



Housing Act 2004 Guidance

Houses in Multiple Occupation ~ Licensing in the East Midlands



A Landlords Guide

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Landlord's Guide – Houses in Multiple Occupation

The Housing Act 2004 introduces the licensing of Houses in Multiple Occupation – HMOs. It will be compulsory to license larger, higher-risk HMOs. Councils will also be able to license other types of HMO to tackle problems in these smaller properties.

What is an HMO?

HMO stands for House in Multiple Occupation, which means a building, or part of a building, such as a flat, that:

- is occupied by more than one household and where more than one household shares – or lacks – an amenity, such as a bathroom, toilet or cooking facilities
- is occupied by more than one household and which is a converted building – but not entirely self-contained flats, whether or not some amenities are shared or lacking
- is converted self-contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulation and at least one third of the flats are occupied under short tenancies.

The building is occupied by more than one household:

- as their only or main residence
- as a refuge for people escaping domestic violence
- by students during term time
- for other purposes prescribed by the government.

A household is:

- families – including single people, couples and same sex couples
- other relationships, such as fostering, carers and domestic staff.

Why does the government want HMOs to be licensed?

Larger HMOs, such as bedsits and shared houses, often have poorer physical and management standards than other privately rented properties. The people who live in HMOs are among the most vulnerable and disadvantaged members of society. As HMOs are the only housing option for many people, the government recognises that it is vital that they are properly regulated.

Licensing is intended to make sure that:

- landlords of HMOs are fit and proper people, or employ managers who are
- each HMO is suitable for occupation by the number of people allowed under the licence
- the standard of management of the HMO is adequate
- high risk HMOs can be identified and targeted for improvement.

Where landlords refuse to meet these criteria, the council can intervene and manage the property so that:

- vulnerable tenants can be protected
- HMOs are not overcrowded
- councils can identify and support landlords, especially with regeneration and tackling anti-social behaviour.

Do all HMOs have to be licensed?

No. Under the new Housing Act 2004, there are **three** types of licensing:

1. Compulsory – required by law - Licensing of HMOs for properties that:

- are three or more storeys high
- have five or more people in more than one household, and
- share amenities such as bathrooms, toilets and cooking facilities.

Please check the flowchart on page 6 to work out if your property needs a licence.

2. Additional licensing of HMOs

A discretionary power that councils may decide to apply to a particular type of HMO, for example, two-storey properties occupied by three or more students or asylum seekers.

3. Selective licensing of other residential accommodation

Properties that are not subject to HMO licensing could be covered under a selective licensing scheme. This is where the council may declare that certain areas, for example, where there is low demand for housing and/or anti-social behaviour, are appropriate for selective licensing. This licensing would cover all forms of private rented housing, including HMOs. It is most likely that, at first, councils will only introduce licences for HMOs that fall into the first group. They may introduce the other two types of licensing later.

Please note that licensing only applies to HMOs where rents or other considerations are payable.

How will it work?

Anyone who owns or manages an HMO that must be licensed has to apply to the council for a licence. The council must give a licence if it is satisfied that:

- the HMO is reasonably suitable for occupation by the number of people allowed under the licence
- the proposed licence holder is a 'fit and proper person'
- the proposed licence holder is the most appropriate person to hold the licence
- the proposed manager, if there is one, is a 'fit and proper person'
- the proposed management arrangements are satisfactory
- the person involved in the management of the HMO is competent
- the financial structures for the management are suitable.

What does a 'fit and proper person' mean?

The council will carry out checks to make sure that the person applying for the licence is a fit and proper person. In deciding whether someone is fit and proper, the council must take into account:

- any previous convictions relating to violence, sexual offences, drugs and fraud
- whether the proposed licence holder has broken any laws relating to housing or landlord and tenant issues
- whether the person has been found guilty of unlawful discrimination
- whether the person has previously managed HMOs that have broken any approved code of practice.

It is advisable for the landlord or manager to be a member of a professionally recognised body, or an approved landlords association. Some landlord associations for consideration are ...

- A local or regional landlords association that is affiliated to the National Federation of Residential Landlords such as East Midlands Property Owners Ltd.
- The National Landlords Association.
- The Residential Landlords Association.
- The British Property Federation.

What is in a licence?

