

# Licensing Guide for Landlords



## Contents

What is a House in Multiple Occupation (HMO)?.....	4
Can you give me some examples of HMOs?.....	4
Does my property need an HMO licence? .....	4
Current Mandatory Licensing.....	4
Extension of Mandatory Licensing to ALL HMOs (Licensing of Houses in Multiple occupation (prescribed description) (England) Order 2018.....	4
Who needs to apply for a licence? .....	5
Who will the licence holder be? .....	5
What is a “fit and proper person”? .....	5
What happens if I live outside the UK? .....	5
Are there any exemptions to licensing? .....	5
How can I check if the property is already licensed? – .....	6
How do I make an application for an HMO licence? .....	6
When will the council inspect my HMO for licensing?.....	8
How long will the licence last? .....	8
Can a HMO licence be revoked? .....	8
What conditions will be attached to a licence?.....	9
How can I comply with the anti-social behaviour (ASB) condition?.....	9
Do my tenants have to have a tenancy agreement?.....	9
Should I be carrying out pre-letting checks on my tenants? .....	10
What will happen if I don’t licence a property and my property is licensable?.....	10
What will happen if I breach a condition of my licence?.....	10
How much does a licence cost? .....	10
What happens if a licence cannot be granted or is revoked? .....	10
Am I able to appeal against a licensing decision made by the Council? .....	11
What if my HMO doesn’t require a licence? .....	11
What do the HMO Management Regulations require? .....	11
The Housing Health and Safety Rating System (Housing Act 2004) .....	12

Essex Amenity Standards .....	12
The Regulatory Reform (Fire Safety) Order 2005.....	13
The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.....	13
Furniture and Furnishings (Fire) (Safety) Regulations 1988 (As amended).....	13
Fire Safety Measures in a HMO.....	14
Who is responsible for paying council tax in an HMO?.....	14
Will my mortgage be affected by licensing?.....	14
Rent deposit protection.....	14
Does my property need an Energy Performance Certificate?.....	14
Other responsibilities .....	15
Is the definition of an HMO the same for planning? .....	15
I'm thinking of converting my property into an HMO, do I need to apply for planning permission? .....	15
Inspection and advice services .....	15

## What is a House in Multiple Occupation (HMO)?

A house in multiple occupation (HMO) is defined as a property rented by at least 3 people who are not from 1 household (e.g. a family) but share a facility like a bathroom or a kitchen.

## Can you give me some examples of HMOs?

A HMO is currently defined by the Housing Act 2004 as

- An entire house or flat which is let to three or more tenants who form two or more households and share a kitchen, bathroom or toilet
- A house which has been converted entirely into bedsits or other non-self contained accommodation and which is let to three or more tenants who form two or more households and who share a kitchen, bathroom or toilet facilities
- A converted house which contains one or more flats which are not wholly self-contained (i.e. the flat does not contain within it a kitchen, bathroom or toilet) and which is occupied by three or more tenants who form two or more households
- A building which is converted entirely into self contained flats if the conversion did not meet the standards of the 1991 Building regulations and more than one-third of the flats are let on short term tenancies (sec 257 HMO)

## Does my property need an HMO licence?

### Current Mandatory Licensing

A HMO needs a Mandatory Licence when:

- it has 3 or more storeys
- is occupied by 5 or more persons, forming two or more households
- one or more of the basic amenities such as a bathroom, toilet or cooking facilities are shared or lacking

### Extension of Mandatory Licensing to ALL HMOs (Licensing of Houses in Multiple occupation (prescribed description) (England) Order 2018

The new mandatory licensing from 1<sup>st</sup> October 2018 will now include ALL HMOs (other than sec 257 HMOs and flats in larger purpose built blocks) that are:

- Occupied by five or more persons;

And

- Occupied by persons living in two or more separate households

**Landlords of HMOs falling within the prescribed description, who fail to apply for a licence by 1<sup>st</sup> October 2018 commit a criminal offence from that date.**

### Who needs to apply for a licence?

Normally this will be the landlord or a managing agent acting on behalf of the landlord.

### Who will the licence holder be?

The proposed licence holder needs to be the most appropriate person to hold the licence. This will usually be the landlord (the person in control of the property). The proposed licence holder must be considered to be “fit and proper” person before we issue a license (see below).

### What is a “fit and proper person”?

Before granting a licence, the Housing Act 2004 requires that the council must be satisfied that the proposed licence holder or proposed manger is a “fit and proper” person.

