

# Additional HMO licensing

## Questions and answers

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We've consulted on a proposal to introduce an **additional licensing scheme** and the following questions and answers are provided to help, where queries which may arise once the scheme is introduced.

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## Q1. Do I need an additional HMO licence

If you own or manage a property anywhere in Luton and it is occupied by 5 or more people, forming two or more households, who share common amenities such as a kitchen, bathroom or toilet, it is a house in multiple occupation (HMO) and is required to be licensed now by the Housing Act 2004.

When the Additional HMO Licensing Scheme is introduced and you own or manage a property anywhere in Luton where the following condition applies, it is also a HMO and would be required to be licensed.

It is occupied by three or four persons, forming two or more households who share common amenities\* such as a kitchen, bathroom and/or toilet.

\*An 'amenity' includes a toilet, personal washing facilities, a kitchen or a living room but excludes any area used for storage, a staircase, corridor or other means of access.

HMOs must also adhere to both:

Luton Council's HMO standards

[The Management of Houses in Multiple Occupation \(England\) Regulations 2006 \(Management Regs\)](#).

Properties operating as 'AirBnB' and bed and breakfast establishments etc, operating without the correct consents, will be treated as HMOs and may require a licence under one of the schemes above.

## Q2. How do I know if I am exempt and don't need to apply?

When the scheme is introduced, certain premises will be exempt from the requirement to license only, ie the properties must still meet other repair/management standards if rented out.

There are exemptions to Additional licensing and these include premises managed or controlled by a local housing authority, a police authority, metropolitan police authority, a fire and rescue authority, a social provider or a health service body.

Housing associations and registered social landlords are exempt from the licensing schemes. Charities that provide residential accommodation are not exempt from requiring a licence. However provisions within the Housing Act do allow us to review, on a case by case basis, whether they should be exempt from paying the fee.

Further information relating to specified exemptions for HMOs is available within:

[Schedule 14 of the Housing Act 2004](#)

[The Licensing and Management of Houses in Multiple Occupation and Other Houses \(Miscellaneous Provisions\) \(England\) Regulations 2006](#)

If you're still not sure whether your property requires a licence, you should seek independent legal advice.

You can apply for exemption from licensing, but you have to satisfy the council that you're taking particular steps to ensure that the building is, or will become, not subject to licensing. The council does not have to grant the exemption.

This provision is not available for avoidance or evasion of licensing, since that would be contrary to the purpose of the act. Landlords and managers, therefore, need to demonstrate to the council that they are genuinely taking steps to ensure the building ceases to be licensable.

Such steps could include entering into a contract for sale of the building with vacant possession. Simply a proposal to or the act of, putting the property on the market for sale will not normally be sufficient for the council to agree to issue a temporary exemption notice from licensing (TEN).

### Q3. Can I evict my tenants to avoid licensing?

No. When the scheme is introduced and a property is required to be licensed and you have not obtained a licence, you can't serve a notice (normally called a section 21 notice) to gain possession of an assured shorthold tenancy until you have applied for, or been granted, a licence or temporary exemption from licensing.

You should also be aware that evicting or threatening to evict occupiers without following the correct legal procedure, or by harassment, is a criminal offence, and the council may take enforcement action.

### Q4. How do I apply for a licence?

You'll be able to apply for a licence through the property licensing section on the councils website, (just follow the links).

### Q5. What information will I need to provide with the application form?

Within the form you'll need to provide:

- the number of letting rooms, storeys, and occupants including any children/families
- statements and declarations that the licence holder(s), person(s) in control and or managing the property are 'fit and proper persons'
- a statement and declaration that any furniture and furnishings within the property comply with [The Furniture and Furnishings \(Fire\)\(Safety\) Regulations 1988 \(as amended\)](#)
- details of the management arrangements, for example how you or your manager deal with complaints from tenants, items of disrepair and emergencies
- if there's gas at the property, a current Landlords Gas Safety Certificate - the certificate must be carried out by a competent engineer (within the last 12 months) and must cover any gas appliances within the property
- current (within the last five years) Electrical Installation Condition Report (EICR) - the report must be carried out by a competent engineer registered with one of the following professional bodies:
  - NICEIC
  - ECA
  - ELESCA
  - NAPIT
- Energy Performance Certificate (EPC)
- copy of the existing tenancy agreement / rental contract(s), or if the premises are currently unoccupied, a copy of the agreements you propose to issue to your tenants
- residency check – you'll be required to demonstrate that you're entitled to reside and remain in the United Kingdom, such as:
  - valid UK passport
  - permanent residence card issued by the Home Office

- a copy of floor plans showing the layout of the property, we recommend that each floor is drawn on 1 side of A4 sheet of paper and must show the following:
  - number, type and location of any smoke/heat detectors, emergency lighting and any fire alarm control panels including any 'remote hush, test and locate switches, and show where each fire door is located, the plans must also show the location of each window and staircase
  - the location of kitchens, bathrooms, WCs, sinks, wash hand basins and any other common areas such as lounges and dining rooms
  - the plans must also show any cupboards located under any staircases and on any halls or landings and show any chimney breasts in any rooms including the number and location of any electrical sockets
  - the measurements of each bedroom, flat, bedsit and any common rooms such as kitchens, kitchen/diners, lounge and dining rooms - the plans do not have to be to scale but the measurements and layout of the property and each room must be accurate\*

\* You can show the measurements in square metres for each room or you can show the room dimensions. This will enable us to assess how many people can occupy the property. For more information on space standards in HMOs please [refer to the council's HMO standards](#).

**Please note:** the council can do floor plans for you but there is a charge for this service ([see licence fees for more details](#)). [Download an example floor plan here](#).

- A fire alarm test certificate complying with BS5839 (tested within the last 12 months)
- If an emergency lighting system is present, a test certificate complying with BS5266 (tested within the last 12 months)
- Fire safety checklist\*

**\*Please note:** this document doesn't constitute a **fire risk assessment (FRA)**. In licensed HMOs, under the [Regulatory Reform \(Fire Safety\) Order 2005](#), a suitable and sufficient written FRA must be carried out by a competent person.

This could be by, or on behalf of, the licensee/prospective licensee, and is required in order to establish and reduce both the risk of fire occurring and the risk to people in the event of fire. [Visit the Bedfordshire Fire and Rescue Service website for more information](#).

Your documents will need to be uploaded during the online application process so please ensure that you have stored each document separately and in accordance with the electronic document guidance and you will find additional guidance during the application process

## Q6. What is the fit and proper person test?

When the scheme is introduced, the council must satisfy itself that a proposed licence holder and the manager (if they are different people) are fit and proper persons to hold a licence or to manage a licensable property. The test is applied to the licence holder and any person managing the property and any director or partner in a company or organisation which owns or manages the property.

In this context, the council needs to be satisfied that the proposed licence holder, proposed manager, or agent/employee has not:

- committed an offence involving fraud or other dishonesty, or violence or drugs or any offence listed under [Schedule 3 to the Sexual Offences Act 2003](#) (section 66(2)(a) of the [Housing Act 2004](#))

- practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in or in connection with the carrying on of any business ([section 66\(2\)\(b\) of the Housing Act 2004](#))
- contravened any provision of the law relating to housing or landlord and tenant law ([section 66\(2\)\(c\) of the Housing Act 2004](#))
- acted otherwise than in accordance with a code of practice under section 233 of the act (regarding the management of HMOs) ([section 66\(2\)\(d\) of the Housing Act 2004](#))
- contravened any relevant legislation in respect of the premises, and any statutory notice served, in respect of the premises within the timescales specified on that notice, or such other period as may be determined on appeal of that notice

**Please note:** this is not an exhaustive list and the council may take into account other matters, for example where it has been identified that a landlord is or has been in council tax arrears, or where there is a history of non-compliance with the council's requirements.

A fit and proper person declaration will need to be completed, during the application process.