The licence will specify the maximum number of people who may live in the HMO. It will also include the following mandatory conditions, which apply to every licence:

- a valid current gas safety certificate, which is renewed annually, must be provided
- proof that all electrical appliances and furniture are kept in a safe condition
- proof that all smoke alarms are correctly positioned and installed
- each occupier must have a written statement of the terms on which they occupy the property, for example, a tenancy agreement.

Councils may also apply the following, discretionary, conditions:

- restrictions or prohibitions on the use of parts of the HMO by occupants
- a requirement that the condition of the property, its contents, such as furniture and all facilities and amenities, bathroom and toilets for example, are in good working order
- a requirement for specified works or repairs to be carried out within a particular timeframe
- a requirement that the responsible person attends an approved training course.

A list of the proposed mandatory and discretionary licensing conditions is available in Appendix IV.

How long will it last?

A licence will normally last for a maximum of five years, although it can be for a shorter period.

How much will it cost?

Landlords will have to pay a fee to cover the administration costs of the licence procedure. This will vary depending on the amount of time and resources that are needed to satisfy all the licensing conditions.

Can the council refuse to license my property?

Yes, if the property does not meet the conditions set out above and the landlord or manager is not a fit and proper person, the council must refuse the licence.

What will happen then?

If a landlord fails to bring an HMO up to the required standard, or fails to meet the fit and proper person criteria, the council can issue an Interim Management Order – IMO, which allows it to step in and manage the property. The owner keeps their rights as an owner. This order can last for a year until suitable permanent management arrangements can be made. If the IMO expires and there has been no improvement, then the council can issue a Final Management Order. This can last up to five years and can be renewed.

Can I appeal?

You may appeal if the council decides to:

- refuse a licence
- grant a licence with conditions
- revoke a licence
- vary a licence
- refuse to vary a licence.

You must appeal to the Residential Property Tribunal, normally within 28 days. Details of how to appeal are available from www.rpts.gov.uk

Temporary exemption from licensing

If a landlord or person in control of a property intends to stop operating it as an HMO, or reduces the numbers of occupants and can give clear evidence of this, then he or she can apply for a Temporary Exemption Notice. This lasts for a maximum of three months, and ensures that a property in the process of being converted from an HMO does not need to be licensed. If the situation is not resolved, then a second Temporary Exemption Notice can be issued. When this runs out, the property must be licensed, become subject to an Interim Management Order, or cease to be an HMO.

Are there any other penalties?

It is an offence if the landlord or person in control of the property:

- fails to apply for a licence for a licensable property or
- allows a property to be occupied by more people than are permitted under the licence.

