Chapter Four

Houses in Multiple Occupancy (HMOs)
Welcome to the second edition of the West of England Landlord Manual, which has been developed as a stand-alone information document and a reference manual to accompany the West of England Landlord Development Course. This manual has been adopted by the West of England Housing Group; these are the four local authorities in the region (Bath & North East Somerset, Bristol City Council, North Somerset and South Gloucestershire).

Development of the original manual was undertaken by the Improvement and Development Agency (iDEA), Local Authority Coordinators of Regulatory Services (LACORS) and Accreditation Network UK (ANUK). Additions have been made by the West of England Housing Group in order to make this document more applicable to landlords and agents with properties in the West of England region.

This second edition contains new sections or updates on many subjects, including:

- Energy Performance Certificates.
- Local Housing Allowance.
- Regulatory Reform (Fire Safety) Order 2005.
- Inheritance Tax and Capital Gains Tax.
- Regional Accreditation.

We are committed to providing private landlords and agents with quality information to help them to operate successful businesses now and into the future. We can now offer three major development opportunities to regionally based private landlords and agents; The annual Landlord Expo, The Landlord Manual and the West of England Landlord Development Course.

The importance of the private rented sector continues to grow and it is essential for the success of the region that the quality, standards and professional development of those working in the sector is maintained. For these reasons the West of England Housing Group will continue to work in partnership with private sector landlords and agents.
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4 HOUSES IN MULTIPLE OCCUPATION (HMOs)

Special requirements apply to types of properties known as ‘Houses in Multiple Occupation’ (HMOs).

4.1 Definition of an HMO

The definition of an HMO is contained in sections 254 and 257 of the Housing Act 2004. An HMO can be a whole building or a part of a building (for example a block of flats might not be an HMO, but one of the flats within the block could be an HMO).

A building or part of a building that contains two persons sharing is not an HMO. Also, a building occupied by the owners household plus up to two lodgers is excluded.

If the property is not excluded as above, then a building or a part of a building is a house in multiple occupation:-

- If the building or part of building consists of living accommodation, and
- The accommodation is occupied by more than a single household (See later for definition of household), and
- It is their main residence, and
- Rents are payable or other consideration is provided, and
- The occupiers share one or more (or the accommodation lacks one or more) toilet, personal washing facilities or cooking facilities.

A household is where all the persons are members of the same family. There are other prescribed descriptions for example an au-pair. A person is a member of the same family if:

- Those persons are married to each other or live together as husband and 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 self contained flat will be an HMO if the self contained flat matches the criteria above (i.e. occupied by more than a single household, rents are payable etc.)

The definition of a self contained flat in the Housing Act 2004 is:
• A separate set of premises. (whether or not on the same floor).
• Which forms part of a building;
• Either the whole or material part of which lies above or below some other part of the building; and
• In which a toilet, personal washing facilities and cooking facilities are available for the exclusive use of its occupants.

Certain converted blocks of flats - Section 257 HMO
Under section 257 Housing Act 2004, certain converted blocks of flats may be an HMO. A purpose built block of flats is not an HMO because the building must have been “converted” into self contained flats.

A converted block of flats is an HMO if it meets the following criteria:
• Building work undertaken in connection with the conversion did not comply with the Building Regulations 1991 (or regulations that applied after if the conversion was after 1st June 1992) and still does not comply with them; and
• Less than two-thirds of the self contained flats are owner-occupied.

Below is a table to show some examples of what does and does not constitute an HMO, if you are looking for information on HMO licensing please see section 4.3, or contact your council’s Private Housing team. [See Appendix 5, Useful contacts for landlords]

<table>
<thead>
<tr>
<th>Description</th>
<th>HMO?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 bedroom house or flat, 2 unrelated tenants</td>
<td>NO</td>
</tr>
<tr>
<td>2 bedroom flat, 1 couple living as though married &amp; 1 unrelated sharer</td>
<td>YES</td>
</tr>
<tr>
<td>3 bedroom house, 3 unrelated tenants</td>
<td>YES</td>
</tr>
<tr>
<td>3 bedroom house, brother, sister and cousin sharing</td>
<td>NO</td>
</tr>
<tr>
<td>Building converted into 3 flats, conversion does not meet building regulations 1991, 1 tenant in each flat</td>
<td>YES</td>
</tr>
</tbody>
</table>

