



Ministry of Housing,  
Communities &

# Houses in Multiple Occupation and residential property licensing reform

Guidance for Local Housing Authorities



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# Introduction

The private rented sector is an important part of our housing market, with 4.7 million households in England<sup>1</sup>. The sector has undergone rapid growth over the last ten years. It is the second largest tenure in England, representing 20 per cent of all households in England

Houses in multiple occupation (HMOs) form a vital part of this sector, often providing cheaper accommodation for people whose housing options are limited. HMOs are known to be commonly occupied by students but there are also a growing number of young professionals and migrant workers sharing houses and flats.

Some HMOs are occupied by the most vulnerable people in our society. These people live in properties that were not built for multiple occupation, and the risk of overcrowding and fire can be greater than with other types of accommodation. We want to support good private landlords who provide decent well-maintained homes and not impose unnecessary regulation. The nature of HMOs means that regulation of this part of the sector is widely agreed to be necessary. However, it is important that this regulation is proportionate and targeted.

Mandatory licensing of HMOs came into force in 2006 and originally applied to properties of three storeys or more with five or more people making up two or more separate households living in them. Licensing has largely been successful in helping to drive up standards and make these 60,000 larger HMOs safer places to live in.

As demand for HMOs increased in the decade since mandatory licensing was first introduced there has been a significant increase in properties with fewer than three storeys being used as HMO accommodation, notably two storey houses originally designed for families and flats. Some have been used by opportunist rogue landlords who exploit their vulnerable tenants, and rent sub-standard, overcrowded and potentially dangerous accommodation. The growth of HMOs has also had an impact on the local community, including where inadequate rubbish storage leads to pest infestation and health and safety

accommodation in HMOs and added requirements relating to the provision of refuse disposal in licensed properties.

The measures complement those in the Housing and Planning Act 2016 which tackle rogue landlords. They will also operate within the additions brought in by that Act to the enforcement regime, including the financial penalty procedures and banning orders.

This document sets out guidance for local authorities in the implementation of requirements set out in 2018 statutory instruments on the Licensing of Houses in Multiple Occupation.

# 1. Purpose and scope

## 1.1 Introduction

This document has been prepared as a guide for local housing authorities to help them understand how to implement the reforms to HMO licensing and should be read alongside The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018, and the Housing Act 2004.

In this guidance, the term **Person in Charge** includes a person managing or controlling an HMO. This will include property or letting agents or anyone in the business of renting out an HMO.

## 1.2 What is the status of this guidance?

This guidance has been produced for local housing authorities, but will also be of interest to landlords.

This guidance is non-statutory. It does not provide an authoritative interpretation of the law; only the courts can do that.

## 1.3 What are the extended mandatory HMO licensing requirements ?

In April 2018, Parliament approved secondary legislation which reforms the mandatory HMO licensing regime.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018<sup>2</sup> has the effect of extending the scope of section 55(2)(a) of the Housing Act 2004 so that mandatory HMO licensing also applies to HMO properties which are less than three storeys high. The Prescribed Description Order 2018 also deals with the passporting of licences granted under additional<sup>3</sup> and selective licensing<sup>4</sup> schemes into the mandatory licensing regime. This is covered in more detail in chapter 2.

A second statutory instrument, the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018<sup>5</sup> amends Schedule 4 of the Act, introducing new conditions that must be included in licences that have been granted under Part 2 of the Act. These are:

- x Mandatory national minimum sleeping room sizes; and







authorities have the discretion to make them subject to additional licensing where they are problematic. However, individual flats within such converted blocks will require a mandatory HMO licence if they meet the standard test described in 2.3 (b) above.

## 2.5 Additional HMO licensing

If the local housing authority believes that there are problems such that there is a need to license certain HMOs not subject to mandatory licensing (such as section 257 HMOs or purpose built flats situated in a block comprising three or more self-contained flats) it can designate a specific area as subject to additional HMO licensing. This must be introduced in line with the statutory requirements under Part 2.

## 2.6 Implementation

Landlords

Local housing authorities have a statutory duty to satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 Housing Act 2004 (housing conditions) functions that ought to be exercised by them in relation to HMOs for which they have received a licence application.<sup>12</sup>

It is important that local authorities make landlords fully aware of the requirements. We expect local authorities to carry out active promotion of the extended mandatory licensing regime. Local housing authorities will have their own processes and policies in relation to

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<sup>11</sup> The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

<sup>12</sup> Section 55 (5) of the Housing Act 2004

communications and advertising. This may include advertising in the local press or having dedicated pages on their own website. We also expect local authorities to provide guidance to landlords on the new licensing requirements.