**Please note:** that it is an offence to give false or misleading information and the council may require you to undergo either of these checks:

- DBS (Disclosure & Barring Service)
- PNC (Police National Computer)

Declarations of any unspent conviction will not necessarily mean that the applicant is not a 'fit and proper' person.

## Q7. Will I need planning permission or building regulation approval?

Structural works, in any property, must have the required building regulations approval and appropriate planning consents.

Additionally you will require planning consent if you want to operate an HMO with seven or more people or you want to convert an existing property into self-contained flats/studios and or bedsits.

If you need advice in these respects please contact:

### Building Control

- Town Hall, Luton, LU1 2BQ
- Telephone: 01582 546327
- Email: [Build.Control@luton.gov.uk](mailto:Build.Control@luton.gov.uk)

### Planning & Development Control

- Town Hall, Luton, LU1 2BQ
- Telephone: 01582 546317
- Email: [DevelopmentControl@luton.gov.uk](mailto:DevelopmentControl@luton.gov.uk)

The issue of a licence does not imply compliance with planning consent and building regulation approval. We recommend you contact the relevant department if you have any concerns.

## Q8. Is there an article 4 direction in place requiring planning permission for a change of use from a house to a small house in multiple occupation?

Luton does not currently have an article 4 direction requiring planning permission for a change of use from dwelling house (use class C3) to HMO by not more than six residents (use class C4).

[See article 4 directions in Luton.](#)

## Q9. How long will the application process take?

When the scheme is introduced and you submit an application, together with the relevant documents, your licence will be processed. We'll send you an acknowledgement within 14 days.

If you haven't heard anything from us after 14 days, please contact us: [HMO.hotline@luton.gov.uk](mailto:HMO.hotline@luton.gov.uk)

Your licence will be issued once:

- the application and all relevant supporting documentation has been submitted
- the relevant payment has been made

Generally we'd expect this to take around 6 to 8 weeks, although it could be longer during high demand periods.

Tacit approval is not automatically given to any application for a property licence. In the interest of public safety, each licence application must be given full consideration by the council before it can be approved.

If we need to clarify anything, or inspect the property for any reason, we'll contact you prior to the issue of your licence.

## Q10. How much will it cost?

Please refer to the [property licence fees section](#).

When introduced, an additional licensing scheme would run for five years. The fee structure itself is subject to annual review in scale of charges, which may include inflationary increases.

The fee for each property requiring a licence will be calculated based on the number of months remaining that the scheme has to run, from the date of application. For example, if you buy a property, which requires a licence, in year 3 of the scheme, your licence will be issued for the remaining 2 years and the fee will be two-fifths of the 5-year fee relevant at the time of application.

Properties which are found to be operating without a licence when one is required will be:

- liable to legal proceedings
- required to pay the full five-year licence fee
- issued with a licence for a shorter period ie the remaining period of the scheme

Payment for the licence will be taken electronically during the electronic application process and you can pay using a credit or debit card.

A discount per application for the licensing scheme is available if you or your manager is a member of trade body which regulates its members through a Code of Management Practice, such as:

- National Residential Landlords Association (NRLA) – previously National Landlords Association (NLA) and Residential Landlords Association (RLA)

- Association of Residential Letting Agents (ARLA)
- Association of Residential Managing Agents (ARMA)
- Royal Institute of Chartered Surveyors (RICS)
- National Association of Estate Agents (NAEA)
- Safeagent – incorporating National Approved Lettings Scheme (NALS)

Your membership / registration number would be required during the application process.

## Q11. How long does the licence last?

When the scheme is introduced, a licence would last for a maximum of five years under the terms of the scheme, although the council may issue a licence for a shorter period in certain circumstances.

An example of this is where there's a delay in providing the requested information or documentation to support the application, or where the council has discovered the property to be operating without a licence but should have been licensed.

## Q12. Who would be the licence holder and manager?

The 'proposed licence holder' is the person whose name will be on the licence. The proposed licence holder will be the person, in the local authority opinion, who is the most appropriate person to hold the licence for the property. This is likely to be the person who ultimately receives the rent for the property (in other words, the owner).