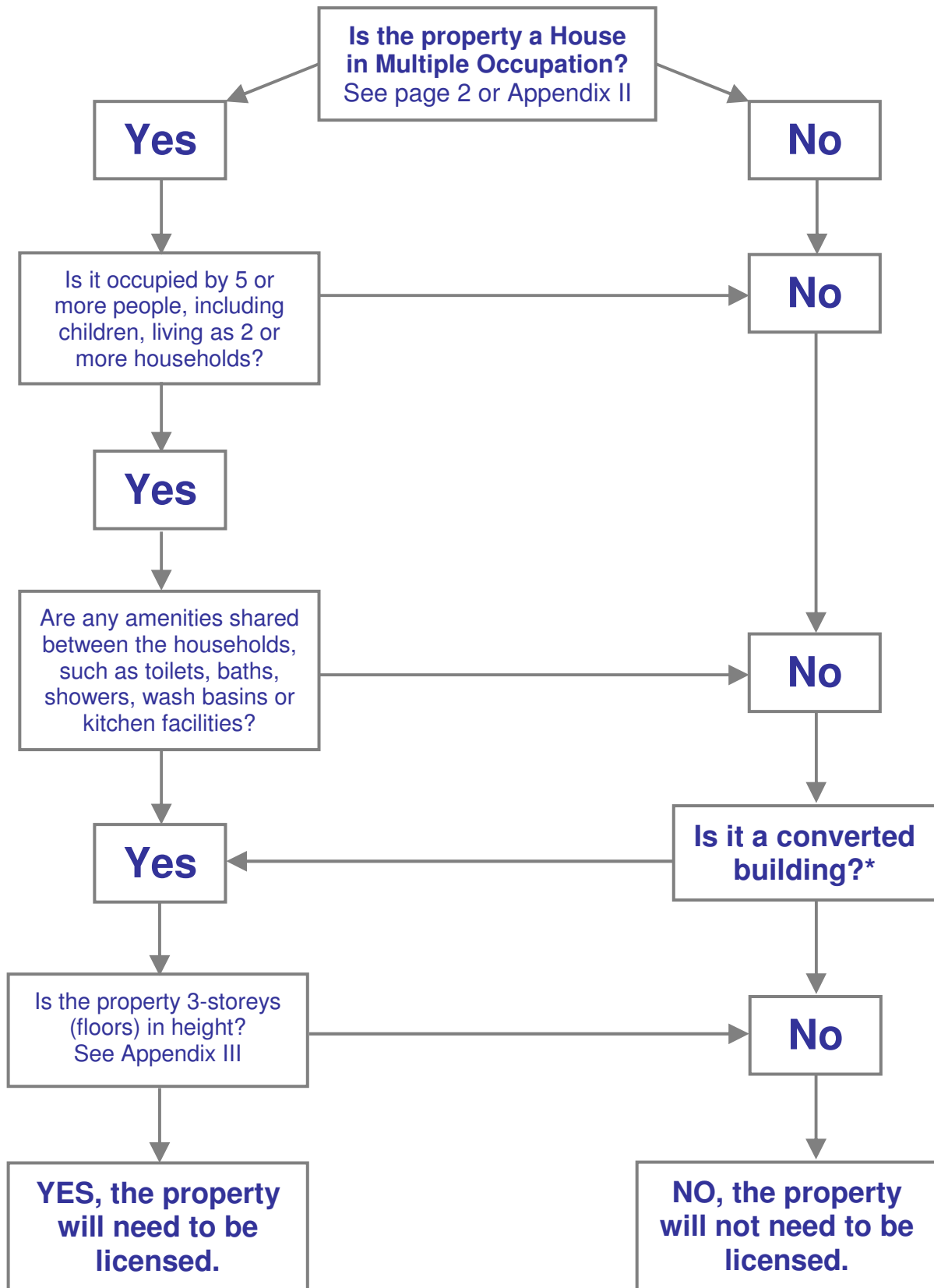
A fine of up to £20,000 may be imposed. In addition, breaking any of the licence conditions can result in fines of up to £5,000.

Rent repayment orders

A tenant living in a property that should have been licensed, but was not, can apply to the Residential Property Tribunal to claim back any rent they have paid during the unlicensed period – up to a limit of 12 months. Councils can also reclaim any housing benefit that has been paid during the time the property was without a licence.

Appendix I

Does my property need to be licensed?



* "Converted Building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed.