4.2 Duties upon the manager of an HMO

The Management of Houses in Multiple Occupation (England) Regulations 2006 and the licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 place the following duties upon the manager of a house in multiple occupation (HMO). Failure to comply with the regulations is a criminal offence. This section highlights some of the key duties in the Regulations: Duty to provide information to occupiers:
• The name, address and telephone number of the manager must be provided to each household in the HMO, and the same information must be clearly displayed in a prominent position in the HMO (in the common parts of the HMO).

Duty to take safety measures:
• Means of escape from fire must be kept free of obstruction and kept in good order and repair.
• Fire fighting equipment, emergency lighting and alarms must be kept in good working order.
• All reasonable steps must be taken to protect occupiers from injury with regard to the design of the HMO, its structural condition and the total number of occupiers. In particular, any unsafe roof or balcony must be made safe or all reasonable measures taken to prevent access to them. Safeguards must be provided to protect occupiers with windows with sills at or near floor level.
• In HMOs of more than four occupants, notices indicating the location of means of escape from fire must be displayed so they are clearly visible to all occupiers.

Duty to maintain water supply and drainage:
• These must be maintained in proper working order - namely in good repair and clean condition. Specifically, storage tanks must be effectively covered to prevent contamination of water, and pipes should be protected from frost damage.

Duty to supply and maintain gas and electricity:
• These should not be unreasonably interrupted by the landlord or manager.
• All fixed electrical installations must be inspected and tested by a qualified engineer at least once every 5 years and a results certificate obtained.
• The latest gas safety record and electrical safety test results must be provided to the council within 7 days of the council making a written request for such.
Duty to maintain common parts, fixtures, fittings and appliances:

- All common parts must be kept clean, safe, in good decorative repair and working order and free from obstruction. In particular, handrails and banisters must be provided and kept in good order, any stair coverings securely fixed, windows and other means of ventilation kept in good repair and adequate light fittings available at all times for every occupier to use.
- Gardens, yards, outbuildings, boundary walls/fences, gates, etc., which are part of the HMO should be safe, maintained in good repair, kept clean and present no danger to occupiers/visitors.
- Any part of the HMO which is not in use (including areas giving access to it) should be kept reasonably clean and free from refuse and litter.

Duty to maintain living accommodation:

- The internal structure, fixtures and fittings, including windows and other means of ventilation, of each room should be kept clean, in good repair and in working order.
- Each room and all supplied furniture should be in a clean condition at the beginning of the tenant’s occupation.

Duty to provide waste disposal facilities:

- No litter should be allowed to accumulate, except for that stored in bins provided in adequate numbers for the requirements of the occupiers. Arrangements need to be made for regular disposal of litter and refuse having regard to the Council’s collection service.

4.2.1 Duties on occupiers of HMOs

The Regulations also place a number of duties upon the occupiers (e.g. tenants) of an HMO. These duties include:

- Not to obstruct the manager in the performance of their duties.
- Allow the manager access to the accommodation at all reasonable times for the purpose of carrying out their duties.
- Provide information to the manager which would be reasonably expected to enable them to carry out their duties.
- Act reasonably to avoid causing damage to anything the manager is under a duty to supply, maintain or repair.
- Store and dispose of litter/refuse as directed.
- Comply with reasonable instructions of the manager as regards to any fire escape, fire prevention measures and fire equipment.

The Regulations require that the specified duties are met and maintained. If an occupier breaches their duties under the Regulations it is likely to put their tenancy at risk, and you may be able to take legal action against the tenant. They can also be prosecuted by the local authority with a maximum fine of £5000. So tenants are liable to being prosecuted and fined in the same way as landlords if they fail to comply with the regulations.

