

Quick Guide: Property and HMO Licensing in England and Wales

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Before we can look at the different requirements around property licensing we need to explain what is an HMO, or House in Multiple Occupation.

The standard definition of a section 254 HMO is:

- 3 or more tenants
- More than 1 household
- Shared facilities

What is a "household"?

- A single person, or members of the same family who live together.
- Each tenant from a separate family is classed as a separate household.

What constitutes a "family"

- Tenants who are married or living together as a couple, form one family. This includes couples in same-sex relationships and their children.
- All relatives & half-relatives count as the same family e.g. grandparents, step-parents, aunts, uncles, siblings and step-siblings.
- Any household domestic staff are included in the household if they do not pay rent while living with the person(s) they are working for, this may also depend on their contract terms.



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Examples:

- 3 brother or sisters living together are 1 household **NOT** an HMO
- 3 friends living together are 3 households - **IS** an HMO
- 2 couples living together are 2 households - **IS** an HMO
- - 1 couple and 1 single unrelated person are 2 households - **IS** an HMO



To be classified as an 254 HMO the property must meet the standards defined in the description above, and meet the standard conversion test, self-contained flat test or converted building test. The full definition of all HMO's can be found in the Housing Act 2004 [Sections 254 to 260](#).

A section 257 HMO is a whole building that has been converted into self-contained flats that meet specific criteria. The full details of what constitutes a section 257 HMO is under the additional licensing section below.

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What is property and HMO licensing?

Property and HMO licensing is the Local Authority's process of improving living standards in rental accommodation and prove that landlords are 'fit and proper' persons to operate these properties. The type of licence a property requires varies depending on a number of different factors, including the number of tenants and the council your property is located in.

If you change the use of the property or change the number of tenants, the property's living standards and fire/health and safety risk levels also change.

You should always hold the correct licence for your property. If the number of tenants in the property has changed this may change which licence is required. For example, if you have an HMO of 4 tenants under additional licensing and then tenant numbers increase to 5 this means a mandatory licence may now be required and the council must be notified of the change. The same is true if you are decreasing numbers. You may also have to risk assess the property again for fire precautions as a minimum.

There are 3 different types of property licence:

1. Mandatory
2. Additional
 - ➔ S257 (optionally included by councils as part of their additional licensing scheme)
3. Selective



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Mandatory HMO licensing

An HMO with 5 or more unrelated persons, from more than one household, sharing facilities will require a mandatory licence. This applies to all HMO properties in England , although there is an exception to the rule (stated below).

Mandatory HMO licensing became prevalent following a fatal flat fire in Glasgow. Two students became trapped in their basement flat that had a disconnected smoke alarm, iron bars on the window and a blocked fire exit.

Research at the time showed that you were 16 times more likely to die in a fire in a 3 storey (or more) HMO than in a family home. So properties of 3 or more storeys were the first to require licensing. However, in October 2018 the national Mandatory Licensing Scheme in England changed - properties with 5+ unrelated tenants now need a licence, regardless of the number of storeys. In Wales, the property is still required to be 3 or more stories and the exemption below does not apply.

Who needs it?

Any landlord with a property tenanted with 5+ unrelated persons.

The exception to the rule: For an *individual flat* of 5 or more tenants, located inside a *purpose built block* of three or more self contained flats, mandatory licensing does not apply. However, the local borough may still apply additional or selective licencing to the individual flats if they meet the criteria.



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Licensing of Section 257 HMOs (Part of Additional Licensing)

A number of councils have included section 257 HMOs within their additional licensing schemes. These are whole buildings that:

1. Have been converted into self-contained flats; and
2. the conversion did not comply with the relevant building regulations in force at that time and still do not comply; and
3. less than two-thirds of the flats are owner-occupied.

Note - some councils operate their additional licensing schemes to include buildings where less than 50% of the flats are owner-occupied. There are many variations of licensing schemes throughout the country.

Who needs it?

It is the responsibility of the freeholder(s) of the building to apply for a licence relating to section 257 HMOs.

This is a complicated licensing scheme, please contact HMO Services if you think your client requires a licence and needs more information.



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Additional HMO licensing

Any HMO that doesn't fall under the mandatory scheme may need this type of HMO licence. This is not an England & Wales-wide scheme and only some councils have this in place over the whole borough or in certain wards, streets or postcodes.

Additional licensing schemes tend to be brought into areas where there has been a significant change in housing occupation from families to sharers. Major cities are prime examples with their ever growing young professional populations. The main driver is to ensure fire safety standards are improved in line with the extra risks involved in shared housing.

Who needs it?

Any landlord which has an HMO that doesn't meet the criteria for a mandatory HMO licence may require an additional licence, although there are many variations of this type of licence.

This is a complicated licensing scheme, please contact HMO Services if you think your client requires a licence and needs more information.



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Selective licensing

Not all councils in England and Wales use selective licensing, and only some councils have this in place over the whole borough or in certain wards, streets or postcodes.

Selective licensing schemes tend to be brought in where there have been complaints over standards of accommodation, antisocial behaviour, or issues with rubbish disposal. Properties over commercial premises are often included.

Who needs it?

Generally, landlords of any privately let property in participating areas that fall on the list of selected streets, postcodes or wards require a licence, regardless of who occupies it. This can include HMOs that do not fall into any other HMO licensing scheme operating in that area.

As of April 2015 councils can only introduce a selective licensing scheme that covers more than 20% of the borough or 20% of privately rented homes with central government approval.

There are a number of statutory exemptions to licensing schemes, please inquire with our partners at HMO Services for more information.

