Landlords & HMOs

Understanding how HMOs work and your obligations as a landlord

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Foreword

Being a landlord in the United Kingdom isn’t easy. The press vilifies landlords as money-grabbing, the rules and regulations are unforgiving, and contract law is weighted heavily in favour of tenants. And that’s before you even start to consider those delightful agent fees.

Rentify was founded by a group of landlords and technology experts who saw things a little differently. We believe that the rental industry in the United Kingdom is outdated, and we’re building a service to help fix it. Much like the travel industry before it, we’re starting to see changes as the high street monopoly is broken and sleek online services become the norm. No more commissions, no more pink ties and no more branded minis.

The Rentify guides are a little helping hand for landlords who want to know more about the rights, responsibilities, and options available for landlords. We’ll cover everything you need to know in order to get on with making the right decisions for your portfolio. It can be daunting, but hopefully our guides will demystify the essentials.

If you have any questions, or you need more in-depth advice, give us a call on 020 7739 3277. We’re helping thousands of UK landlords and we’d be delighted to hear from you.

George Spencer
CEO at Rentify
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Introduction

Houses in Multiple Occupation (HMOs) are a special type of rental property in which the facilities are shared by separate households (a ‘household’ can be one person or a family and includes co-habiting couples).

Under the Housing Act 2004 HMO status comes with its own unique set of legal responsibilities for the landlord and/or property manager, which may include requiring a licence. These responsibilities can also vary depending on the specific type of HMO property you have. Rentify are bringing you this guide to make sure you know when you have an HMO and what rules apply to it, whatever the type of property.

HMOs are an attractive proposition for many landlords as they tend to be more profitable than other types of private rental. But you must remember that because they come with special requirements your initial costs will be higher. There will be assorted fees for bringing the property up to the legal standards and acquiring any necessary licence or planning permission. Also, an HMO’s Council Tax is paid by the landlord, not the occupiers. Furthermore, an HMO requires more time and effort in general, so if you are planning on operating one, make sure you will be able to meet all of the demands.

Your local council will bear much of the responsibility for regulating and enforcing correct HMO management. As we’ll see, they also have powers to introduce their own licencing requirements into the local area. Consequently, they should be your first port of call for any questions about the regulations (most queries will fall under the remit of the Environmental Health Department).

But if you have any questions about this guide or anything else related to HMOs, Rentify are always here to help. Call our team on 020 7739 3277 or email help@rentify.com.
Definition

A pretty good rule of thumb is that a property will usually be an HMO if the occupants are not related and share facilities (e.g. bathroom, toilet, kitchen...). But strictly speaking there is a little more to it than that. As you’ll see, the definitions can get slightly confusing too!

Types of HMO

- A house or flat in which 3 or more people from at least 2 households share facilities such as a bathroom, toilet and/or kitchen (with each household also having exclusive use of a room or rooms). A ‘household’ is defined as a single person or a family living together. ‘Family’ includes married couples, couples living as married (including same sex couples), and immediate relatives (parents, grandparents, children, step children, foster children, aunts, uncles, cousins, nephews, nieces). If you are in any doubt, a good sign of separate households is if they have separate tenancy agreements.

- A property in which the landlord also lives as the owner-occupier and has more than 2 tenants (lodgers), all sharing at least some facilities.

- Accommodation owned by a private landlord and shared by students who have exclusive use of the property (so essentially each student is considered to be a different household).

- A confusing one: A building or part of a building (such as a flat) which is a converted building not solely made up of self-contained flats, whether or not the facilities are shared. ‘Self-contained’ means that all of the facilities are contained within the flat itself for the exclusive use of the household in question.

- The most confusing one: A building or part of a building which is entirely made up of converted self-contained flats which do not meet the conversion requirements of the Building Regulations 1991, and in which more than one third of the flats are occupied under short tenancies. This is known as a Section 257 HMO.

Not an HMO

- A property in which only 2 individuals are living and sharing facilities, whether the landlord is resident or not.

Rent must also be paid by the tenants for an HMO to exist and the property must be the main residence of the occupiers. If the property is not listed as the occupiers’ main residence but the council decides that at least some of the occupiers are living there on that basis, it can issue an HMO Order, imposing HMO status on the property.

If you are establishing an HMO, try to match tenants who will be able to live relatively peacefully in close proximity. We understand you may not always have a large choice, but ill-matched neighbours will increase the likelihood of arguments, stress, people moving out, void periods and re-letting costs.
General legal responsibilities

Regardless of whether or not you have an HMO, you have legal responsibilities simply by virtue of being a landlord. Please see Rentify’s guide to ‘Landlords & the Law’ for a full discussion of these.