The licence holder should have adequate financial means to manage the property and undertake their responsibilities as a licence holder. You must be a resident in the UK to be a licence holder. The licence holder could be an individual or a company.

The council is required to satisfy itself that there are satisfactory management arrangements for the property and the person(s) managing the property is/are suitable in accordance with the Housing Action 2004.

- The 'proposed manager' is someone with authority to look after the property on a day-to-day basis including, but not limited to, responding to emergencies, arranging repairs and general maintenance.
- The manager could be an individual or a company such as a letting agent and must be a UK resident.

Landlords who manage their properties directly would be both the licence holder and the manager and should apply for a licence in their own right.

The proposed licence holder and the proposed manager must both pass the fit and proper person test.

In some circumstances, it may be appropriate for the owner / landlord to appoint another person or company to be the licence holder. An example of this is where someone who holds a lease from the owner, giving the leaseholder full control of the property, or where the owner is considered to be not a fit and proper person.

## Q13. Can I change the manager of the property?

When the scheme is introduced, you must inform us if the manager of the property changes and the new manager will be required to pass the **fit and proper person** test.



## Q14. Can I transfer my licence?

Property licences are not transferable and a new application will be required in the following circumstances.

- If you sell your licensed property you must let us know as soon as possible and tell us you want to revoke the licence. If not the licence will still be in your name and you may be liable if the conditions are not complied with. The new owner must apply for a new licence in their own name.
- If you buy a licensed property, you must apply for a new licence in your own name.
- If you grant a lease on the property to someone who operates the premises as a licensable property, they must apply for a new licence in their own name.
- If the licence holder dies while the licence is in force, the licence ceases and the building will be treated as having a temporary exemption notice granted, for three months from the death.
- If your property was subject to an HMO Licence and becomes a single family dwelling, you must check to see if a new licence is required.

## Q15. What standards apply to my property?

All privately rented residential properties must be maintained in good condition and free from category 1 hazards as assessed under the [Housing Health & Safety Rating System](#) (HHSRS).

Additionally properties must not be overcrowded and as a general guide:

- kitchens and living rooms are not 'bedrooms'
- the presumption should always be that, where the dwelling has been designed with a separate identifiable living space, this space should be retained as living space and not be counted as a bedroom.
- no-one should share a bedroom unless they are a couple, or both aged under ten, or both aged under twenty-one and of the same sex
- in all cases there should be sufficient living room space available for the household
- there should be sufficient provision for sleeping having regard to the numbers likely to be accommodated in the dwelling
- depending on the sex of household members and their relationship, and the size of rooms, a dwelling containing one bedroom is suitable for up to two persons, irrespective of age
- a dwelling containing two bedrooms is suitable for up to four persons
- a dwelling containing three bedrooms is suitable for up to six persons
- a dwelling containing four bedrooms is suitable for up to seven persons

In all cases, we would expect any overcrowding issues to be resolved on expiry or renewal of the tenancy agreement supplied with the application. For more information please refer to our website: [landlords: is your property fit to live in?](#)

You must ensure that the following are maintained in a good state of repair, good working order and good decorative repair throughout the period of the licence:

- property
- fixtures, fittings and furniture, including fire precautions

- carbon monoxide alarms
- gas, electrical, water and drainage installations

It's a legal requirement for all rented properties to be fitted with smoke alarms and carbon monoxide alarms. Smoke alarms must be fitted on every floor of the property as well as carbon monoxide alarms in properties which burn solid fuels.

**Please note:** additional fire safety measures are required for all HMOs. [See the guide to fire safety standards in residential properties in Bedfordshire.](#)

## Q16. What licence conditions apply?

When the scheme is introduced, the property licence would come with conditions (see separate document) to ensure that the standards are maintained. There are mandatory conditions requiring the licence holder to:

- produce an annual gas safety certificate, where gas is supplied
- keep electrical appliances and furniture supplied by the landlord in a safe condition and to supply declarations of their safety to the council on demand
- install smoke alarms and keep them in proper working order and to supply to the council, on demand, a declaration of their positioning and condition
- give the occupiers a statement of the terms on which they occupy the property (eg tenancy agreement)
- provide facilities where tenants can store waste while waiting for scheduled council refuse collections

Additional conditions and standards apply to HMOs and are outlined in the Links below.

