

CITY OF WESTMINSTER

# Houses in Multiple Occupation (HMO)

Licensing Policy

2021

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# INTRODUCTION

A [house in multiple occupation](#) (HMO) is a property rented out by at least three people who are not from the same household who share facilities such as bathroom and kitchen facilities. Properties can include bedsit accommodation, hostels and self-contained flats which are multiply occupied.

HMO's are excellent opportunities for residents to take advantage of lower cost accommodation in the centre of the City. However they are also considered to present greater risks to safety and the welfare of their occupants. As a consequence, both national and local controls through licensing have been enhanced over time to ensure that accommodation is safe, well managed and of good quality.

For certain higher risk HMOs, national Mandatory Licensing applies to landlords under Part 2 of the Housing Act 2004. For HMOs which fall outside the scope of the mandatory scheme, we require landlords to apply for a licence under Westminster City Council's Additional Licensing scheme.

This policy sets out the Council's approach to delivering HMO licensing, including receipt, authorisation, and determination of licence applications. It also sits alongside our Private Sector Housing Enforcement Policy in outlining our commitment to support and educate our good landlords, while taking proportionate enforcement action against non-compliance.

## ***Legal and Policy Context***

In preparing this policy the Council has considered and referred to the following:

- Legislation applicable to the Licensing of HMOs (Housing Act 2004)
- The Management of Houses in Multiple Occupation (England) Regulations 2006
- The Licensing and Management of HMOs (Additional Provisions) (England) Regulations 2007
- Housing & Planning Act 2016
- Houses in Multiple Occupation and residential property licensing reform: Guidance for Local Housing Authorities - MHCLG
- Westminster City Council's Corporate City for All Strategy
- Westminster City Council's Private Housing Enforcement Policy
- Westminster City Council's Private Rented Sector Strategy 2020-24
- Westminster City Council's Homelessness Strategy

# REQUIREMENT FOR A LICENCE TO OPERATE AN HMO

## *HMOs Requiring a Licence*

The definition of an HMO can be found under [Part 2 of the Housing Act 2004](#) and licences are usually required to operate an HMO property in Westminster. Whether you need a licence and the type of licence required is dependent on the property type, the number of households in occupation and amenities available.

It is the responsibility of a landlord or property manager to ensure they check whether their property requires a licence and to obtain one if needed. Separate licences will be required for separate HMOs.

The table summarises the HMOs which require a licence to operate in Westminster:

SHARED HOUSES AND FLATS	<b>Mandatory HMO</b>	If there are two or more households and five or more people sharing facilities, you will require a mandatory licence. This is a national requirement but does not apply to flats in purpose-built blocks.
	<b>Additional HMO</b>	For all properties not covered by the mandatory scheme where there are two or more households and three or more people sharing facilities.
	<b>Live in landlord</b>	You are required to apply for a licence if you have 3 or more paying lodgers

## *Conditions of the Licence*

The licence holder, or manager, must comply with certain management obligations set out in regulations set out below, which apply to all HMOs:

- The Management of Houses in Multiple Occupation (England) Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

The licence holder must comply with national minimum amenity standards and mandatory conditions, as well as locally adopted standards and conditions. Other management and work conditions may also

be added to the licence to ensure the property is suitable and safe for occupation by the permitted number of occupants.

### ***HMO Declarations***

The council may serve an HMO declaration on a building which it thinks should be treated as a Section 254 HMO. The building must meet one of the Section 254 HMO tests but fails to meet the 'sole use' condition. This may be the case where the sole use of a building by residents is not as their only or main residence, but a significant proportion is. For example a hotel or hostel where a significant number of residents occupy the building on a longer-term basis as their only or main residence.

## LICENCE EXEMPTIONS

Under the Additional Licensing Scheme, certain properties and agents are exempt from requiring a licence. Including:

- Registered Social Landlords
- Public sector bodies
- Certain buildings managed by a cooperative society Buildings controlled by educational establishments / specified educational premises
- Certain religious organisations, where the building is occupied for the purposes of the religious community

### ***Temporary Licence Exemptions***

Under certain circumstances it is possible to apply for a temporary exemption from licensing for a period of 3 months.

The council will consider a temporary exemption request where:

- The applicant outlines particular steps with a view to securing that the property is no longer required to be licensed. Evidence will be required in most instances such as a house purchase contract with vacant possession.
- There is a reasonable prospect of the proposed course of action being achieved within 3 months.
- There is no threat to the existing tenants in the building or risk that they will be treated unfairly or made homeless.
- The exemption is not be used as an alternative to licensing, for example where an HMO is being created for a short term period.
- The exemption is not being used to avoid enforcement proceedings or civil proceedings against the landlord.

## APPLYING FOR A LICENCE OR LICENCE RENEWAL

### *The Licence Holder*

The most appropriate person to apply for a licence will be the person having control of the property. This is normally the person who receives the rent. (further information on the licence holder can be found in Appendix A). HMO licences are non-transferrable following approval. It is a condition of the licence that the licence holder notifies the council of any change in management or ownership or proposed change of licence holder. Where there is a change of licence holder, or ownership where the owner is the licence holder, a full new application will be required by the new licence holder or owner.

