



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 introduced the licensing of certain Houses in Multiple Occupation (HMOs) in 2006. Changes will see mandatory licensing extended to cover all higher-risk HMOs from 1<sup>st</sup> October 2018. Councils will also still be able to licence other types of HMO to tackle problems in 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
- foster parent, carers & 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 when tackling anti-social behaviour.



## Do all HMOs have to be licensed?

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

- 1. Mandatory** – required by law - Licensing of HMOs for properties that:
- 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 7 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, smaller properties occupied by three or more students or asylum seekers within a certain area.

## **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, areas such as Nottingham City have introduced selective licensing. Check your Local Authority website to confirm.

## How does Mandatory licensing work?

Anyone who owns or manages a licensable HMO 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 (among other things):

- 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 or associated persons has been found guilty of unlawful discrimination
- whether the person or associated persons has previously managed HMOs that have broken any approved code of practice.



## 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.

Council's may also apply conditions they consider appropriate for regulating the management, use, occupation and conditions of the HMO

Councils may also apply discretionary conditions for example:

- 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 suggested 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 cost of licensing. This will vary depending on the amount of time and resources that are needed to satisfy all the licensing conditions. Check LA website for charging details.

### 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 the premises or management arrangements are unsuitable or the landlord or any proposed manager 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 First Tier Tribunal normally within 28 days. Details of how to appeal are available from <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>



## 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 under exceptional circumstances. 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 licence their licensable HMO
- allows a property to be occupied by more people than are permitted under the licence
- It's also an offence for the landlord to fail to comply with any condition of the licence

A Landlord can be issued a Civil Penalty of up to £30,000, be prosecuted and have a banning order imposed.