- [HMO standards](#)
- [guide to fire safety standards in residential properties in Bedfordshire](#)
- [The Management of Houses in Multiple Occupation \(England\) Regulations 2006 \(Management Regs\)](#)

The council may also specify conditions such as those relating to the facilities in the HMO, its condition and the management of the building, including how the licence holder deals with the behaviour of occupiers.

New regulations in force from 1 October 2018 require minimum bedroom floor sizes in HMOs as follows:

- for a child under 10 years of age - 4.64m<sup>2</sup>
- for any single person over 10 years of age - 6.51m<sup>2</sup>
- for two people over 10 years of age - 10.22m<sup>2</sup>

Any room of less than 4.64m<sup>2</sup> may not be used as sleeping accommodation and the landlord will need to notify the local housing authority of any room in the HMO with a floor area of less than 4.64m<sup>2</sup>.

Any area of the room in which the ceiling height is less than 1.5m can't be counted towards the minimum room size.

The council will give landlords time to comply with the new room size standards in respect of the first licence granted on or after 1 October 2018 (whether or not the HMO was licensed immediately

before that date). The maximum period that the council may specify is 18 months however, the council may choose to shorten this time if it's reasonable.

## Q18. What should I do about self-contained flats?

When the scheme is introduced, there will be specific requirements relating to the licensing of self-contained flats – please see separate document.

Any conversion may require planning consent and building regulation approval and all privately rented residential accommodation must still comply with other housing standards as assessed under the Housing Health and Safety Rating System (HHSRS).

## Useful resources for section 18

- [Planning](#)
- [Building Control](#)
- [Landlords: is your property fit to live in?](#)

## Q19. Can the council refuse to grant a licence?

When the scheme is introduced, the council may refuse to grant a licence if the premises cannot be made to comply with all relevant legislative requirements. These include:

- the property is too small for the number of proposed occupants
- there are insufficient facilities such as kitchens and bathrooms, for the number of occupants
- inadequate fire precautions
- the management arrangements are not suitable
- the proposed licence holder and/or manager do not meet the fit and proper person test

## Q20. Can a licence be revoked?

Yes. When the scheme is introduced, the council may revoke the licence if it considers management of the property to be unsatisfactory or that the property is no longer suitable to house the number of occupiers.

When considering the management arrangements, the council will consider any information/evidence we have become aware of which may affect the fit and proper person status of the licence holder and/or manager.

Before revoking the licence the council must inform the landlord and any other relevant person of the intention to revoke. The council will consider any representations received within 14 days.

If the premises continue to operate as a licensable property, a new licence application will be required.

## Q21. Can I carry out any changes to my property during the term of the licence?

When the scheme is introduced, landlords must inform us of any significant changes to the property. Examples of this include, but are not limited to:

- major building works, such as installation of additional bathrooms, toilets, kitchens etc
- works to extend the property

- creating (or removing) an extra room

In some circumstances you may be required to apply for a new licence.

## Q22. Are there any implications for Council Tax?

For traditional HMOs, such as where occupants share amenities, the landlord will be liable for Council Tax.

## Q23. Will the council inform my mortgage company?

When the scheme is introduced, the law requires you to let certain persons know in writing that you intend to make an application for a property licence. The persons that need to know are:

- any mortgagee of the property to be licensed
- any owner of the property if that is not you, such as a freeholder and any head lessors who are known to you
- any tenants or long leaseholders of the property or any part of it (including any flat) who is known to you other than a statutory tenant or other tenant whose lease or tenancy is for less than three years (including a periodic tenancy)
- the proposed licence and property manager (if any) if that is not you
- any person who has agreed to be bound by any conditions in a licence if granted

A declaration that you have notified the people above forms part of the application form.

