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When will the new HMO legislation be implemented?

The original target date was mid October 2005; this has subsequently been put back to 6th April 2006 when the Houses in Multiple Occupation (HMOs) licensing and the Housing Health and Safety Rating System (HHSRS) will both be implemented.

Some general information about the new HMO licensing regime.

- An HMO licence will be granted for up to five years.
- A licence will be required for each HMO caught by the mandatory requirements
- A licence may not be transferred to another person
- The cost of an HMO licence is subject to Local Housing Authority (LHA) discretion and the level of fees is set by each LHA so a landlord/agent managing properties in several different areas will probably pay different fees on each. The fees collected must only be sufficient to fund the administration of the licensing scheme itself, not used to supplement other activities or departments of the Local Authority.
- A LHA has the power (s.237) to cross reference information they already hold from their Council Tax register and the Housing Benefit payment records in order to identify a likely HMO which might need to be licensed or to investigate whether an offence relating to licensing has been committed.
- The LHA only have the ability to grant or refuse a licence; where a licence is refused to a particular applicant a more suitable manager (or licence holder) will need to be appointed in order for the HMO to continue to operate. The LHA have the ability (s.102 and 113) to take the management of a property away from an “unfit” manager or controller of premises by use of “Interim Management Orders” and subsequently, a “Final Management Order”.
- A LHA may vary a licence either with the agreement of the licence holder, or, if they consider that there has been a “change of circumstances” since the licence was granted (e.g. the discovery of new information).
- Upon the death of an existing licence holder the licence ceases. Within three months a new licence must be applied for; an LHA can make a temporary exemption order for a further three months if considered appropriate.
- An HMO licence may include such conditions as the LHA consider appropriate for regulating either (a) the management, use and occupation (numbers) of the HMO and/or (b) its condition and contents. [Commonly referred to as Management Regulations and Amenity Standards]
- A licence may not include conditions requiring (or intending to secure) any alteration in the terms of a tenancy or licence under which any person occupies the HMO.
- There is certain information or questions that all LHAs will ask as part of the application process but there will not be a standard national application form. A landlord/agent with properties in more than one LHA area will have to fill in different forms which might ask different questions or require different information or supporting documentation.

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- Each LHA has the discretion to ask for additional information on the application form to help it establish that the intended manager is a fit and proper person, that decent management standards are in place and that the property is suitable for licensing (basic amenities, room sizes etc).
- LHAs are being encouraged by central government to fast track and offer discounted fees to applicants for a licence who demonstrate compliance with certain standards and competence etc., e.g. by belonging to a professional organisation or trade body such as ARLA, RICS, NAEA which have enforceable Codes of Practice, Qualifications and Training programmes etc. Another example might be a landlord belonging to a local accreditation scheme. The principle being that licence fees should be proportional to the amount of admin and checking needed to be done.
- Every LHA must establish and maintain a register of (a) all HMO licences granted by them which are in force, (b) all Temporary Exemption Notices which are in force, (c) all HMO (Interim or Final) Management Orders made by them which are in force. Such a register must be available to the public for inspection at the LHA's head office at all reasonable times.

What about existing local HMO registration schemes?

Any such schemes disappear as the relevant previous legislation that was used to create them is revoked upon implementation of the 2004 Housing Act provisions. However, LHAs are being encouraged by central government to passport and provide fast track applications and discounted fees for properties which are already accredited by the LHA under an existing local HMO registration scheme and will now be caught by the mandatory licensing regime.

As an Agent, do I need to do anything now?

Yes, taking account of the new rules you need to be assessing your portfolio to decide which properties may be subject to mandatory HMO licensing; you should consult with your client landlord and discuss what action needs to be taken by either of you. Both you and your client landlord should contact the LHA HMO team relevant to the property location and clarify their particular application process, fees etc.

How long have I or my client landlord got to get an HMO licensed?

Three months from the date on which the legislation is implemented, after which enforcement action can be taken against any person operating an HMO liable to mandatory licensing who has not either obtained a licence, applied for a licence or obtained a temporary exemption notice (whilst steps are taken to make the property no longer liable to be licensed.)

Who is the licence holder, the Landlord or the Agent?