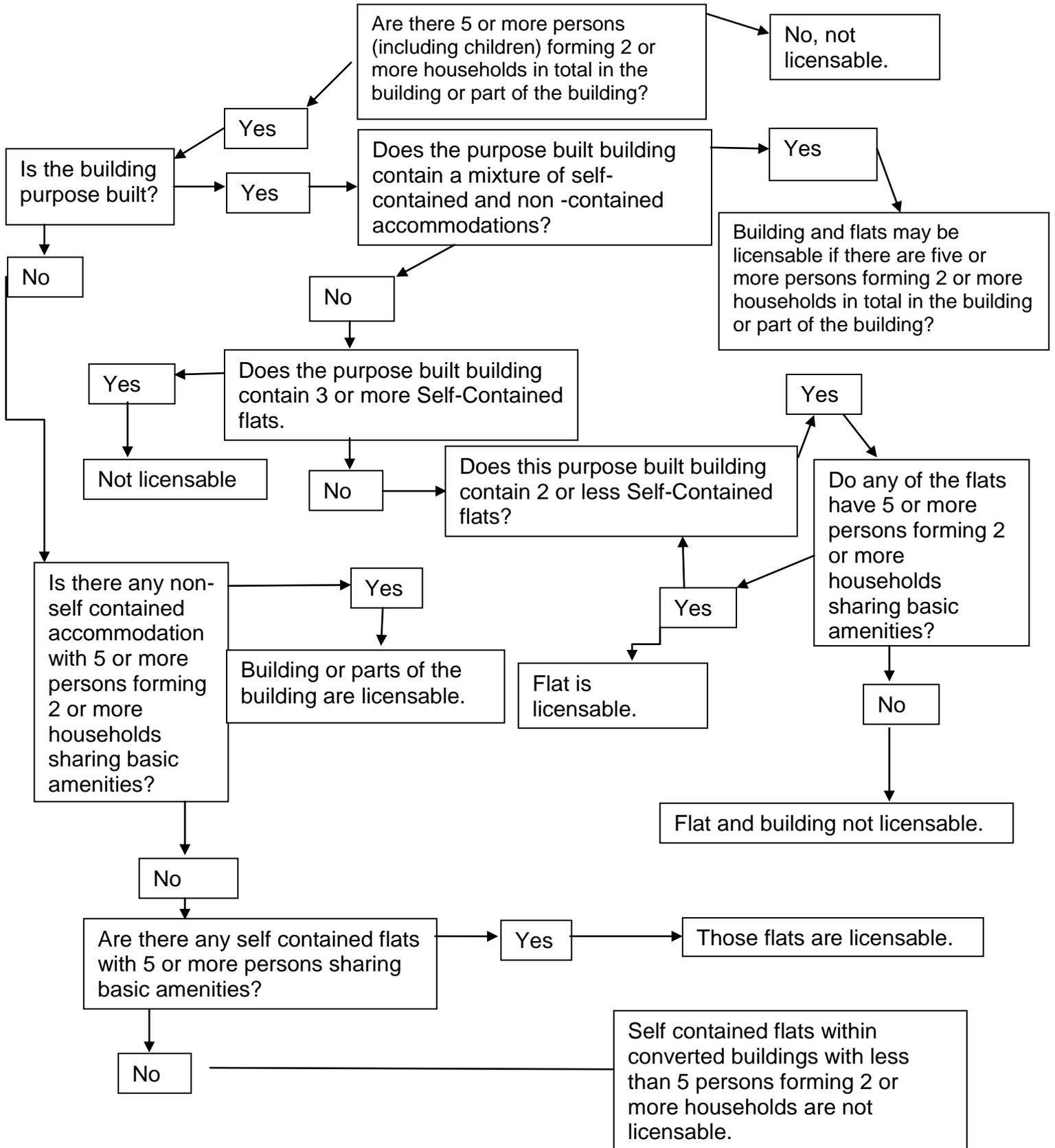
## Rent repayment orders

A tenant living in a property that should have been licensed, but was not, can apply to the FTT 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 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:	
<b>A shared house</b> lived in by people who belong to more than one family and who share one or more facilities.	s254(2) (The 'standard test')
<b>A house in bedsits</b> lived in by people who belong to more than one family and who share one or more facilities.	s254(2) (The 'standard test')
<b>A converted building</b> (see definition on page 6)	s254(4) (The 'converted building test')
<b>An individual flat</b> lived in by people who belong to more than one family and who share one or more facilities.	s254(3) (The 'self-contained flat test')
<p><b>A building of self-contained flats</b> that do not meet 1991 Building Regulation standards.</p> <p><b>Exemptions...</b></p> <ul style="list-style-type: none"> <li>• If it is occupied by only two people.</li> <li>• If it is occupied by the owner – and their family if any – and one or two lodgers.</li> <li>• If it is occupied by a religious community.</li> <li>• If the occupiers have their main residence elsewhere***.</li> <li>• If no one in the property is required to pay rent.</li> <li>• If the owner or manager is a public body.</li> <li>• If the owner or manager is an educational institution.</li> <li>• A building of self-contained flats if two thirds or more of the flats are owner-occupied.</li> <li>• If the property is part of a guest house or hotel – unless an 'HMO declaration' is made.</li> </ul>	<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 s257(2)(b)</p> <p>s254(2)(d) (s255(1))</p>
Some of these HMOs must have a Licence – Which ones?	
<p>A house or flat that meets the definition of an HMO must have a licence if</p> <p>a) it is an <b>HMO</b> – see definition of HMO above, and</p> <p>b) it is occupied by <b>five people or more</b>.</p> <p>Exemptions:</p> <ul style="list-style-type: none"> <li>• If the whole property has 3 or more purpose built self-contained flats only</li> <li>• If the basement is in commercial use and there are only two residential storeys above.</li> </ul>	<p>Regulations made under s55</p>
<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>s258</p> <p>s254(8)</p> <p>s259(2)(a)</p>

## Appendix III

### Sample copy of 'Management Conditions' by Derby City Council

#### 1 Gas safety

- 1.1 If gas is supplied to the house, the licence holder shall ensure that the Gas Safety (Installation and Use) Regulations 1998, or any Regulations which subsequently replace these, are complied with.
- 1.2 In particular the licence holder shall ensure that an annual safety check is carried out by a Gas Safe registered engineer on each gas appliance/flue in the house.
- 1.3 The licence holder shall annually produce to the Council, for its inspection, a gas safety certificate obtained within the last 12 months in respect of the house..

#### 2 Safety of electrical appliances

- 2.1 The licence holder shall ensure that the Electrical Equipment (Safety) Regulations 1994, or any Regulations which subsequently replace these, are complied with.
- 2.2 The licence holder shall ensure that electrical appliances made available in the house by them are kept in a safe condition and proper working order at all times.
- 2.3 The licence holder shall ensure that all electrical appliances made available in the house by them are inspected visually for defects, such as frayed wiring, badly fitting plugs and so on, at the beginning of each occupancy, regularly thereafter and in any event every two years.
- 2.4 Subject to (2.5) below, the licence holder shall ensure that earthed electrical equipment (class 1) and the associated leads and plugs made available to him are tested at least every five years (more often if deemed necessary by a risk assessment undertaken by the licence holder).
- 2.5 The licence holder shall ensure that portable earthed electrical equipment (class 1) and the associated leads and plugs made available by him are tested at least every two years.
- 2.6 This testing shall be undertaken by a person who is competent in the use of the testing equipment and who has the appropriate electrical knowledge and training (ie a competent electrician or competent other person in possession of a City and Guilds Certificate 2377).
- 2.7 The licence holder shall ensure that as soon as any electrical appliance is identified as being unsafe, it shall be removed from the house immediately
- 2.8 The licence holder shall ensure that a record of visual inspections and tests is maintained.
- 2.9 The licence holder shall submit to the Council on demand the record of visual inspections and tests within 14 days of the Council's demand.

#### 3 Furniture and Furnishings (Fire Safety)

- 3.1 The licence holder shall ensure that the Furniture and Furnishings (Fire Safety) Regulations 1988, or any Regulations which subsequently replace these, in respect of any upholstered furniture supplied by them, including chairs, sofas, children's furniture, beds, upholstered head boards, mattresses, scatter cushions, seat pads, pillows and upholstered garden furniture are complied with.
- 3.2 The licence holder shall ensure that the furniture made available by them is kept in a safe condition at all times.