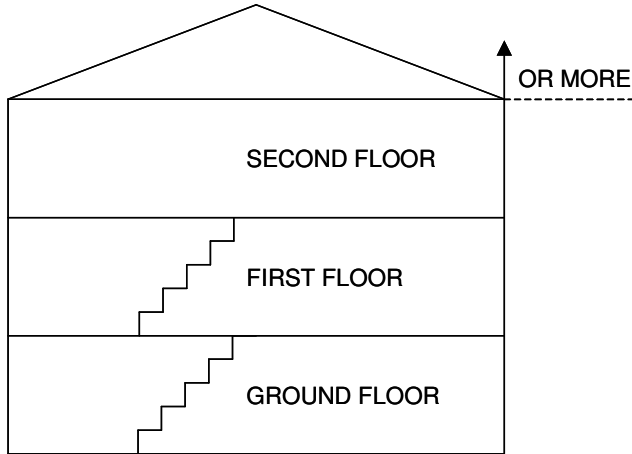
Appendix II

Is my Property an HMO?	Housing Act 2004 section and schedule numbers
It will be an HMO if it is one of the following:	
A shared house lived in by people who belong to more than one family* and who share one or more facilities**.	s254(2) <i>(The 'standard test')</i>
A house in bedsits lived in by people who belong to more than one family* and who share one or more facilities**.	s254(2) <i>(The 'standard test')</i>
A converted building (see definition on page 6)	s254(4) <i>(The 'converted building test')</i>
An individual flat lived in by people who belong to more than one family and who share one or more facilities**.	s254(3) <i>(The 'self-contained flat test')</i>
<p>A building of self-contained flats that do not meet 1991 Building Regulation standards.</p> <p>Exemptions ...</p> <ul style="list-style-type: none"> • If it is occupied by only two people. • If it is occupied by the owner – and their family if any – and one or two lodgers. • If it is occupied by a religious community. • If the occupiers have their main residence elsewhere***. • If no one in the property is required to pay rent. • If the owner or manager is a public body. • If the owner or manager is an educational institution. • A building of self-contained flats if two thirds or more of the flats are owner-occupied. • If the property is part of a guest house or hotel – unless an 'HMO Declaration' is made. 	<p>s257</p> <p>Sch 14, 7 Sch 14, 6(c)</p> <p>Sch. 14, 5 s259 s254(2)(e) Sch. 14, 2 Sch. 14, 4</p> <p>s257(2)(b) s254(2)(d) (s255(1))</p>
Some of these HMOs must have a Licence – Which ones?	
<p>An HMO must have a licence if all three of the following apply:</p> <p>a) it is an HMO – see definition of HMO above and</p> <p>b) it is three storeys or more – includes basements, and</p> <p>c) it is occupied by five people or more.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • if the whole property is in self-contained flats • if the basement is in commercial use and there are only two residential storeys above. <p>* 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.</p> <p>** Facilities – basic amenities: wc; wash hand basin, shower, bath; cooking facilities.</p> <p>*** Accommodation used by full-time students while they are studying is taken to be their main residence.</p>	<p>Regulations made under s55</p> <p>s258</p> <p>s254(8)</p> <p>s259(2)(a)</p>

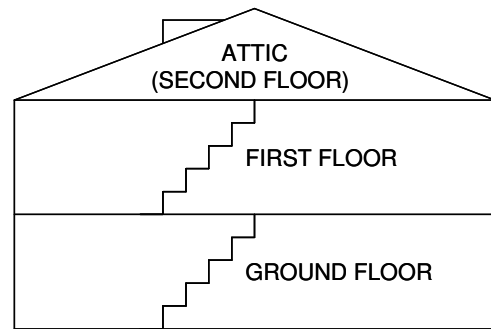
Appendix III

What is a three-storey property?

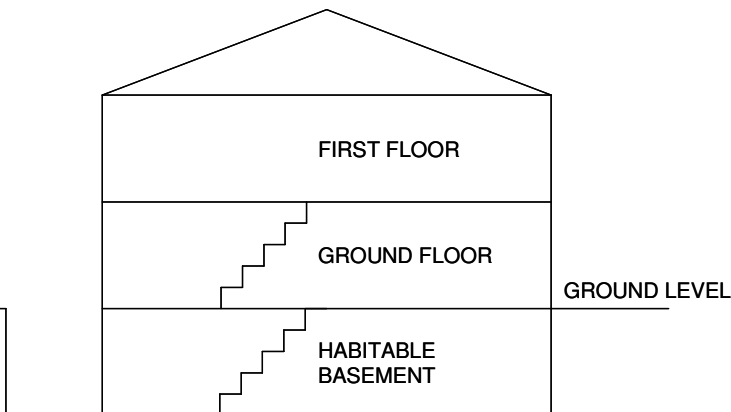
The following are examples of the most likely types of property which will be considered to three storeys in height.



