

**AMBER VALLEY BOROUGH COUNCIL
HMO LICENSING POLICY 2018**

The Mandatory Licensing of Houses in Multiple Occupation (HMO's)

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1. Introduction

The Housing Act 2004 stated that Local Authorities had a duty to licence (subject to specific exemptions) all Houses in Multiple Occupation (HMO's) which consist of three or more storeys and are occupied by 5 or more people, consisting of 2 or more households.

In addition, powers were made available to Local Authorities to carry out Selective Licensing and Additional HMO licensing.

On 1st October 2018, SI 221/2018 comes into force and extends Mandatory Licensing to all non-exempt HMO's of 5 or more persons, forming 2 or more households sharing amenities – regardless of the number of storeys. In addition, flats in purpose built blocks of three or more self-contained flats will be exempt but all other flats in multiple occupation included.

Additional legislation also expected in late 2018 will introduce minimum room sizes and introduces a mandatory licence condition for the collection, storage and disposal of waste.

Amber Valley Borough Council recognises the valuable role that the private rented sector plays for its residents and the importance of availability of accommodation of this nature. The Council recognises the importance for all accommodation to be safe for its occupiers, and specifically recognises the higher risks associated with Houses in Multiple Occupation. The Council enjoys a strong working relationship with the landlords of existing licensed HMO's and anticipates that this will extend to new landlords and new premises affected by the changes in legislation. Advice and support is readily available to assist landlords through the process.

It is the responsibility of Landlords suspecting that they may require a licence to submit the relevant application.

Please contact:

Amber Valley Borough Council, Housing Standards team, Town Hall, Market Place, Ripley, DE5 3BT.

Email enquiries can be made to ehhousing@ambervalley.gov.uk
Or visit www.ambervalley.gov.uk/hmolicensing

2. Definition of a HMO

The definition of a HMO is contained within sections 254-259 of the Housing Act 2004.

It generally includes:

- A building where two or more households who occupy the living accommodation share one or more basic amenity, or the living accommodation is lacking one or more basic amenity;
- The living accommodation is occupied by persons who do not form a single household;
- A building, or part of a building which consists of one or more units of living accommodation not consisting of self-contained flats;
- Buildings converted into self-contained flats if more than one third of the flats are tenanted and the conversion does not comply with Building Regulations 1991 or subsequent Building Regulations. See section 257 of the Act (S257 HMO's are not included in mandatory licensing)

The intention of HMO licensing is to ensure that the highest risk properties in the private rented sector are identified, meet the necessary legal standards in respect of safety and are properly managed. HMO's occupied by 5 or more persons, forming two or more households will be subject to this licensing regime, unless they are exempt.

Exempted premises

- Buildings controlled or managed by public sector bodies or Registered Landlords
- Any building occupied by two persons forming two households.
- Student halls of residence – when run by an educational establishment
- Buildings occupied principally for the purposes of a religion whose principal occupation is prayer, contemplation, education or the relief of suffering
- Buildings providing accommodation for specific groups which are governed by specific legislation (children's homes, immigration centres, young offender institutions, care homes, prison related accommodation, secure training centres, bail hostels, residential family centres)
- HMO's that meet the definition of section 257 of the Housing Act 2004.

3. The Application Process

To be within the law, any licensable HMO must be in one of these states:

- Licensed
- Subject to a Temporary Exemption Notice
- Subject to an Interim Management Order (IMO) or a Final Management Order (FMO)

No offence is committed if a licensable HMO is the subject of a valid, pending licence or Temporary Exemption Notice (TEN) application.

The contents of the application form shall be those as specified in the 2004 Act. An application will be considered a full application when all requested documents have been provided.

Where an incomplete application is received, a letter will be sent to the applicant listing the outstanding items and requesting that they are submitted within 14 days. Failure to submit the information within 14

days without reasonable excuse will result in the application being made ineffective. Where this could be deliberate avoidance of applying for a licence, then legal proceedings may be instigated which may result in prosecution or civil penalty.

4. Timescales

The onus shall be on the applicant to provide all necessary information to submit a full application for licence.

Once those documents are received, the Council shall process that information and aim to dispatch a draft licence for consultation within 8 weeks. The commencement date for the licence may be back dated to the date that a valid application was received, along with the necessary fee.

The Council will be unable to issue licences before 1st October 2018 for those premises that fall within the extended definition.