But if you are a landlord of an HMO, you do have further special legal responsibilities. These come under The Management of Houses in Multiple Occupation (England) Regulations 2006 and 2007 (a belting read). It does not matter whether your HMO requires a licence or not, you must comply with these. Failure to do so is a criminal offence punishable by fines of up to £5000.

As a landlord of an HMO you have a legal obligation to do the following:

• Provide the name, address and telephone number of the property manager (which of course can be the landlord) to each household in the HMO.

• You must take reasonable steps to ensure your tenants are not injured because of the property’s structure or condition. A ‘reasonable step’ may be to contact a professional to conduct a health and safety inspection of the property, perform any work that is suggested, and keep a record of all of this.

• Take specific fire-safety measures:
  • Keep escape routes from fire clear
  • Keep fire-safety equipment (alarms, extinguishers etc.) in working order
  • By The Regulatory Reform (Fire Safety) Order 2005 you or your managing agent must carry out a fire risk assessment and take action to minimise the risk of fire. Contact your local council to make sure this is performed properly. It’s worth noting that in some cases where a fire has harmed or killed an HMO occupant and the landlord has not been able to produce a risk assessment, the landlord has been convicted and imprisoned
  • Comprehensive guidance on fire-safety can be found here: www.lacors.gov.uk/lacors/NewsArticleDetails.aspx?id=19844
  • Keep the water supply and drainage clean and in working order. For example, you must cover water tanks and protect pipes from frost damage
  • Have electrical equipment inspected at least once every 5 years and obtain a report of the inspection
  • Supply a gas or electrical safety record within 7 days, if requested by the council
  • Keep all shared areas clean, in good repair and safe. Shared areas may include entrances, corridors, stairways, and the kitchen and/or bathroom. If applicable, this also extends to the garden and any structures there which are part of the HMO (e.g. a shed)
  • Keep all parts of the exterior in good order and safe
  • Ensure that the number and location of shared bathrooms and kitchens complies with local minimum standards. Your local council’s Environmental Health Officer will be able to advise you if you are unsure.
  • Also, keep the interior (including windows, fixtures and fittings, and ventilation) in good working order and safe
  • Make sure you have the correct insurance: you will need a special policy for an HMO
  • Provide for the regular disposal of refuse and litter
HMOs that require a licence will have the maximum number of occupants dictated by the licence. But non-licensable HMOs will have no such ‘official’ maximum. You of course still have a responsibility as landlord to prevent overcrowding. And if the council think the property is overcrowded or will become so, they can issue an overcrowding notice, specifying a maximum, taking age and sex into account, and dictating which rooms can and cannot be used as sleeping accommodation. You can appeal against the order through a Residential Property Tribunal. The order will remain in force until the council revokes it, although if circumstances change you may ask them to revoke or change it. Failure to comply with the order could result in a fine up to £2,500.

Tenants of HMOs also have legal obligations under the same set of regulations, also punishable by a fine of up to £5,000. They must:

- Allow you reasonable access and not obstruct you in completing your duties
- Inform you of anything necessary to enable you to complete your duties
- Act in a reasonable way so as not to damage anything it is your duty to provide
- Follow the refuse guidelines you have implemented
- Follow your fire-safety guidelines
- The local council’s Environmental Health Department will be in charge of making sure that these responsibilities are complied with. If you are found to be in breach of them, they could issue you with the fine, but in most cases they will give you the chance to remedy the problem.

As the local council is responsible for making sure you perform your duties as a landlord of an HMO, it pays to get in touch with them so that you know exactly where you stand. If you have any questions or concerns about the state of your property, an Environmental Health Officer is usually the best person to approach. This should also be your starting point for the all-important fire risk assessment (there should be a special Fire Officer for this).
“The council will decide whether to return control to the landlord or impose a final management order... giving the council long-term control of the property.”

Management orders

In certain serious cases, where the health and safety of the occupiers is deemed to be at serious risk, the council also have the option of issuing an interim management order. This must also be issued if a licensable HMO fails to reach the standard for a licence or if the council revokes a licence (see below).

Features of an interim management order:

- An interim management order transfers management of the property to the council or an approved council partner
- Rent becomes payable to the council and no longer to you
- It must be approved by a Residential Property Tribunal and you will have the chance to present your case to them if you so wish
- An interim management order is usually issued for 12 months, which is the maximum. You can apply for it to be revoked earlier but the council will need convincing that you have resolved the issues and that it’s unlikely they will arise again. If they deny your application, then you can appeal to a Residential Property Tribunal.
- At the end of the 12 months the council will decide whether to return control to the landlord or impose a final management order, which usually lasts up to 5 years, giving the council long-term control of the property.
- As with an interim order, you may apply for a revocation and, if unsuccessful, appeal to a Residential Property Tribunal.