The Act states [s.64(2)] that where certain specified matters are satisfied, a licence can be granted to either (a) the applicant, or (b) to some other person, if both he and the applicant agree. So, the answer would seem to be it could be - either landlord or agent or another person. However, the person actually managing the HMO or "having control" must also fulfil the (fit and proper) requirements referred to elsewhere in this note.

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The “matters” over which a LHA must be satisfied before granting a licence are set out in s.64(3) and (4), summarised as follows:-

- The house is suitable for occupation by the number of people stated in the application or some other maximum number decided by the LHA;
- The proposed licence holder is a fit and proper person and is the most appropriate person, from those available, to be the licence holder;
- That the proposed manager of the house is either (i) the person having control of the house, or (ii) a person who is an agent or employee of the person having control of the house;
- That the proposed manager of the house is a fit and proper person to be the manager; and that the proposed management arrangements for the house are otherwise satisfactory.

Fit and Proper person? Satisfactory management arrangements?

(1) As part of the licence application process the LHA must consider whether a person is:-

A fit and proper person to be the licence holder or, as the case may be, the manager of the HMO property. The LHA must have regard to any evidence which shows that the person has:-

- Committed any offence involving fraud, or other dishonesty, or violence or drugs, or any offence listed in schedule 3 of the Sexual Offences Act 2003 (ch.42).
- Practised unlawful discrimination (including, sex, race etc and disability) in the carrying on of any business.
- Contravened any provision of the law relating to housing or of landlord and tenant law
- Acted in contravention of any recognised applicable Code of Practice (relating to the Management of HMOs)

Further, any evidence which shows:-

- That any person associated or formerly associated with the applicant (whether on a personal, work or other basis) has done any of the things set out above, and, it appears to the LHA that the evidence is relevant to the question of whether the applicant is a fit and proper person to either be the licence holder or the manager of the HMO.

(2) As part of the licence application process the LHA must consider whether the proposed **management arrangements** are satisfactory, such considerations will include:-

- Whether any person proposed to be involved in the management of the HMO has a sufficient level of competence;
- Whether any person proposed to be involved in the management of the HMO other than the manager is a fit and proper person to be so involved; and
- Whether any proposed management structures and funding arrangements are suitable.

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Some explanations of relevant key terms under the Housing Act 2004

Household – a family or a single person	
Family – husband, wife, co-habitee, child, step-child, foster-child, grandchild, parent, step-parent, foster-parent, grandparent, brother, half-brother, sister, half-sister, aunt, uncle, niece, nephew, cousin.	s.258
Facilities – Basic Amenities: toilet, washing facilities (wash hand basin, shower, bath) cooking facilities	s.254(8)
A flat is “ Owner-Occupied ” if it is occupied (a) by a person who has a lease of the flat granted for a term of more than 21 years, (b) by a person who owns the freehold estate in the converted block or, (c) by a member of the household of a person within (a) or (b).	s.257(4)
“ Only or Main residence ” means occupied as (a) the persons residence for the purposes of undertaking a full-time course of further or higher education, (b) a refuge [as defined s.259(3)] or (c) in any other circumstances of a description specified for the purposes of this section by the appropriate national authority.	s.259(2)
“ Person having control ”, in relation to premises means the person who receives the rent of the premises (whether on his own account or as agent or trustee of another person). “ Person managing ”, in relation to premises means the person who, being an owner or lessee of the premises receives (whether directly or through an agent or trustee) rent or other payments from, in the case of an HMO, persons in occupation as tenants or licensees of part of the premises and includes, where those rents or other payments are received through another person as agent or trustee, that other person.	s.263(1) and (3)

Are there any exemptions to what is classed as an HMO?

Yes, some specific exemptions are ones where the building (or part):-

Is owner or managed by a public body	Sched.14. 2
Is owned or managed by an educational institution (University Accommodation)	Sched.14. 4
Is occupied by a religious community	Sched.14. 5
Is only occupied by - (a) persons who have an interest in the whole or part of either the freehold or leasehold interest granted for a term of more than 21 years, (b) any member of the household of such a person	Sched.14. 6
Is occupied by the owner (and their family if any) and one or two lodgers	Sched.14 6(c)
Is occupied by only two people (even if they form two households)	Sched.14. 7
Is occupied by persons who have their main residence elsewhere	s.259(2)
Is a building comprising solely of self-contained flats converted to or constructed in compliance with the 1991 Building Regulations irrespective of the tenure of the individual flats.(But a particular flat within such a building could still be classed as an HMO)	

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What property will be classed as an HMO?