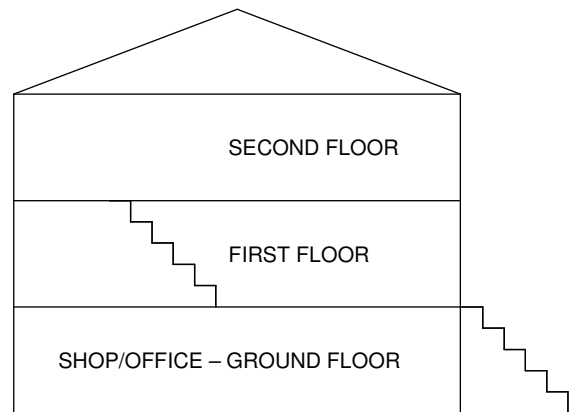
House with three or more levels



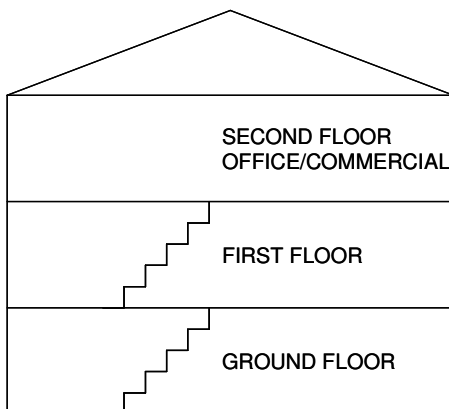
House with attic conversion



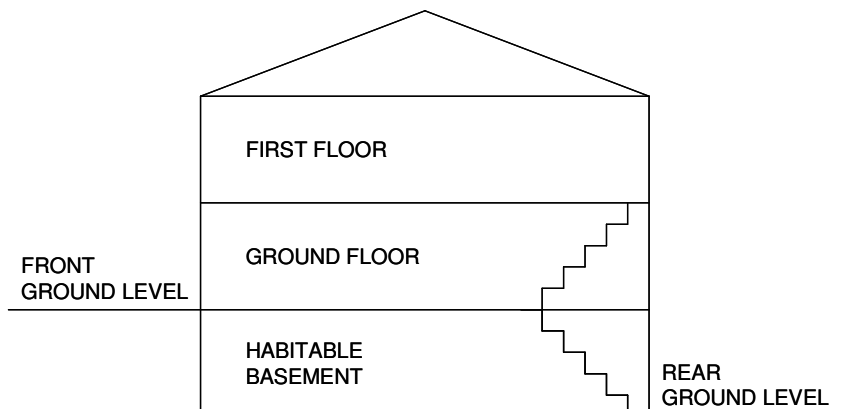
House with two floors above ground and a habitable basement



Property with three or more floor levels and a shop or other commercial use on the ground floor and living accommodation above



Property with three or more floor levels. Living accommodation on the lower two levels and commercial use above



House on a sloping site with two floor levels at the front and three at the back

Appendix IV

Conditions which incorporate the mandatory requirements

Clauses in *italics* are those specifically required in schedule 4 of the Housing Act 2004.

1. If gas is supplied to the house the Gas Safety (installation and use) Regulations 1998 where relevant to the licence holder shall be complied with in all respects.
 - 1.2 In particular an annual safety check shall be carried out by a CORGI registered engineer on each gas appliance/flue.
 - 1.3 A gas safety certificate obtained within the last 12 months in respect of the house shall be produced by the licence holder to the Council on and annually thereafter for their inspection.**
2. The Electrical Equipment (Safety) Regulations 1994 as they apply to the licence holder shall be complied with.
 - 2.1 Electrical appliances made available in the house by the licence holder shall be kept in a safe condition.
 - 2.2 All electrical appliances made available in the house by the licence holder shall be inspected visually for defects, such as frayed wiring, badly fitting plugs, and so on, at the beginning of each occupancy and, in any event, every two years.
 - 2.3 Earthed equipment (class 1) such as kettles and irons, and the associated leads and plugs, made available by the licence holder shall be tested at the point of supply and at least every two years thereafter – more often if deemed necessary by a risk assessment undertaken by the licence holder. This test shall be undertaken by a person competent in the use of the testing equipment and who has the appropriate electrical knowledge and training, such as a competent electrician or other person in possession of a City and Guilds Certificate 2377.
 - 2.3 Unsafe items shall be removed.
 - 2.4 A record of visual inspections and tests shall be maintained by the licence holder.
 - 2.5 A declaration, on demand, shall be supplied to the Council as to the safety of such appliances.**
3. The Furniture and Furnishings (Fire Safety) Regulations 1988 shall be complied with, in respect of any upholstered furniture supplied by the licence holder including chairs, sofas, children's furniture, beds, upholstered head boards, mattresses, scatter cushions, seat pads, pillows and upholstered garden furniture.
 - 3.1 The furniture made available by the licence holder shall be kept in a safe condition.**
 - 3.2 A declaration, on demand, shall be supplied to the Council as to the safety of such furniture.**
4. **The licence holder shall ensure that at all times [smoke alarms] [a fire detection system] in proper working order [are] [is] installed at the house.**
 - 4.1 A fire detection and alarm system designed to meet the requirements of BS 5839 - 6:2004 shall be installed in the house in accordance with the specification below:

Technical specification to be inserted here.

Note: Clause 4.1 may not be appropriate – see section 67 of the Act

- 4.2 The fire alarm system in the property shall be inspected tested and serviced, where relevant, in accordance with BS 5839 - part 1:2002, sections 6 and 7. In particular, the following shall be carried out:

Every 6 months checks on the system shall be carried out in accordance with clause 45.3.

Every 12 months checks on the system shall be carried out in accordance with clause 45.4.

Where provided independent smoke alarms shall be cleaned periodically in accordance with supplier's instructions.

Throughout the period of the licence, inspection and servicing certificates in the format recommended by BS 5839 - part 1:2002 (Annex G 6), [shall be submitted to the Council within 1 month of each check] [shall be submitted to the Council upon demand by an authorised officer of the Council].