You can find more information about Residential Property Tribunals at: http://www.justice.gov.uk/tribunals/residential-property

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Licencing

Some HMOs will legally require a licence to prove that the property – and landlord! –, as well as the way it is managed, all come up to scratch.

If the HMO needs a licence then this cannot be ignored. You may consider evicting occupants so that the property no longer fulfils the criteria for being an HMO, but this is very difficult and dangerous ground. For example, if the property requires an HMO licence then you cannot remove an occupant who is under an AST by Section 21 notice unless you have the licence in the first place. Our advice is to find out if you need a licence, and then apply for one: do not try to beat the system!

Types of licence

A licence is compulsory for properties higher than 3 stories (including those above shops) which have 5 or more occupants from 2 or more households. This is known as mandatory licencing.

Local authorities have the power to require other designated types of HMO to be licenced. This is known as additional licencing and can only be introduced if the council considers that a significant number of HMOs are being mismanaged in a certain area. The conditions of the licence will depend on the local authority in question.

If you are ever in any doubt about whether your property is an HMO and/or whether it requires a licence, check with your local council. As the private rented sector is under close scrutiny at the moment, there is a real trend towards local councils introducing new licencing regulations and the potential fines are not worth any risk!
Applying for a licence

Contact your local council to obtain a licence application form. A landlord or managing agent can make the application. A non-refundable fee is usually payable but the amount is set by the local authority. Once issued, a licence will usually last for 5 years, the maximum period.

You will need to inform the following ‘relevant persons’ that you are applying and must also supply the council with their details:

- The landlord (if it’s not you!)
- The freeholder (if applicable) or any other owners of the HMO.
- Any long leaseholder (you need only inform tenants who have 3 or more years to run on their agreement).
- Any mortgagee.
- The proposed licence holder (again, if it’s not you).
- The managing agent (if there is one, and – you guessed it - it’s not you).
- Any person who has agreed to be bound by any conditions in the licence if it’s granted.

The council may ask for further information before granting a licence and they may even inspect the building, although this is not a necessary measure. Within 5 years of receiving an application the council must make sure that the building has no health or safety hazards, but this can be done at any time during those years.

The factors which the council will take into consideration when deciding whether or not to grant an HMO licence are as follows:

- Whether the HMO is suitable for the number of occupiers allowed under the licence, taking into account the facilities that are to be shared.
- Whether the proposed landlord and/or managing agent are ‘fit and proper’ persons for their respective roles. This may take into account criminal convictions, any previous breaches of landlord duties and whether they have been found guilty of things like unlawful discrimination. It is a general test of suitability. It may be decided, for example, that the landlord is not fit to hold the licence but the proposed property manager is, in which case the licence can be issued to the property manager.
- Whether the proposed property management arrangements are suitable.

Remember that any licencing fees are tax-deductible for landlords!
The conditions of a licence

If the licence is granted, the following conditions will always apply to it. If you breach any of them you could face a fine of up to £5,000 (or £20,000 for allowing more occupants than the licence grants). In serious cases your licence could be revoked and control (and rent) would pass to the council through a management order.

Mandatory Conditions of an HMO Licence

- No more than the maximum number of occupants (as stated in the licence) may live in the property. The number will, of course, depend on the property. You need not have the maximum number of occupants and you may even let to a single occupant or family if you so wish (i.e. the property need not necessarily be occupied as an HMO even though it has an HMO licence).
- A valid gas safety certificate must be provided annually.
- You must keep all electrical appliances and furniture in a safe condition and be able to produce proof of this to the council on demand.
- Smoke alarms must be installed and kept in good working order. You must produce details of their positioning and proof that they are functioning correctly if the council requests it.
- You must supply each occupier with a written statement of terms on which they occupy the HMO. This can be done in the tenancy agreement.

The council in question may also issue their own conditions relating to the facilities, property management and relations between the landlord and occupiers. In certain circumstances you may be required to attend an approved training course.

If the council intend to provide you with a licence they must first send you and the relevant persons their proposed version of it. You then have a minimum consultation period of 14 days in which you can propose changes. If any changes are made, the council must send you a new proposed licence and you will have a further 7 days to comment on it.

Once the licence has been granted, you may appeal against certain conditions through a Residential Property Tribunal. You cannot appeal against mandatory conditions, except in the case of disputing the precise maximum number of occupants who are allowed to live in the property.