The test of a “fit and proper person” is mainly concerned with whether the landlord or manager have been convicted for breaking any relevant laws or acted in a way which indicates that they are unsuitable to manage an HMO.

Local Authorities can also decide a person is not “fit and proper” as a result of them being associated with other persons who would not be considered “fit and proper” and that this would affect the management of an HMO.

### What happens if I live outside the UK?

Landlords living outside the UK will not be able to hold the licence themselves but may appoint a fit and proper person in the UK to be the licence holder.

### Are there any exemptions to licensing?

Yes, the Housing Act 2004 specifies properties which are not HMOs for the purpose of the Act. Examples of properties where *under certain circumstances* no licence will be required can be read here:

**<https://www.legislation.gov.uk/ukpga/2004/34/schedule/14>**

## How can I check if the property is already licensed?

The council publishes a register of licensed HMOs on the website:

<https://www.rochford.gov.uk/sites/default/files/LicencedHMOregister.pdf>

## How do I make an application for an HMO licence?

Applications for a licence involve completing and submitting an application form to the council together with the required fee. The form will ask questions about the people involved with the property as well as about the property itself, such as the number of letting rooms or flats, shared bathrooms, toilets and kitchens as well as details of safety measures that have been put in place, such as the presence, type and extent of a fire detection system. Any proposed licence holder or manager of the property would be required to make a declaration that they are a “fit and proper person”.

Application forms must be submitted with: -

- A simple floor plan showing the use and dimensions of each room e.g. bedroom, kitchen, bathroom. You can see an example of a floor plan below.
- Copy of most current Landlords Gas Safety Record.
- Copy of current Fire Detection and Alarm System Inspection and Servicing Report
- Emergency Lighting Periodic Inspection and Testing Certificate (where applicable)
- Copy of current Electrical Installation Condition Report
- The required fee

The application form should be completed here:

<https://www.rochford.gov.uk/applying-hmo-licence>

Example of a floor plan

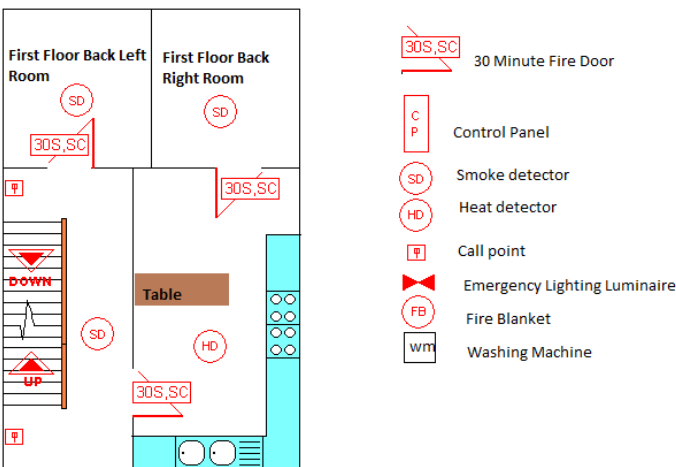
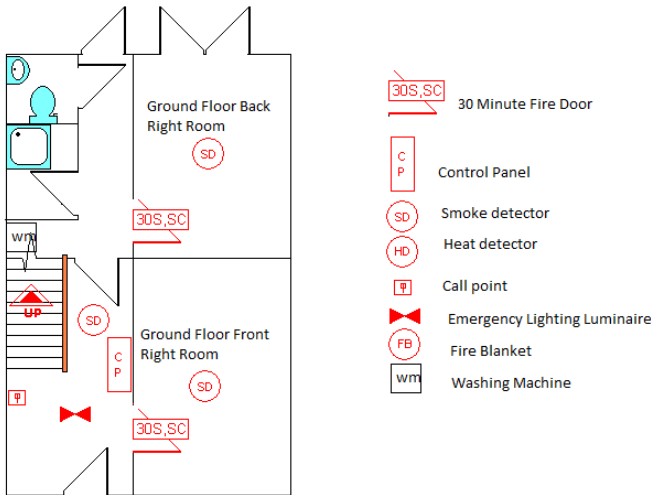
To help the Fire Authority and the Private Sector Housing Service assess the application, please draw a simple floor plan of the entire premises (all levels) overleaf. Please include:

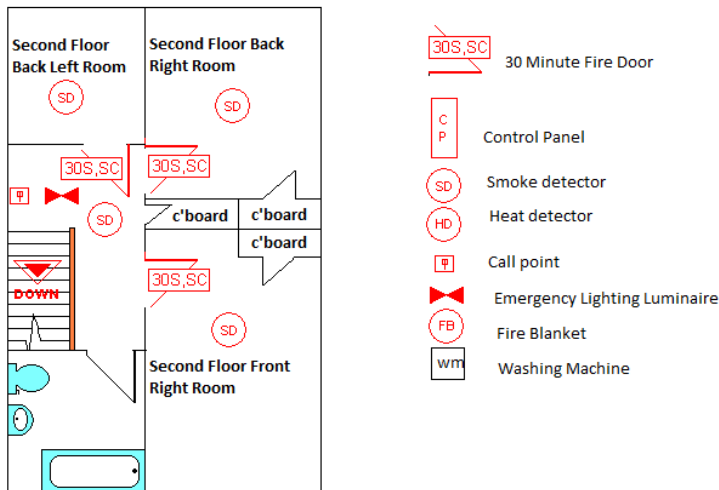
- Doorways and openings;
- Entrance and exits;



- All stairways;
- External and separating walls;
- Internal walls and columns;
- Description of rooms e.g. kitchens, bathrooms
- Show facilities e.g. toilets, baths, showers

**EXAMPLE**





### When will the council inspect my HMO for licensing?

We may carry out an inspection once a complete licence application has been made. A further inspection within the first year of a license being issued will take place. A licensed HMO will be inspected annually throughout the term of the License.

### How long will the license last?

In general the council will aim to grant licenses for the maximum term (5 years) unless there are good reasons why this should not be the case. There may be instances in which there are justifiable concerns with either:

- the condition of the property
- the management or the management arrangements
- or with the conduct (past or present) of a landlord or his associates

### Can a HMO licence be revoked?

If a building is no longer operating as an HMO which requires a licence, a request that the council revokes the licence can be made. The council has the power to revoke licenses at the licence holders request but does not have to do so.

The council may also revoke the licence where: -

- there has been a serious or persistent breach of licence conditions
- the licence holder is no longer considered to be a fit and proper person and that the management of the house is no longer being undertaken by fit and proper persons

Before revoking the licence, the council must inform the landlord and the other relevant persons that it intends to do so and must allow a minimum period of fourteen days for representations to be made. The council cannot issue its final



decision unless it has considered any representations made. If it does revoke the licence the landlord has a right of appeal against that decision.

### What conditions will be attached to a license?

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

- 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.
- anti social behavior by tenants.

### How can I comply with the anti-social behaviour (ASB) condition?

Whilst the council appreciate that licensing will not necessarily make tenants better behaved, we regard it to be important that landlords act reasonably to deal with any tenant anti-social behaviour within the licensing framework. The proposed condition concerning this requires no more than to investigate complaints of ASB and to take reasonable steps to resolve the problem and demonstrate that procedures are in place to accommodate this as part of their management practice.

### Do my tenants have to have a tenancy agreement?

Yes, a written tenancy agreement specifying the terms of occupation of any letting must be provided to all residents at the commencement of any rental period. We would encourage you to use a suitable model tenancy agreement. You can find such an agreement for an assured shorthold tenancy on the government's website at <https://www.gov.uk/government/publications/model-agreement-for-a-shorthold-assured-tenancy>

## Should I be carrying out pre-letting checks on my tenants?

Whilst this is not required as a condition of the licence, the licence holder is encouraged to carry out adequate pre-letting checks including the take up of suitable references.

This should minimise the risk of letting to someone who is likely to behave anti-socially and the council recommends that the tenancy agreement should include appropriate clauses concerning ASB.

Pre-letting checks and the inclusion of the appropriate tenancy terms concerning ASB may be considered along with other relevant material as evidence that the condition is being met and of good management practice and procedure.

A short guide for landlords on the right to rent can be found at <https://www.gov.uk/government/publications/landlords-right-to-rent-checks-guide>.

## What will happen if I don't licence a property and my property is licensable?

There are strict penalties for operating an HMO subject to a licensing scheme without a licence and this is a criminal offence. The maximum fine is currently unlimited on summary conviction.

The council also has the powers to take control of an HMO without a licence where conditions are very poor and where there is no realistic prospect of there being sufficient improvement within the foreseeable future.

Landlords may also have to pay back up to 12 months' rent or housing benefit payments if required to do so by a Rent Repayment Order (RRO). RROs are made by the First-tier Tribunal - Property Chamber (Residential Property).