4.3 Licensing of HMOs

The Housing Act 2004 introduced licensing of some categories of HMOs. It is compulsory to licence larger, higher-risk dwellings. Local authorities will also be able to additionally licence other types of HMOs if they can establish that other avenues for tackling problems in these properties have been exhausted.

4.3.1 Purpose of licensing of HMOs

Licensing is intended to make sure that:

- A landlord of an HMO is a fit and proper person (or employs a manager who is).
- Each HMO is suitable for occupation by the number of people allowed under the licence.
- The standard of management of the HMO is adequate.
- This is to ensure vulnerable tenants are protected and that the dwelling is not overcrowded.

High-risk HMOs can be identified through licensing and targeted for improvement by a local authority under the HHSRS.

4.3.2 HMOs subject to mandatory licensing

Mandatory licensing applies to HMOs for which:

- The HMO or any part of it comprises three storeys or more, and
- It is occupied by five or more persons, and
- It is occupied by persons living in two or more households.

If you are the landlord of a licensable HMO you must apply to the Local Authority for a licence. More information about mandatory HMO licensing can be found on the DCLG website at: www.communities.gov.uk

For clarification of whether or not your property is licensable contact your local Environmental Health team. [See Appendix 5, Useful Contacts for Landlords]

If you refuse to apply for a licence or cannot meet the criteria yourself yet do not use an agent to manage the property, the local authority must intervene and manage the property.

Other HMOs may also require a licence through an additional local authority licensing scheme. [See section 4.3.3 below]
4.3.3 Additional licensing of HMOs

Local Authorities have a discretionary power to establish a scheme to require particular types of HMO within their area to be licensed. This can apply to any type of HMO provided it isn’t already mandatorily licensable, nor exempted by the Act (for example student halls of residence, housing association owned properties). Before they can set up such a scheme, the authority must follow the legal process which includes:

- Identifying the problems arising from that type of HMO.
- Considering whether any other course of action to deal with the problems is available.
- Ensuring the scheme is consistent with their local housing strategy.
- Consulting with those likely to be affected including tenants, landlords, landlord organisations etc.

A scheme does not come into effect until three months after it is made and may last for up to five years.

4.3.4 Selective licensing

Local authorities have the power to selectively licence any privately rented properties in designated areas suffering from low housing demand and/or significant and persistent anti-social behaviour. A selective licensing scheme is not limited to HMOs.

A similar process to that for Additional Licensing must be followed before a scheme can be made. A scheme does not come into effect until 3 months after it is made and may last for up to 5 years.

4.3.5 Transitional licensing

Prior to the introduction of HMO licensing, some local authorities operated HMO registration schemes locally with control provisions, to ensure that HMOs met certain standards. In those areas, all registered HMOs requiring a mandatory licence were automatically given one for the duration of the remaining registration period. At the end of that time you or the manager will have to apply for a new licence if the property continues to meet the criteria for mandatory HMO licensing.

Smaller registered HMOs that do not require a mandatory licence are also automatically given a licence as if an additional licensing scheme was in operation. This licence lasts for the remainder of the period they would have been registered.

This special arrangement for additional licensing schemes to replace registration for smaller HMOs will last until July 2009. After that if the local authority wishes to continue additional licensing they have to undertake the normal consultation and approval procedures. However, even if they drop the scheme any licences which are still running will remain in force until the end date on the licence. When the licence comes to an end, if there is no new additional licensing scheme in place, you will not need to apply for a new licence.

4.3.6 Applying for a mandatory licence

Anyone who owns or manages a licensable HMO has to apply to the local authority for a licence. West of England HMO licence application forms can be downloaded from: www.landlordinfo.co.uk

The local authority 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 or that the proposed manager, if there is one, is fit and proper.
- The proposed licence holder is the most appropriate person to hold the licence.
- The proposed management arrangements are satisfactory, the person involved in the management of the HMO is competent and the financial structures for the management are suitable.

As of 01 January 2008 the West of England authorities will be taking a hard line towards landlords of licensable HMOs who have failed to come forward and apply for their licence.