When the licence is granted there may be more occupants living in the HMO than the licence allows. In this instance there shouldn’t be a problem as long as you are trying to reduce the number of occupants through legal methods (i.e. by initiating legitimate eviction proceedings).
Refusal to grant a licence

The council will only tend to refuse to grant a licence if they have serious concerns about how the HMO will be managed (see the factors influencing their decision above). If they do refuse it, you may be able to resolve the issue by suggesting a different licence holder (say the property manager, if applicable).

If there is no resolution, they will inform you of their decision along with the reasons for it. You may make representations to them to convince them to change their mind and there must be a minimum period of 14 days for them to hear and analyse these representations (usually you’ll be given 28 days).

If your representations are unsuccessful, the council will inform you of their decision and the reason for not granting a licence. They must then impose an interim management order (see above).

Revoking a licence

If the council grants a licence but come to the decision over time that the conditions are being seriously and/or consistently breached, then the licence could be revoked. They must inform you of their plans and reasons, and then give you at least 14 days to respond. If they still decide to revoke it, you will have the opportunity to appeal to a Residential Property Tribunal, normally within 28 days.

Alternatively, the landlord may wish for the licence to be revoked. In most circumstances it is expected that the licence should run its full course, but you may wish to have it revoked if, for example:

- You wish to change the licence holder
- You are no longer operating the property as an HMO

The council are under no obligation to grant your request and if they refuse, you can again appeal against their decision through a Residential Property Tribunal.

If you no longer wish to operate your property as an HMO but you originally required planning permission to convert it into an HMO, you may need permission to revert it to single dwelling status. Contact a Planning Officer from your local council if you are in any doubt.
If you are planning to stop operating an HMO or reduce the number of people living there, you can apply to the council for a **Temporary Exemption Notice (TEN)**:

- This lasts for up to 3 months and means the property is not subject to a licence in that period, even if the property is a licensable HMO, while you effect the necessary changes
- If the situation is not resolved at the end of the Temporary Exemption Order, a second one can be granted, again for up to 3 months
- If the situation is still not resolved after that and the HMO is still under operation then it must be licenced or put under an interim management order

In order to get a TEN you must convince the council that you are actively taking steps to ensure the property will no longer be a licensable HMO. Such steps may include:

- Getting planning permission to turn the property into a single occupancy dwelling
- Entering into a contract for sale of the property for use as something other than an HMO (just putting it on the market probably won’t be sufficient)
- Proving that you are taking legal steps to reduce the number of occupants

### Licencing enforcement

If a landlord does not acquire the necessary licence or allows more occupants than the licence grants, it will be a criminal offence with a possible fine of up to £20,000. If you break other conditions of the licence, fines of up to £5,000 can be issued. You cannot be prosecuted, however, if you have made a valid application and the council have yet to make a decision.

If you break conditions of the licence and your tenant has been receiving Housing Benefit, the council can apply through a Residential Property Tribunal for a **Rent Repayment Order**. This allows the council to recover rent paid during a period when a licensable HMO was not licenced. A maximum of 12 months’ rent can be reclaimed for any such period. The money will be recovered from you, even if you did not directly receive the benefit (and remember that with new Universal Credit, no landlord will receive Housing Benefit directly).
HMOs and Planning Permission

You do not necessarily need planning permission to convert a building into an HMO since HMO classification is purely based on how the house is occupied, not on any specific planning permission that’s been acquired.

So, if you wish to operate a property as an HMO for up to 6 people and you have not made any significant changes to the property, you may not need permission. You will, however, usually need permission from the council to let to 7 or more people.

Many local councils have, however, obtained Article 4 powers, meaning that planning permission is required for any new HMOs. Once again, the best course of action is simply to check with a Planning Officer at your local council.
What can Rentify do for you?

Rentify is the UK’s leading online service for landlords, helping them to market, manage and make money from their properties.

We offer a wide breadth of services aimed at making life a little easier for landlords these include:

- Online advertising on leading UK websites
- Photography services
- Energy Performance Certificates
- CP12 — Gas Safety Certificates
- Tenant finding services
- Credit reference checks
- Assured Shorthold Tenancy agreements
- Deposit protection service
- Inventory checks & management
- Removals of all sizes
- Evictions
- Flexible property management

We also offer a selection of other guides we hope landlords will find useful:

If you have any questions please talk to those nice people at www.rentify.com on 020 7739 3277 or email us at help@rentify.com if you have any questions.

Please note that we cannot offer legal advice and advise you speak with your solicitor.