<https://www.gov.uk/government/.../first-tier-tribunal-property-chamber/about>

## What will happen if I breach a condition of my licence?

Breaches of licence conditions are an offence and may result in a maximum fine of £5,000 for each offence committed. If you knowingly allow the HMO to be occupied by more occupiers than it is licensed for, without a reasonable excuse, you are committing a criminal offence and will face a penalty of an unlimited fine. In some circumstances the licence could be revoked if you permit overcrowding.

## How much does a licence cost?

A full schedule of licensing fees can be found here:

<https://www.rochford.gov.uk/applying-hmo-licence>

## What happens if a licence cannot be granted or is revoked?

If the council is unable to grant a licence or the licence is revoked, they must make an Interim Management Order. The council (or their appointed service provider) then take over the management of the HMO, collect the rents and have responsibility for the tenancies and upkeep of the property. The ownership of the HMO does not

change. The Order can last for up to twelve months although it may be revoked earlier if it has been possible to grant a licence.

### **Am I able to appeal against a licensing decision made by the Council?**

Yes, appeals against licensing decisions can be made to the First-tier Tribunal - Property Chamber (Residential Property) where the council decides to:

- refuse to licence a premises
- grant a licence with conditions that the landlord is unhappy about
- revoke a licence i.e. takes away a licence
- vary a licence i.e. changes the licence conditions
- refuse to vary a licence

Normally an appeal against such decisions must be made within 28 days of the licence issue date.

<https://www.gov.uk/government/.../first-tier-tribunal-property-chamber/about>

### **What if my HMO doesn't require a licence?**

All HMOs and privately rented properties, whether they need a licence or not, have to be managed according to the relevant legislation. This sets out the responsibilities of both landlords and tenants. The key enactments are:

- The Management of Houses in Multiple Occupation (England) Regulations 2006
- Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
- The Housing Act 2004
- The Regulatory Reform (Fire Safety) Order 2005
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- Furniture and Furnishings (Fire) (Safety) Regulations 1988 (As amended)

### **What do the HMO Management Regulations require?**

The manager of an HMO is required to comply with the requirements of the Management of Houses in Multiple Occupation (England) Regulations 2006 or in the case of HMOs falling within Section 257 of the Housing Act 2004, the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007. Duties of a manager include:-

- that certain information is provided to occupiers and to be clearly displayed
- to take safety measures, including the maintenance of fire alarms and fire- fighting equipment
- to maintain water supply and drainage
- to supply and maintain gas and electricity
- to maintain common parts, fixtures and appliances (including windows)
- to maintain living accommodation
- and a duty to provide waste disposal facilities

A person commits an offence if he/she fails to comply with the Regulations and is liable on summary conviction to a fine not exceeding level 5 on the standard scale

Further information concerning these Regulations can be found at:

<http://www.legislation.gov.uk/ukxi/2006/372/contents/made>  
<http://www.legislation.gov.uk/ukxi/2007/1903/contents/made>

### The Housing Health and Safety Rating System (Housing Act 2004)

The Housing Health and Safety Rating System (HHSRS) was introduced under Part 1 of the Housing Act 2004, and applies to all residential premises. This is an assessment method for hazards that are most likely to be present in housing and include **fire, overcrowding, excess cold conditions, damp and mould, security and electrical safety** among others of which there are 29 in total and apply to all residential premises including houses in multiple occupation.

Where there are hazards, the assessment could show the presence of serious (category 1) hazards and other less serious (category 2) hazards. The Council has a duty to take the appropriate action in relation to category 1 hazards where these are found.

The Council, regardless of licensing conditions, must seek to identify, remove, or reduce category 1 hazards in the property under Part 1 of the Housing Act 2004.

Over the duration of a licence, the licence Holder may be required to provide full access for further Housing Health and Safety Rating System (HHSRS) assessments to be carried out. Any defects found as a result of an inspection may require enforcement action to be taken.

### Essex Amenity Standards

Even where your HMO does not require a licence, you should comply with the Standards agreed across Essex with regard space standard and amenities.

\*The standards can be found here:

<https://www.rochford.gov.uk/standards-required-hmos>

This guide was recently consulted on and will be updated when any changes are finalised.

### **The Regulatory Reform (Fire Safety) Order 2005**

An owner, manager or operator of a business, will need to comply with fire safety law. The main law is the Regulatory Reform (Fire Safety) Order 2005 or "the Fire Safety Order" which applies across England and Wales and came into force on 1st October 2006.