5. Issuing of a licence

A licence can only be issued where the following is confirmed:

- The building is reasonably suitable for occupation having regard to amenity levels, available living space and general health and safety considerations, or can be made suitable through the use of licence conditions.
- The property must have rooms of a reasonable size and comply with any government prescribed room size standards.
- There must be suitable access to cooking facilities, bathrooms and WC's for the number of people living there. Reference will be made to the Amenity Standard in Appendix 2 and ordinarily premises will be expected to meet this standard.
- Officers may use discretion in adjusting these requirements if it is seen fit and if the amenities may, in exceptional cases be considered suitable for the number of occupiers without fully meeting the requirements of the Amenity Standard.
- Management arrangements are satisfactory. "Management arrangements" includes arrangements for monitoring and maintaining the property, ordering works, finance, and general manager competence.
- The licensee, manager and others involved in the running of the property are fit and proper persons. There are certain criteria to be met before an applicant can be considered to be a fit person to manage a HMO. When deciding whether an individual is a fit and proper person the Council has to consider whether there is evidence that they have committed an offence of fraud, dishonesty, violence or drugs or an offence under Schedule 3 of the Sexual Offences Act 2003. The Council also has to consider whether there is evidence that they have practised discrimination on grounds of sex, colour, race, ethnic or national origins or disability in connection with any business, or evidence that they have contravened housing or landlord and tenant law.

Fit and proper person

The HMO licensing application form asks specific questions to obtain relevant information so that the Council may assess whether further checks are required to establish if an applicant is fit and proper.

Applicants must complete and sign the Declarations to confirm that all the information provided on the application form is correct to the best of their knowledge.

In addition to this, the Council will contact partner agencies including Local Authorities, Community Safety and DFERS to establish whether there is any evidence to suggest that the applicant is not a fit and proper person. The Council will also consult the Rogue Landlords Database as part of the pre-licensing process.

Where an applicant indicates that one or more issues as listed applies to them, or where other information comes to light, it is important to establish further details in order to assess whether this impacts on their implied 'fit and proper' status. Housing Officers may contact applicants by telephone or in writing, or may invite applicants to attend the Council offices with a view to establishing the exact circumstances of the matter.

If it appears that the matter is not of relevance to their implied status as a fit and proper person, then the application may proceed for approval. If it is established that the matter is of relevance to their status as a fit and proper person then this clearly has significant implications in that it may be necessary to refuse to grant a licence.

The final decision as to whether a person is to be regarded as not being a fit and proper person shall be made by the Executive Director, following a review of the case and considering the applicant on their merits.

Wherever possible, applicants who are assessed as not being fit and proper will be encouraged to propose an alternative person or company to act as licence holder on their behalf.

Where it is felt necessary, for example where occupants are likely to be from a vulnerable group the applicant may be required to obtain a basic DBS check.

In granting a licence, the Act prescribes mandatory licence conditions relating to

- provision of annual gas safety certificates
- safety of electrical appliances and furniture
- provision and maintenance of smoke alarms
- provision of written tenancy agreements

In addition, the Council will, where it considers appropriate;

- impose its own licence conditions
- grant a licence for a lesser period than the standard period (normally 5 years) where it considers it appropriate

When the Council is satisfied that the premises are in a satisfactory condition, the people controlling and managing it are fit to do so and the management arrangements are satisfactory, a licence will be prepared for issue to either the applicant or some other person by agreement. Where it is not satisfied that these conditions are met, the licence application will be refused.

6. Compliance with licence conditions

Breaches of licence conditions will be investigated in line with the Council's enforcement policy.

Minor breaches of licence conditions would be expected to be dealt with informally where the breaches have not significantly put at risk occupier's health, safety or welfare.

Formal action will be considered where there have serious or persistent breaches of licence conditions or where the landlord has a poor record of compliance with legislation.

Any reported and established breach of licence conditions will be assessed on its own merits and in line with the Council's Enforcement Policy as well as the Code for Crown Prosecutors.

7. Variation of a licence

A licence may be varied, either by agreement with the licence holder, or variation of the licence may be required by the local authority if there has been a material change in circumstances since the date of grant of licence.

8. Fee Structure

The Housing Act 2004 gives Local Authority the powers to recover their costs for licensing HMO's. The fee charged must reflect the actual costs of licensing a property. The Council's fee structure has been approved by Cabinet and will be reviewed on an annual basis.

There must be no deficit or surplus. If a deficit or surplus occurs then the fee will be adjusted during the next round of licensing to account for this. The fee charged takes into account the development of the licensing scheme, processing applications, monitoring compliance with licence conditions and enforcement action arising from breaches of the licensing process.

No work associated with action under Part 1 of the Housing Act is included in the fee calculation. See appendix 1 for the fee structure for Amber Valley Borough Council.

9. Temporary Exemption Notices (TEN's)

A TEN can be issued where the manager or person having control of an unlicensed HMO (which should be licensed) notifies the Council of his intention to take the necessary steps to ensure that the house is no longer required to be licensed.

A TEN will be valid for an initial period of 3 months. A second TEN for a further 3 month period can be issued at the discretion of the Council under exceptional circumstances. No further TEN's are able to be issued after the second TEN has expired.

Where the manager or person having control of an unlicensed HMO wishes to apply for a TEN, they must state in writing the situation regarding the HMO and the steps that are being taken to remove the HMO from the licensing regime. Where applicable, evidence may be required to support the request for a TEN.

Where the Council decides not to issue a TEN, it will inform the manager or person having control by way of a notice, stating the decision and why it has been made, and providing details of rights of appeal.