### *Making a new or renewing an application*

Applications should be made on the [council's website](#). You will be required to provide information about the property, the licence holder, and pay a fee. For further information on what is required see Appendix A. If special assistance is required completing an application an assisted fee will be charged. The licence holder is responsible for ensuring that renewal applications are submitted in good time prior to the expiry of an existing licence. Should the renewal date lapse, applicants will be required to complete a new licence application rather than a renewal application; a new licence fee will be charged.

## HOW A DECISION IS MADE TO GRANT, VARY OR REFUSE AN APPLICATION

Applications will only be considered valid if the application is fully completed along with all required accompanying documents, and payment of the correct application fee.

The Council aim to determine valid applications within 3 months, however higher risk properties may be prioritised. If there are delays in processing an application, the applicant will be informed of progress at regular intervals. In the event of a delay tacit consent will not apply. This means you cannot act as though your application is granted if you have not heard from us by the end of the target completion period.

### *Licence Duration*

The HMO licence will be granted for a period of 5 years. In certain situations, the council may issue licences for shorter durations, in particular where:

- The HMO is identified by the council rather than through a licence application.
- There is previous history of non-compliance either in Westminster or another local authority.

- Conditions within the property are poor, or conditions are attached to the licence that will require a review of management arrangements in the following 12 months.
- The applicant is not able to demonstrate they will maintain full control over the property for 5 years, for example due to a short lease.
- The property is occupied by 'Property Guardians' on a short-term basis
- The planning status for use as an HMO is unconfirmed
- A freeholder or head leaseholder has made a representation that use as an HMO is in breach of lease conditions

### ***Varying the Terms of a Licence***

There may be applicants who would like the terms of their licence application varied. For example, where there are additions or reductions to occupation and amenities, or where the licence holder is a company and the name of the company changes (providing the registered company number remains the same). An application can be made online and Licences will be varied with agreement with the licence holder. The council may also choose to vary the terms, and this decision will be subject to appeal.

### ***Revoking a Licence***

A licence holder wanting to revoke their licence can do so if the request is made in writing to the Council and supporting evidence is provided. This could be the case if a property is sold, or the owner intends to occupy the property.

### ***The decision-making process***

How we grant, vary, or refuse an application is set out below:

Online Application	<a href="#">Houses in multiple occupation (HMO)   Westminster City Council</a>
Automated Validation	Where the applicant is able to provide all the requested information, documentation and payment of the initial portion of the application fee.
Officer Determination	Where the applicant satisfies the relevant requirements <ul style="list-style-type: none"> <li>• Fit and Proper Test (Appendix B)</li> <li>• Suitability of Property</li> <li>• Sufficient Management arrangements</li> <li>• No representations against the licence have been made or are resolved</li> </ul> High-risk properties and landlords will normally be inspected at this stage.
Senior Manager Determination	The determining officer may defer the determination of the application to a senior manager where it is deemed to raise complex, serious or sensitive matters; or the application involves unusual requests for variation of the licence. This may also include applications where a representation has been made by a freeholder/head leaseholder that HMO use is in breach of lease conditions.
Notice of Intention to Licence	The determining officer will send the applicant and any interested parties an Intention to Licence Notice detailing <ul style="list-style-type: none"> <li>• occupation limits</li> <li>• mandatory and discretionary conditions</li> </ul> The applicant and interested parties will have 14 days to provide any representations in writing in response to the proposed licence and conditions. Where amendments are made to the licence following a representation, a further 7 days will be provided for any further representation. This process may be repeated if necessary.
Licence Issued	Where the applicant has paid the remaining Licensing fee

***The council may refuse to issue a licence for several reasons***

Does not meet the thresholds of Fit and Proper (see Appendix A)	<ul style="list-style-type: none"> <li>• previous contraventions of housing related laws</li> <li>• convictions relating to offences involving dishonesty, violence, sexual offences, drugs or fraud</li> <li>• convictions relating to unlawful discrimination practices</li> <li>• whether they have been subject to any legal proceedings by a Local Authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation</li> <li>• whether they are or have been subject to previous management orders or banning orders</li> <li>• whether persons associated or formally associated with the proposed licence holder are unfit</li> <li>• any other considerations that may be relevant</li> </ul>
Property is not suitable	<ul style="list-style-type: none"> <li>• the number of households</li> <li>• the imposing of condition would still not guarantee suitability.</li> </ul>



Insufficient management arrangements in place	<ul style="list-style-type: none"> <li>the applicant is not considered the most suitable person to hold the licence</li> </ul>
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## LICENCE FEES

### *Required Fees*

Part A	Payable when submitting the application	Covers the cost of processing the application
Part B	Payable following a Notice of Intention to grant a Licence	Covers the cost of enforcing the scheme

[Fees are published on the council's website.](#) There are standard fees for both shared houses and flats and buildings converted into self-contained flats. Larger HMOs which have higher numbers of units may also be required to pay supplementary charges.