The Order applies to virtually all buildings, places and structures other than individual private dwellings e.g. individual flats in a block or family homes, but does include the common parts of HMOs and the common parts of blocks of flats and maisonettes.

This legislation also requires the landlord to complete a Fire Risk Assessment for the property. They should make a suitable and sufficient assessment of the risks with regard to fire safety and means of escape from the property.

### **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

All private sector landlords are legally required to install at least one smoke alarm on every storey of their rented property.

A carbon monoxide detector is also required in any habitable room containing a solid fuel burning appliance, for example an open fire or a wood burning stove. This refers to all properties.

Landlords have a responsibility to make sure these alarms are in proper working order at the start of each new tenancy made from 1st October 2015 and are advised to make sure that there is a record of these alarms being tested. A new tenancy is not a renewal of an existing tenancy.

Landlords should be aware that these Regulations do not contain all of the fire safety requirements which their premises may be subject to, for example additional alarms will be required in HMO's that do not require a licence.

For further information, you can visit:

**<https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords>**

### **Furniture and Furnishings (Fire) (Safety) Regulations 1988 (As amended)**

Furniture and furnishings provided must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended in 1989, 1993 and 2010). This will include any upholstered furniture such as chairs, sofas, children's furniture, beds, upholstered headboards, mattresses, scatter cushions, seat pads, pillows and upholstered garden furniture.

The regulations apply to all furnished accommodation and in HMOs requiring a license, and compliance can and generally will form part of the conditions attached to the license.

For further information, visit the government's website [www.bis.gov.uk](http://www.bis.gov.uk) and use the search engine.

## Fire Safety Measures in a HMO

There is a duty on persons managing or having control of a HMO to provide adequate safety measures having regarding to the design, structural condition and occupancy of the property. Therefore there is no one size fits all when it comes to fire safety in HMOs.

The LACoRS Housing Fire Safety Guide contains information about certain types of HMO and the typical fire safety measures required. This document is used nationally by local authorities when drafting schedules of works and for justifying certain fire safety measures. Essex Fire and Rescue Service are consulted when there are complex layouts or a mixture of commercial and residential usage.

For more information use the link below:

**[The LACoRS Housing Fire Safety Guide](#)**

## Who is responsible for paying council tax in an HMO?

Usually it is the Landlord's responsibility.

**It is advisable to contact the Councils Revenues and Benefits Service for advice.**

## Will my mortgage be affected by licensing?

The Council are not aware of any specific cases of this kind although it is good practice to check the terms of your mortgage to see if there are any restrictions. If in doubt, you should contact your lender or mortgage advisor for further information, as we will consult with all interested parties as part of the licensing procedure.

## Rent deposit protection

Under the Housing Act 2004 the landlord is legally required to protect the deposit with a Government approved scheme and send the Tenant certain information within 30 calendar days of receiving the deposit. Penalties apply where a landlord fails to comply. Further information about tenancy deposit protection can be found on the government's website at:

**<https://www.gov.uk/tenancy-deposit-protection/overview>**

## Does my property need an Energy Performance Certificate?

Yes an EPC is required on the rent, sale or exchange of a residential property.

Further information can be found at:

**<https://www.gov.uk/government/publications/energy-performance-certificates-for-the-construction-sale-and-let-of-dwellings>**

### Other responsibilities

Whether you are the landlord of an HMO or other kind of privately rented residential property you will have certain other responsibilities not mentioned in this guide.

Further information about this can be found on the government's website at

**<https://www.gov.uk/renting-out-a-property/landlord-responsibilities>**

### Is the definition of an HMO the same for planning?

Yes the definition of an HMO occupied by not more than 6 persons for planning purposes is the same as that Under Section 254 of the Housing Act 2004.

### I'm thinking of converting my property into an HMO, do I need to apply for planning permission?

Currently HMOs with fewer than 7 occupants do not require planning permission. However it is advised that the Council's Planning Service be contacted for clarification around planning requirements.

### Inspection and advice services

If you would like advice on a proposed HMO or the suitability of your current properties for use as HMOs please contact:

**[privatesectorhousing@rochford.gov.uk](mailto:privatesectorhousing@rochford.gov.uk)**

Please visit the Rochford District Council website for more details on Mandatory HMO Licensing:

**<https://www.rochford.gov.uk/houses-multiple-occupation-hmo>**

**We have a limited supply of good quality housing in our district we would welcome conversations with Landlords around working together in supplying good quality homes for residents.**