The above-mentioned checks shall be carried out by a competent person. NICEIC, ECA or BFPSC contractors who are familiar with all British Standards relating to automatic fire detection systems are normally acceptable in this respect. Other contractors will be asked to demonstrate their competence to the Council before acceptance of the certificates.

- 4.3 A declaration, on demand, shall be supplied to the Council as to the condition and position of any smoke alarms in the property.**

- 5. The licence holder shall supply to the occupiers of the house a written statement of the terms on which they occupy it.**

Proposed discretionary licence conditions

Items 1-7 are likely to be applied on all licences and items 8-11 will be applied to licences so far as is appropriate in the circumstances – marked with an asterisk

1. The licence holder shall comply with The Housing (Management of Houses in Multiple Occupation) Regulations 1990 and any Approved Code of Practice issued under section 233 of the Housing Act 2004.
2. The electrical installation shall be kept safe and in proper working order.
 - 2.1 A periodic inspection of the electrical installation shall be undertaken in accordance with BS 7671 at intervals of no more than 5 years.
 - 2.2 A **periodic inspection report** in the format recommended in Appendix 6 of BS 7671 shall – at any time during the period of the licence – be submitted to the Council, upon demand by an authorised officer.
 - 2.3 This report shall be issued by a competent person. A competent person in this respect includes NICEIC enrolled contractors or ECA members who regularly inspect, and are qualified to inspect domestic electrical installation systems and whose work is subject to regular assessment.
3. The licence holder shall ensure that at all times, gardens, yards and other areas within the curtilage of the house are kept in a reasonably clean and tidy condition and free from rodent infestation.
4. The licence holder shall notify all occupants at the beginning of their occupancy of the arrangements in place to deal with emergency and other repairs.

5. The licence holder shall at all times comply with relevant landlord and tenant legislation.
6. The licence holder shall maintain the exterior of the property in reasonable decorative order and in reasonable repair.
7. The licence holder shall make suitable and adequate provision for refuse storage and collection at the house. This shall include ...
- *8. The escape lighting in the property shall be inspected, tested and serviced generally in accordance with clause 12 of BS 5266 – 1: 1999. In particular, the following shall be carried out ...

Every six months checks on the system shall be carried out in accordance with clause 12.4.4.

Every three years checks on the system shall be carried out in accordance with clause 12.4.5.

For self-contained luminaires with sealed batteries, after the first three yearly test, the three yearly test shall be carried out annually in accordance with clause 12.4.6.

- 8.1 Throughout the period of the licence, periodic and test certificates in the format recommended by BS 5266 – part 1:1999 (Annex C) [shall be submitted to the Council within 1 month of each check] [shall be submitted to the Council upon demand by an authorised officer of the Council].
- 8.2 The above-mentioned checks shall be carried out by a competent person. NICEIC, ECA or BFPSA contractors who are familiar with all British Standards relating to emergency escape lighting systems are normally acceptable in this respect. Other contractors will be asked to demonstrate their competence to the Council before acceptance of the certificates.

- *9. The licence holder shall comply with the (following) (attached) schedule of (restrictions) (and/or) (prohibitions) on the use or occupation of the house (and/or) (particular parts of the house) by persons occupying it:
- *10. The licence holder shall take reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house:
- *11. The licence holder shall ensure that each occupier is made aware of any conditions imposed by the Council relating to the behaviour of occupants. The licence holder shall also ensure that compliance with any such conditions is made a condition of occupancy of any new tenancies made after the commencement of the licence. Those conditions are that the occupants shall:

- not cause nuisance and annoyance to other occupants or to neighbouring residents
- comply with arrangements made by the manager for the storage and disposal of refuse
- not cause damage to fixtures, fittings, fire precautions, or premises
- not use abusive or threatening behaviour
- allow access to the agent/landlord to maintain communal areas and, with reasonable notice, to carry out works within the occupants own accommodation.

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Further information on DASH, its associates, projects and successes can be found by visiting our website at www.eastmidlandsdash.org.uk or by calling 01332 256409.

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Also Available:

- Housing Act 2004 Guidance - Amenities and Space. A Landlords Guide
- Housing Act 2004 Guidance - Local Authority Enforcement Options. A Landlords Guide
- Housing Act 2004 Guidance - The 29 Hazards. A Landlords Guide
- The Decent Homes Standard. A Landlords Guide

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