The council will not approve and issue the licence until the full fee has been received and the property will be treated as unlicensed until full payment is received.

### *Refunds*

Where applications are made in error and the subject property does not require a licence, a full refund will be issued. Where applications are refused or invalid, no refund will be issued.

## HMO INSPECTIONS

Once a licence has been granted, the council will notify the licence holder of any programmed HMO inspections within the 5 year licence period. Higher risk properties and those with poor conditions will be prioritised.

The purpose of the inspection is to ensure:

- the Licence holder is compliant with their licence conditions
- the building/property is free from hazards
- further advice and guidance is provided on housing standards
- enforcement action is taken as required

### *Inspections of Owner-Occupied properties*

Where the HMO is housing an owner-occupier, the council will inspect owner occupied parts of the property as part of a building wide inspection to ensure fire separation and detection provisions are adequate. The council will generally refrain from requiring works in owner occupied flats unless there

is a need to protect other occupiers in the building. Any other significant hazards located within owner occupied dwellings will usually be brought to the attention of the owner through the service of a Hazard Awareness Notice which advises of the existence of the hazard and what action can be taken to remove the hazard.

## HMO INVESTIGATIONS, ENFORCEMENT AND PENALTIES

Enforcement Action will be taken in line with the Council's [Corporate Enforcement Policy](#). In summary this means we will adopt a positive and proactive approach towards ensuring compliance, by helping HMO owners understand and meet regulatory requirements easily, and responding proportionately to breaches. However, where failure to comply may risk causing serious harm, be the result of deliberate illegal behaviour, or failure to correct an identified serious problem - we will not hesitate to take strong enforcement action. Enforcement action may be taken for the following:

- Operating an HMO without a licence
- Failing to comply with licensing conditions
- Failing to comply with Management Regulations
- Failing to comply with a Notice or Order served under Part 1 of the Housing Act 2004

The action we may take, initiating prosecution or imposing a civil penalty, and level of penalty fine we may determine is outlined in the council's **Private Housing and Lettings Enforcement Policy**.

### ***Revoking a Licence***

The council may also consider revoking a licence where:

- The landlord is no longer considered fit and proper. This could include new offences that have come to light both in Westminster or other local authority areas.
- There has been a significant breach of licensing conditions or non-compliance with enforcement action
- For a reason in relation to the structure of the property.
- The property is no longer considered reasonably suitable for specified number of persons occupying the house.

Prior to a licence being revoked a Notice of Intention will be served providing a representation period of 14 days for the licence holder and interested parties to respond.

# Appendices

## APPENDIX A: INFORMATION REQUIRED FOR A LICENCE APPLICATION

### **The Licence Holder**

Any person who owns or manages a property can apply for a licence.

Usually this is the person who receives the rent. This could be freeholder or any other owner or lessor who receives rent (whether directly or through an agent or trustee) from tenants or lodgers in the premises.

In determining whether the proposed licence holder is the most appropriate party the council will consider whether they have:

- The authority to ensure compliance with the licence conditions
- The authority to let and terminate the tenancies and receive the rental income for the whole property
- Are able to access all parts of the premises

### ***Fit and Proper Test***

Before considering a licence application the council has a duty to consider whether the proposed licence holder and manager is fit and proper having regard to the following:

- Whether the proposed licence holder has contravened any housing related laws
- Convictions relating to offences involving dishonesty, violence, sexual offences, drugs or fraud
- Convictions relating to unlawful discrimination practices
- Whether they have been subject to any legal proceedings by a Local Authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation
- Has been subject to previous management orders or banning orders
- Any other considerations that may be relevant

Consideration of 'persons associated or formally associated' with the proposed licence holder will be taken into account when determining the proposed licence holder and manager's fitness.

When deciding if the applicant is fit and proper, each case will be judged on its own merits. Consideration will be given to:

- Number and severity of offences
- When previous offence(s) were conducted
- Circumstances surrounding the offence
- Whether the offences were conducted by individuals or larger companies
- Evidence of rehabilitation or more recent good practice
- Any other mitigating circumstances

## ***Information Required***

The following information must be submitted:

### Mandatory Licence

- Fully completed application form
- The correct licence fee
- Gas safety certificate (issued within the last 12 months – where there is a gas supply)
- Emergency lighting inspection & test certificate
- Electrical installation safety certificate (issued within the last 5 years)
- Fire alarm test certificate (issued within the last 12 months where a fire alarm system is installed)
- Floor plan or sketch of the property detailing the size in square meters., layout and position of each room.
- A copy of an Assured Shorthold Tenancy agreement

### Additional Licences

- Fully completed application form
- The correct licence fee
- Gas safety certificate (issued within the last 12 months – where there is a gas supply)
- Electrical installation safety certificate (issued within the last 5 years)
- A copy of an Assured Shorthold Tenancy agreement
- Fire alarm & Emergency lighting test certificate (issued within the last 12 months if a common parts alarm system is installed)
- Floor plan or sketch of the property layout / room sizes in Square meters.