The landlord of any licensable HMO who has not applied for a licence by 01 January 2008 may be subject to an additional £100 administration fee on top of the licence fee for the property. Landlords could also be prosecuted for failing to licence their properties [See section 4.3.12].

4.3.7 Fit and Proper Person test

In determining whether the licence applicant is a ‘Fit and Proper Person’ the local authority will take into account a number of factors. They have to consider:

- Any unspent convictions relating to violence, sexual offences, drugs and fraud.
- Whether the person has breached any housing or landlord and tenant law.
- Whether they have been found guilty of unlawful discrimination.

4.3.8 Licence conditions

A mandatory licence, which will normally last for the maximum five year period, will carry a fee to be charged by the local authority to cover their administration costs. This fee will vary with the size of the property and the number of occupants. There may also be discounts available for joining certain schemes, such as accreditation or deposit bond or loan schemes. The licence will specify the maximum number of people who may live in the HMO.
The following conditions must apply to every licence:

- A valid current gas safety record, which is renewed annually, must be provided. (for properties that have gas)
- Proof that all electrical appliances and furniture are kept in a safe condition.
- Proof that all smoke alarms and emergency lights are correctly positioned and installed.
- Each occupier must have a written statement of the terms on which they occupy the property. This may be, but does not have to be, a tenancy agreement.

The local authority may also apply other conditions of their own which may include any of the following:

- Restrictions or prohibitions on the use of parts of the HMO by occupants.
- Action necessary to deal with the behaviour of occupants or visitors.
- Ensuring the condition of the property, its contents, such as furniture and all facilities and amenities (e.g. bathroom and toilets) are in good working order and to carry out specified works or repairs within certain time limits.
- A requirement that the responsible person attends an approved training course in relation to any approved code of practice.

A full list of HMO licensing conditions can be obtained from the licence application form, available at: www.landlordinfo.co.uk

4.3.9 Properties which cannot be granted a licence

If the property is not suitable for the number of occupants or is not properly managed or the landlord or manager is not a fit and proper person, a licence will not be granted. If an HMO is supposed to be licensed but cannot be granted one, the council must make an Interim Management Order (IMO), which allows it to manage the property. The IMO 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 (FMO). This can last up to five years and can be renewed.

4.3.10 Temporary exemption from licensing

If the landlord or person in control of the property intends to stop operating as an HMO or legally reduces the numbers of occupants and can give clear evidence of this, then they can apply for a Temporary Exemption Notice for a further three months. When this runs out the property must be licensed, become subject to an Interim Management Order, or cease to be a HMO.

Temporary Exemption Notices also apply where the licence holder dies. The property will be treated as if it is subject to an exemption notice for three months, during which time the estate can either apply for a new licence or cease to run the property as an HMO. If it takes longer than the initial three months the estate can apply for one further exemption notice.

4.3.11 Right of appeal against a local authority decision

A landlord can appeal to the Residential Property Tribunal, normally within 28 days if the local authority refuses a licence, grants a licence with conditions, revokes or varies a licence.

More information about the work of the Residential Property Tribunal Service and the jurisdiction of Residential Property Tribunals under the Housing Act 2004 can be obtained from: www.rpts.gov.uk [See section 3.6.10 for more information on the RPTS]

4.3.12 Offences

It is a criminal offence if you or the 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.

Note also, that no section 21 notice [See section 6.2.6 for more information about section 21 notices] may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO. This means that unlicensed HMO landlords will be unable to evict their tenants by the notice-only section 21 procedure.

4.3.13 Rent Payment Orders

The Local Authority may apply to the Residential Property Tribunal Service for a ‘rent repayment order’ allowing it to reclaim any Housing Benefit that has been paid during the time the property was without a licence up to a maximum of 12 months.

A tenant living in a property may also make an application to claim back any rent they have paid during the unlicensed period, up to a maximum of 12 months, if the landlord has been convicted of operating a licensable HMO without a licence, or has been required by a rent repayment order to make a payment to the local authority in respect of Housing Benefit on the property.

For more information about licensing go to: www.communities.gov.uk or www.landlordinfo.co.uk