A building, or part of a building, is a House in Multiple Occupation (an **HMO**) if it meets one of the following:

• the “standard test”,	s.254(2)
• the “self contained flat test”,	s.254(3)
• the “converted building test”, plus,	s.254(4)
• certain “converted blocks of flats”.	s.257(1)(2)

In broad terms these can be summarised as:-

Either

A building (a house) or part of a building (a flat) in which live two or more households, comprising three or more people (as their only or main residence) who share one or more basic amenities and for which rent is paid by at least one person for that use and occupation.

Or,

A building or part of a building which has been converted into, and consists of, self contained flats but was not converted to the 1991 Building Regulations and still does not comply with them, and, less than two thirds of the self contained flats are owner-occupied.

Some HMOs are subject to mandatory licensing.

An HMO **must** have a licence if **all** of the following apply:-

1. The building or part of the building (see above) is classed as an HMO, **and**,
2. The property is three or more storeys (including basements, mezzanines, loft rooms etc), **and**,
3. It is occupied by five or more people who form two or more households who are sharing one or more basic amenity.

Exemption:- If the basement is in commercial use and there are only two residential storeys above.

What are the offences, consequences or penalties in relation to the licensing of HMOs?

These are set out in s.72, 73, 74, and 75 of the 2004 Housing Act.

Offences:

1. A person commits an offence if he is in control of, or managing, an HMO which is required to be licensed but is not so licensed.
2. A person commits an offence if he knowingly permits another person to occupy the HMO and whose occupation results in the HMO being occupied by more persons or household than the licence permits.
3. A person commits an offence if, as the licence holder (or person to whom the licence obligations apply), fails to comply with any condition of the licence.

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Penalties:

- Upon conviction under 1 or 2 above; a fine not to exceed £20,000.
- Upon conviction under 3 above; a fine on scale 5 (currently a maximum of £5,000)

Further consequences of an offence under (1) above:-

- An application can be made by either the LHA or an occupier of an unlicensed HMO (which is required to be licensed) to a Residential Property Tribunal for a "Rent Repayment Order" in respect of any Housing Benefit or rent payment made during the period (but for no more than 12 months) in which the offence was being committed. This will require the person who committed the offence to repay such moneys.
- No section 21 [(1)(b) or (4)(a)] notice under c. 50 1988 Housing Act may be given in relation to a shorthold tenancy of part of an unlicensed HMO as long as it remains such an HMO.

What about Additional or Selective licensing?

- Should a LHA want to expand their mandatory HMO licensing regime (**Additional licensing**) to include properties or other criteria outside the definitions set in the 2004 Act they have to go through a local consultation process before applying to the Secretary of State for permission to do so.
- On the same basis a Local Authority can apply to the Secretary of State to impose a licensing regime on all properties in a particular area. This is known as **Selective licensing**.

[Certain Local Authorities which are categorised by the government auditors as "Good" or "Excellent" have delegated discretion to implement Additional and/or Selective licensing without completing the full submission process to the Secretary of State.]