To download HMO Services free full guide to property licensing please click [here](#)



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Applying for a licence

Is there a deadline to apply?

Every local housing authority will set their own deadlines for their licensing schemes.

What should landlords do when they have missed the deadline?

Local authorities are most interested in prosecuting rogue landlords who are evading licensing altogether. It's definitely preferable to license the property later than never applying for a licence at all.

The longer the property is unlicensed the more likely the landlord will be prosecuted, so it is best to advise landlords to get started as soon as possible.

What happens if a landlord refuses to apply for a licence?

If a landlord lets a property that requires a licence but doesn't have one:

1. They lose the right to serve tenants a section 21 eviction notice
2. The tenants can file for a rent repayment order for up to 12 months rent and the landlord and agent can be issued a civil penalty of up to £30,000.
3. The landlord and agent can be put on the Rogue Database

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How long are property licences valid for?

Licences are typically granted for five years, or until the end of the relative scheme. It is worthwhile remembering that the cost of licensing spread over 5 years isn't as prohibitive as it initially seems.

Are there any conditions?

The conditions that apply to all licence holders include though are not limited to:

- Providing an annual gas safety certificate
- Ensuring electrical appliances & furniture provided are in safe condition
- Installing smoke alarms and keeping them in working order
- Supplying tenants of licensed properties a written statement of terms

How long does the licensing process take?

The length of time will depend largely on how quickly the local authority processes the application. Typically it can take 3-4 months for the entire process to be completed, though we have seen it take over 2 years.

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Holding a licence

Many councils require the holder of a property licence to be based in the UK. If your overseas client has a property in a council which requires a UK-based licence holder, they will have to consider who will hold the licence on their behalf.

If your client is asking you, a friend or a family member to hold their licence, it is important for all parties to understand their legal responsibilities. By holding that licence, they are stating that the property is compliant and will continue to be maintained to that

level for the entire course of the licensing period. One of the expectations of licence holders is to regularly visit the property to do necessary checks and maintenance to ensure it complies with the licence and also Management of Houses in Multiple Occupation (England) Regulations 2006, and the Regulatory Reform (Fire Safety) Order 2005, where applicable.

Remember agents are just as liable as licence holders, so best to ensure this is all in place. Therefore, this person is liable to penalties if the property is found to be substandard at any point during the licensing period. This could happen during the initial council inspection or a subsequent inspection following a complaint from the tenants.

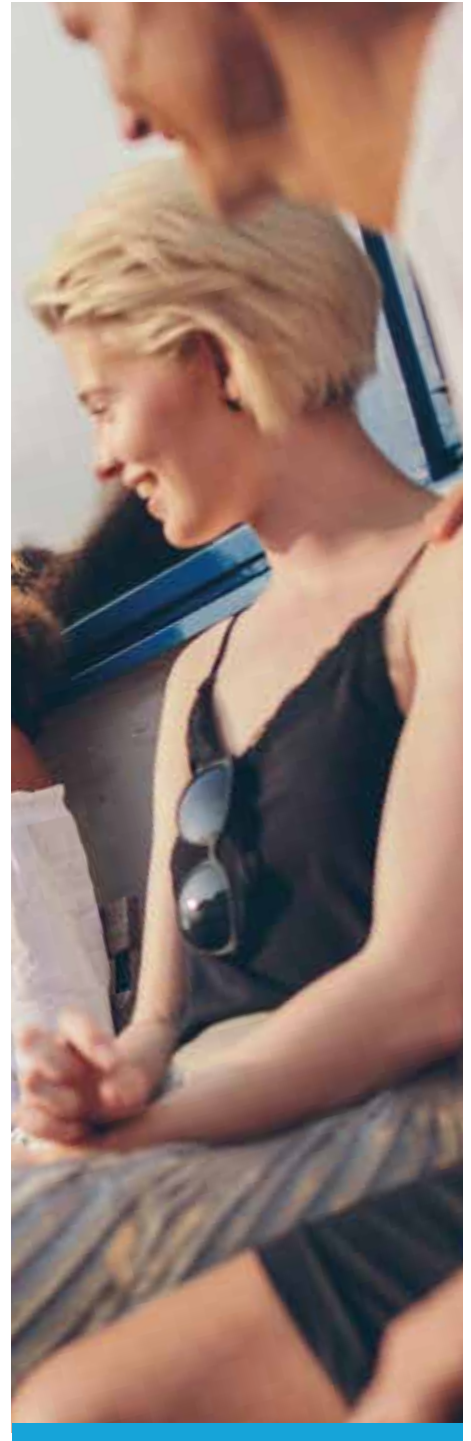


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Documentation required for an application

In order to be granted an HMO or property licence, your client may be asked to supply the following documents. Only some councils would require all of these documents on application. The local housing authority can request further documentation and inspections on top of the list here:

- Gas Safety Certificate
- Floor Plan
- Energy Performance Certificate (EPC)
- Electrical Installation Condition Report (EICR)
- Portable Appliance Testing (PAT)
- Management Agreement (only when the owner is not the licence holder)
- Emergency Lighting Certificate (only for properties where such lighting is required)
- Fire Safety Risk Assessment
- Fire alarm installation and testing certificates



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What will the council be inspecting when they visit?

- Details of amenities and facilities provided for the tenants: Such as kitchen and bathroom facilities.
- Fire safety equipment provided in the property: Such as fire doors, fire detection systems and fire blankets.
- Information on how the property is tenanted: This includes how many tenants and households, and the relationship.
- Details of health & safety and living standards in the property: This is a broad category and can include items such as windows, damp, lighting, cooking facilities and even the fridge.
- Layout of the property: The size of each room and floor.