Where a licence holder dies, the licence has the effect of being a TEN until the future of the property is determined (following the same time restrictions as the TEN).

10. Interim Management Orders (IMO)

Certain circumstances may arise where the Council is under a duty to implement an Interim Management Order;

- If it is a HMO or a Part 3 house which is required to be licensed under Part 2 or Part 3, but is not so licensed, and it is considered that;
- There is no reasonable prospect of it being so licensed in the near future, or that the health and safety condition is satisfied (see Section 104)

An IMO enables the Council to take immediate steps which may be necessary to protect the health, safety and welfare of occupiers of the house, or of neighbours or people having an interest in neighbouring properties, or any other management steps considered appropriate pending the grant of a licence or the issue of a final management order.

Where an IMO is made, the Council will collect rents and can deduct from this income any relevant expenditure and sums due in compensation to a third party. Any residual income, with interest if relevant, must then be paid to the landlord or other recognised recipient at a frequency determined by the Council.

The Council will arrange with an approved housing management body to carry out this management function on its behalf if the situation arises.

An IMO may be revoked where the house ceases to be a HMO, a licence is subsequently issued, a Final Management Order is made or where considered appropriate.

An IMO is registered as a local land charge whilst in force.

An IMO will only be considered when all attempts to licence the premises with a suitable person have been exhausted. Prior to an IMO being undertaken, an Authorisation Sanction Agreement must be submitted to the Executive Director (Operations), and consultation made with the Cabinet Portfolio Holder.

11. Final Management Order (FMO)

When required and after approval as detailed above with the Executive Director (Operations), the Council will make a Final Management Order (FMO) to secure the long-term management of an HMO in accordance with a management scheme detailed in the Order.

A FMO can be for a maximum duration of 5 years.

A FMO will be registered as a Local Land Charge when in force.

Where an FMO is made, the Council will take appropriate steps in relation to the long-term management of the property. The Council will periodically review the order and the management scheme contained in it and consider whether keeping the order in force is the best course of action.

Following the review, the order may be varied or revoked, or a licence can be issued in respect of the property.

When an FMO is in place, the Council has the right to:

- Take possession of the house

- Do anything and authorise a delegated person to do anything which a person having an interest in the house would be entitled to do.
- Create a leasehold or occupancy licence. Such tenures cannot extend beyond the period of the FMO, nor can the notice to quit or termination be more than 4 weeks.
- Create an assured shorthold tenancy as long as it starts more than 6 months before the expiry of the order.

Once a management order is in force, a relevant person may appeal against the making of the order or its terms must be made to the RPT, normally within 28 days. The tribunal may confirm or quash the order.

12. Register of Licensed HMO's

The Council will maintain a register containing the details of all licenced HMO's, as well as any properties that may be subject to an IMO or FMO. The register will contain all relevant information as required to comply with the Act.

The register will be stored and updated electronically and will be available on the Council's website. A paper copy will be made available where requested.

13. Appeals

Applicants and licence holders have a right to appeal to the Upper Tier Tribunal

14. Rent Repayment Orders (RRO's)

Where a landlord has committed an offence of operating an unlicensed HMO, where a licence would have been required, the Council has a duty to consider applying for a RRO. All decisions relating to applications for an RRO will be made in line with the Council's 'Civil Penalty and Rent Repayment Order Policy', and 'Enforcement Policy'.

15. Enforcement Action

Where evidence is obtained that an offence has been committed in relation to the Mandatory licensing of HMO's, a decision shall be made as to the most appropriate form of enforcement action. This decision shall be made in line with the Council's 'Civil Penalty and Rent Repayment Order Policy' and 'Enforcement Policy'.

16. Fire Safety Protocol

A fire safety protocol is in place with Derbyshire Fire and Rescue and this shall be referred to and adhered to during the licensing process.

17. Inspections

Wherever resources allow, all premises where an application is received for a Mandatory HMO licence will be subject to an inspection visit during the application process. This is not a legal requirement, and in exceptional circumstances a licence may be granted purely on application if this is considered appropriate.

The intention of the visit will be to ensure that the Council is satisfied that the information supplied is accurate and correctly represents the nature and condition of the premises. Any issues which require

action by the applicant in order for the application to proceed will be dealt with as part of the licensing process.

It is possible that during these visit, hazards may be identified under Part 1 of the Act. Where this occurs, they will be dealt with in line with the Council's 'Enforcement Policy', unless they directly influence the licence application.

A further visit will be scheduled proactively to ensure compliance is being maintained, unless complaints or enquiries arise where a visit will be scheduled sooner.

18. Number of occupants

Where it becomes apparent that a HMO has sufficient space for 5 or more occupants, the Council will strongly advise that the person in control of the premises applies for a licence, even where the intention may be that the building shall only be occupied by 4 persons.

It shall be made clear to the person in control that unless they are confident that they can manage tenancies in such a way as to ensure that only 4 persons reside in the building as their main address at any one time, they should consider obtaining a licence rather than risk being found to be operating as an unlicensed HMO where an occupier moves their partner in, or similar scenario.