Local housing authorities are under a duty to grant the licence if they are satisfied that:

(a) the house is reasonably suitable for occupation for the maximum number of

## 2.7 Transitional Provisions

Existing licence holders coming under the extended scope of mandatory licensing

Some landlords who

necessary information about future requirements that will need to be met under Part 2 of the 2004 Act.

Upon expiry of the current licence the landlord will need to apply for a licence under Part 2 of the Act.

Only the existing licence conditions will need to be enforced up until expiry of the current licence.

Until the new licence with new conditions is issued an authority would have no grounds to take action against an existing licence holder that is not compliant with new standards. However, the local authority would still be able to take action against the licence holder if they are in breach of the existing licence conditions which included minimum room size conditions.

We expect local authorities to provide guidance to landlords on the types of conditions they will be legally obliged to meet if their HMO is required to be licensed under Part 2 (mandatory or additional licensing). Local authorities have the power to impose conditions in relation to management, use and occupation<sup>13</sup> and the condition and contents<sup>14</sup> of a

## 3. New mandatory licence conditions

### 3.1 Mandatory conditions

Section 67(1) of the 2004 Act provides that a local housing authority may impose conditions relating to the management, use and occupation of a licensed HMO. Under section 67(3) it is mandatory for the local housing authority to include certain conditions in HMO licences. The mandatory conditions are specified in Schedule 4 of the 2004 Act and relate to the provision of smoke and carbon monoxide alarms; gas safety and the safety of electrical appliances and furniture. Schedule 4 conditions apply to all licensed HMOs

It will also be a mandatory condition that any room of less than 4.64 m<sup>2</sup> may not be used as sleeping accommodation and the landlord will need to notify the local housing authority of any room in the HMO with a floor area of less than 4.64 m<sup>2</sup>.

Any area of the room in which the ceiling height is less than 1.5m cannot be counted towards the minimum room size.

In addition local housing authorities are required to impose conditions specifying the maximum number of persons over 10 years of age and/or persons under 10 years of age who may occupy specified rooms provided in HMOs for sleeping accommodation.

The standards are designed to ensure consistency of approach on minimum room sizes used for sleeping within HMOs, and so give certainty for landlords, tenants and local authorities on the absolute minimum standards that are acceptable.

### 3.5 How should local authorities assess the minimum room size condition?

Local authorities may decide to request details of room sizes that are used for sleeping accommodation as part of a mandatory HMO licence application. They may also choose to inspect properties. The approach they take is at their discretion and our expectation is they will make an assessment of required resources and devise their own policies and procedures to ensure compliance with the condition.

However, the approach that the local authority chooses to implement for the renewal of licences should be considered in the light of the recent case of *R (Gaskin) v Richmond upon Thames London Borough Council*<sup>15</sup>. The case ruled that on renewal of HMO licences the local authority was not entitled to demand more information than that detailed in Schedule 2 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006<sup>16</sup>. It is likely that the local authority will need to inspect the property to ensure effective compliance with the minimum room sizes.

### 3.6 What are the sanctions for breaching minimum room sizes?

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The new minimum room size conditions apply to all Part 2 licences. That includes HMOs that are required to be licensed under additional licensing provisions as well as the mandatory licensing regime.

Existing licence conditions remain valid and the local authority is not required to vary the conditions of any existing Part 2 licence (whether granted pursuant to mandatory or additional licensing requirements). However, at the time a licence is renewed the local housing authority must impose the new conditions within Part 2 licence conditions.

Until the new licence with new conditions is issued an authority would have no grounds to



Local authorities should be mindful that HMOs are residential properties, and as such, they should provide a comprehensive and frequent waste collection service for such households which is free at the point of use; this includes HMOs which are occupied by students. Accordingly, it would not be appropriate for local authorities to levy commercial waste charging on such residential properties, or seek to impose such charging via any scheme or direction.

We acknowledge that some local waste authorities may not have a scheme for storage facilities at HMOs and whilst this new condition does not mean local authorities have to put one in place, they may wish to consider reviewing their waste policies in the light of these new provisions.

# ANNEX A: Links to legislation

## Primary Legislation

<https://www.legislation.gov.uk/ukpga/2004/34/contents>

<http://www.legislation.gov.uk/ukpga/2004/34/notes/contents>

## Secondary Legislation

<http://www.legislation.gov.uk/uksi/2018/221/made>

<http://www.legislation.gov.uk/uksi/2018/616/contents/made>

<http://www.legislation.gov.uk/uksi/2006/373/contents/made>