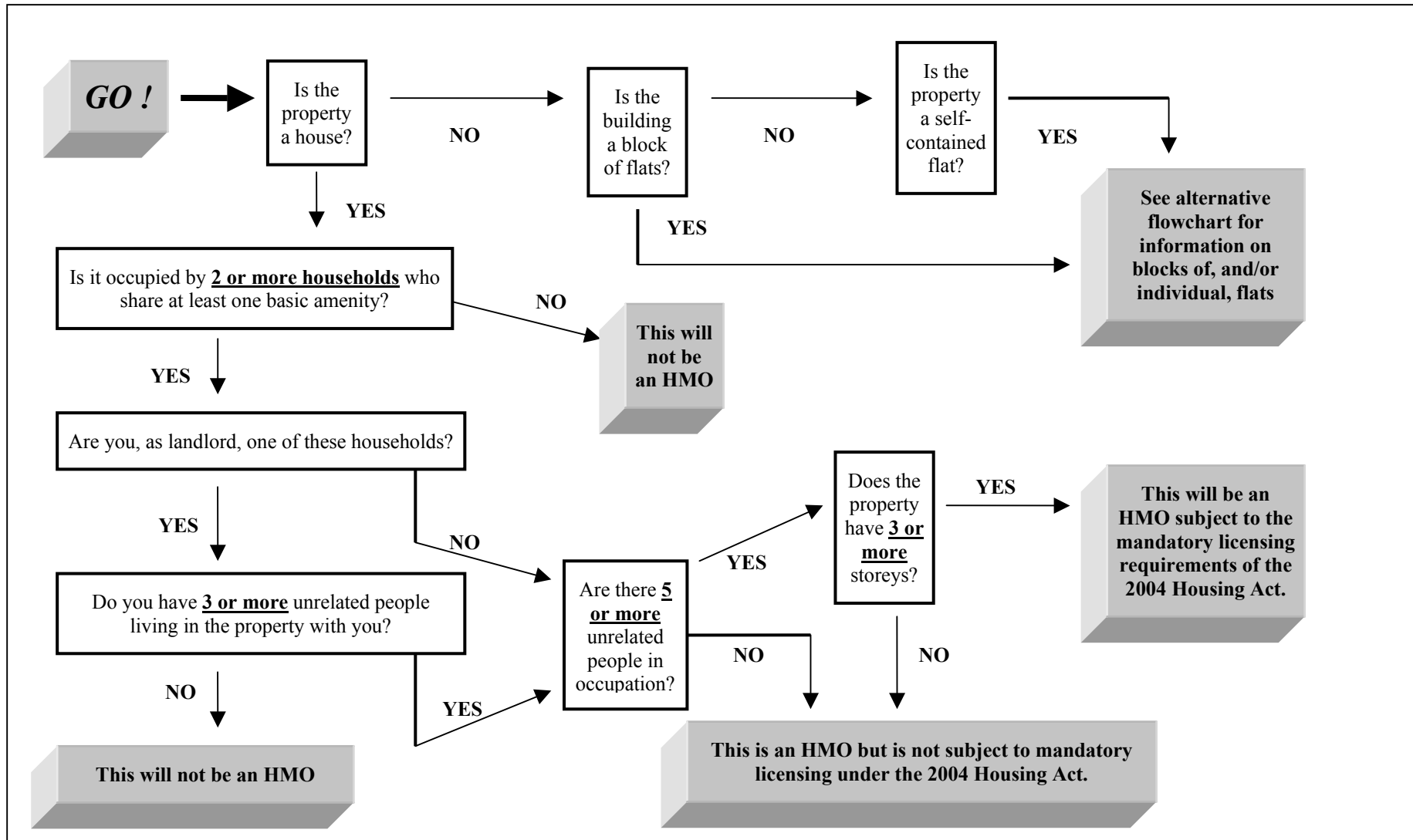
What is this HHSRS (Housing Health & Safety Rating System)?

This is a new "Risk Assessment" approach to measure housing conditions in England & Wales and replaces the current Fitness Standard which dates back originally to 1919. The fundamental principle is that the HHSRS is considering all the key issues within a property that affect Health & Safety and the potential effect of each hazard upon the most vulnerable groups of potential occupiers. This is an evidence based statistical analysis which categorises hazards and thus what, if any, works or improvements might need to be done. The assessments are carried out by Environmental Health Officers and enforced by the Local Authority. Aimed primarily at the Private Rented Sector the HHSRS can be applied to owner-occupied property or social housing (but not that in the ownership of the Local Authority itself).

A 14 page guidance note to the HHSRS will be available free of charge to ARLA members from the members section of the www.arla.co.uk website from January 2006.

**Housing Act 2004 (c.34)
Licensing of HMO's
(Houses in Multiple Occupation)**

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Housing Act 2004 (c.34) Licensing of HMO's (Houses in Multiple Occupation)

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