offered at the property. The number of units of accommodation should be the same as the maximum number of tenancy agreements the landlord may have at any one time. This could be different to the number of tenants as some units may be occupied by more than one person.

Licence: For the purpose of this application, 'licence' refers to a HMO licence.

New Licence: This should be applied for if a property does not have a current Mandatory HMO licence. If the licence holder changes, you must apply for a new licence, as HMO licences are not transferrable.

Renewal Licence: This is the type of licence which should be applied for when the original HMO licence on the property has expired.

Variation of Licence: This is the type of licence which should be applied for if details on the current HMO licence need to be changed. One example of this is when the number of households/occupants at the property increases or decreases or there are changes in the property layout.

Licence Holder: A person, or company, entitled to apply for, or who has been awarded, a licence in respect of the HMO. The licence holder needs to be the person who

Receives the rack rent of the premises whether on his own account, or as agent or trustee of another person; or who would receive it, if the premises were let at a rack rent; can let and terminate tenancies; can authorise, organize and pay for essential repairs. They also must be reasonably available for tenants to contact in case of problems that may arise with respect to the property and they must have the means to resolve the issues arising. The proposed licence holder may often be the landlord, or may be a manager to whom the rent is paid and who has authority from the owner to effectively manage the property. The licence holder is the person in overall control of the property. If the proposed licence holder is not considered to be a fit and proper person, he/she may appoint an agent to control the property and hold the licence. The licence holder should have authority to authorise and pay for works or repairs, as he/she will be liable for any breaches of the licence.

Living Accommodation: Rooms in a house which are used for everyday living activities, excluding bedrooms, kitchens and bathrooms. . Living accommodation includes Living Rooms, Dining Rooms, Studies, Games Rooms and Sports Rooms and includes all other rooms apart from kitchens, bathrooms, uninhabitable rooms, hallways, landings, stairwells, passages and cupboards. Where a room has a dual function in that it is used as a bedroom and living room, it should be classed as sleeping accommodation.

Managing Agent: see Agent and Manager

Manager: A person, or company, appointed by the landlord for the purpose of managing the house. The manager could be an employee of the landlord. If no separate manager is appointed, then the landlord will also be the manager. The manager will act under the instructions of the landlord and will have powers and duties invested in him by the landlord. The manager must have at least the following powers: to let to tenants and terminate tenancies in accordance with the law; to access all parts of the premises to the same extent as the landlord.; to be authorised to approve expenditure of up to 25% of the yearly rental income of the property for necessary repairs, etc. (Note that the manager is not expected to authorise such expenditure, but that he or she has the authority to do so if there is a reasonable need). The manager must be able to travel to the property within a reasonable time unless there are arrangements in place to cover every eventuality that may demand his or her presence.

Management Order: Where a local authority has made an application to the Residential Property Tribunal (RPT) for a Management Order on the property under Part 4 of the Housing Act 2004. Management Orders are to last for a fixed period of time to protect occupiers and others from risk to their health, safety or welfare. The effect of the order is to allow the local authority to possess and take over the entire management of the property.

Mortgage: A loan given by a lender under an agreement which is secured on the property, meaning that the lender would be entitled to take possession of the house and sell it if the repayments of the loan are not kept up.

Mortgagee: A person or financial institution who has granted a loan secured upon a property. Note that this word is often interpreted incorrectly.

Mortgage Lender: A person, company or institution to which loan repayments are made and who would be entitled to take possession of a property if loan repayments are not kept up. The Mortgage Lender may also be referred to as the Mortgagee.

Mortgagor: A person who borrows money from the mortgagee in respect of a loan secured on a property.

New Licence: see Licence.

Owner: The person entitled to sell a particular property.

A Partnership: An arrangement where the parties involved agree to cooperate to advance their mutual interests.

Periodic Inspection Report (PIR): A report relating to the in-service condition of an electrical installation against the requirements of the issue of BS7671 current at the time of the inspection, irrespective of the age of the installation. (Please note that the Periodic Inspection Report (PIR) is a report, NOT a certificate).

Person or Persons: With respect to the number of people occupying the HMO, the terms 'person' or 'persons' refer to persons of all ages, including newly-born children. If you are applying for an HMO licence, you should state both the number of people including children who live in the house now and also the number of people that you anticipate will live there in the future.

Professional Body: An organisation of which one may become a member, or part of a group or society founded for a specific professional purpose.

Rack Rent: Rent being paid to the landlord.

Renewal Licence: see Licence.

Resident Landlord: A landlord who lives continuously in the same building (or in another dwelling which forms part of the same building) as his tenant(s), unless the two dwellings are contained in a purpose-built block of flats.

Risk Room: A kitchen, a bedroom or living room.

Simple Caution: A formal alternative to prosecution in minor cases, administered by the police and other law enforcement agencies in England and Wales. It is commonly used to resolve cases where full prosecution is not seen as the most appropriate solution.

Sleeping Accommodation: The rooms within a house in which a bed, beds or other furniture for sleeping are provided. (See also Living Accommodation).

Statutory Notice: A legal notice served under an act of the law or legal requirements imposed upon citizens which are deemed to exist as a result of legislative action. Examples of this include notices served under the Housing Act 2004 or The Environmental Protection Act 1990.

Statutory Fine: A financial criminal penalty imposed by the Courts.

Statutory Tenant: A tenant whose tenancy has expired under the ordinary rules of law but who has rights by statute to pay rent and continue in occupation at the property under rent control or other emergency legislation.

Tenant: A person or group that rents and occupies land, a house, an office or the like from another for a period of time.

Tenancy: A contract between a landlord and a tenant that allows the tenant to live in a property as long as they pay rent and follow stipulated rules.