Additionally, the law requires the council to notify the relevant people above of the intention to issue a licence.

## Q24. How would the scheme be enforced?

When the scheme is introduced, the council's Private Sector Housing Enforcement team would be responsible for the enforcement and would follow up reports of properties operating without a licence where one is required. The council would investigate properties operating without a licence and may instigate legal action - each case will be considered on its merits.

As the manager or person in control of the property it is your responsibility to ascertain whether the building should have a licence, and you commit an offence if, without a reasonable excuse, you fail to apply for a licence for the property if one is required.

Failure to license a property that is required to be licensed, and failure to comply with licence conditions and/or other relevant legislation are criminal offences and may result in the council taking legal proceedings which could result in an unlimited fine or a civil penalty of up to £30,000.

A prosecution may also lead to the council no longer considering you to be a fit and proper person and revoking your licence.

The council may, depending on the offence, take legal proceedings against any, or all, of the following:

- licence holder
- the manager, or managing agent
- anyone bound by the licence conditions
- the person ultimately receiving the rent

If any of these positions are held by a company, the council may prosecute the director(s), manager(s), secretary or other similar officer, in addition to the company.

## Q25. What happens if my tenant sub-lets?

When the scheme is introduced, the licence holder would be required to notify the council as soon as possible and take appropriate action upon discovery that the property is being sublet by the tenant.

## Q26. How will licensing benefit landlords?

When the scheme is introduced, the Licensing department will help identify irresponsible landlords who impact negatively on the reputation of responsible landlords.

It would:

- assist landlords that are not familiar with all the requirements for establishing a rental business with what they need to do
- raise conditions, management standards, improve tenancy arrangements and help tackle [antisocial behaviour \(ASB\)](#)

## Q27. I am a tenant, how will I be affected?

When the scheme is introduced, Licensing would improve the renting in Luton by improving conditions, raising management standards and ensuring proper tenancy arrangements are in place.

Tenants and prospective tenants would know that landlords are 'fit and proper' persons who have agreed to abide by the conditions of their licence.

All licensed property would be listed on a public register, which tenants could access to find out whether the property is licensed and would therefore be able to refuse to rent properties that aren't.

When the scheme comes into force and you're already renting a property, then licensing shouldn't affect the rent which is contractually agreed between you and your landlord through the terms and conditions of your tenancy agreement. It's only after the contract has ended that your landlord can consider whether to increase the rent.

We would expect responsible landlords to absorb the cost of licensing as part of operating a rental business, much in the same way a food business would have a cost associated with registering their business.

The cost is not unreasonable - £488 for a 5 year licence for a 3 bedroom property, the cost equates to less than £2 per week. The cost of the licence fee can be offset against the business tax costs.

Some landlords may subsequently increase rents to recover the costs of the licence but this will be a business decision for them to make.

When the scheme comes into force, it will be illegal for your landlord to evict you simply because they do not wish to obtain a licence for a property that requires one. Additionally, if you have an assured shorthold tenancy agreement then your landlord legally must follow the correct procedure before evicting you.

If your landlord is threatening you with eviction please contact us, see housing advice for more information.

## Q28. Where can I get more help?

- [Visit our webpages](#)
- Email us for HMO and additional licensing issues: [HMO.Hotline@luton.gov.uk](mailto:HMO.Hotline@luton.gov.uk)

This document is provided for guidance only, for further information and advice, you should seek independent legal advice.

## Further information

For queries in Luton relating to:

- [Apply for Housing Benefit and Council Tax reduction](#)
- [Building control](#)
- [Council Tax](#)
- [Housing advice for landlords](#)
- [Housing advice for tenants](#)
- [Landlords: is your property fit to live in?](#)
- [Planning](#)
- [Tackling anti-social behaviour \(ASB\) together](#)
- [Trading Standards Service](#)
- [Waste management - bins and recycling](#)