3.3 The licence holder shall supply to the Council on demand, a declaration as to the safety of such furniture.

#### 4 **Smoke & Carbon Monoxide Alarms**

4.1 The licence holder shall ensure that at all times a suitable fire detection system designed in accordance with BS 5839-6:2004, or any British Standard which subsequently replaces this, is installed in the house and is maintained in proper working order.

4.2 The licence holder shall ensure that the fire alarm system in the house is inspected tested and serviced in accordance with BS 5839 – part 1:2002, sections 6 and 7, or any British Standard which subsequently replaces this. In particular – where relevant – the following shall be carried out:

- every six months checks on the system shall be carried out in accordance with clause 45.3 of the above mentioned BS 5839
- every 12 months checks on the system shall be carried out in accordance with clause 45.4 of the above mentioned BS 5839
- where provided independent smoke alarms shall be cleaned periodically in accordance with supplier's instructions.

4.3 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 14 days of its demand.

4.4 The above-mentioned checks shall be carried out by a competent person who is familiar with all British Standards relating to automatic fire detection systems, who regularly inspects automatic fire detection systems, who is qualified to inspect automatic fire detection systems and whose work is subject to regular assessment. The NICEIC, the ECA and NAPIT claim to regularly assess the competency of their contractors.

4.5 The licence holder shall supply and install a carbon monoxide alarm in any room (room includes hall or landing, bathrooms and WC compartments) of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

4.6 The licence holder shall keep any such carbon monoxide alarm(s) in proper working order.

4.7 The Licence holder shall ensure that checks are made by them or on behalf of them to ensure that each smoke and carbon monoxide alarm is in proper working order on the day the tenancy begins, if it is a new tenancy.

4.8 The licence holder shall supply to the Council on demand within 7 days, a declaration as to the condition and position of any smoke alarms and/or carbon monoxide alarms in the property

#### 5 **Emergency Escape Lighting**

5.1 The licence holder shall ensure that the escape lighting in the house is inspected, tested and serviced generally in accordance with clause 12 of BS 5266 – 1: 2005, or any British Standard which subsequently replaces this. 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 of the above mentioned BS 5266
- every three years checks on the system shall be carried out in accordance with clause 12.4.5 of the above mentioned BS 5266
- 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 of the above mentioned BS 5266.

5.2 Throughout the period of the licence, periodic and test certificates in the format recommended by BS 5266 – part 1: 2005 (Annex C) shall be submitted to the Council within 14 days of the demand.

5.3 The above-mentioned checks shall be carried out by a competent person who is familiar with all



British Standards relating to emergency escape lighting systems, who regularly inspects emergency escape lighting systems, who is qualified to inspect emergency escape lighting systems and whose work is subject to regular assessment. The NICEIC, the ECA and NAPIT claim to regularly assess the competency of their contractors.

## 6 **Written Agreements**

- 6.1 The licence holder shall supply to the occupiers of the house a written statement of the terms on which they occupy it.
- 6.2 The licence holder shall supply to the Council on demand a copy of the written statement.

## 7 **Safety of Electrical Installations**

- 7.1 The licence holder shall ensure that the electrical installation in the house is kept safe and in proper working order at all times.
- 7.2 The licence holder shall ensure that an inspection of the electrical installation in the house is undertaken in accordance with BS 7671, or any British Standard which subsequently replaces this, at intervals of no more than five years or lesser period if indicated on the previous periodic inspection report.
- 7.3 The licence holder shall supply to the Council on demand the latest electrical installation condition report (EICR) in the format recommended in BS 7671.
- 7.4 The licence holder shall ensure that this report is issued by a competent person who regularly inspects domestic electrical installation systems, who is qualified to inspect domestic electrical installation systems and whose work is subject to regular assessment. The NICEIC, the ECA and NAPIT claim to regularly assess the competency of their contractors.

## 8 **General Public Health and Environmental Housing Standards**

- 8.1 The licence holder shall ensure that the exterior of the house is maintained in a reasonable decorative order and in reasonable repair.
- 8.2 The licence holder shall ensure that gardens, yards, paths and drives, where present, are maintained such that their condition does not adversely affect the amenity of the neighbourhood. To that extent the licence holder shall ensure that gardens, yards paths and drives and other areas within the curtilage of the house are kept in a reasonably clean and tidy condition and free from rodent infestations at all times.

## 9 **Landlord and Tenant Issues**

- 9.1 The licence holder shall ensure that notification in writing is given to all occupants at the beginning of their occupancy of the arrangements in place to deal with emergency and other repairs.
- 9.2 The licence holder shall ensure that all reasonable and practical steps are taken to prevent or reduce anti-social behaviour by the occupants and all persons visiting the house.

Note: Where any of the conditions required as part of the licence, request that reports, certificates, declarations or other documents be produced or supplied to the Council, this shall mean sending by post or delivering by hand, a copy of the relevant report/certificate/declaration to the Council's Offices.

## 10 **Licence Holder**

- 10.1 The licence holder shall inform the Council in writing if they no longer reside at the address given, and provide the authority with new address details within 21 days of a change.



- 10.2 The licence holder shall inform the Council in writing where there is a change in any managing agent within 21 days of such a change.
- 10.3 If the licence holder is a managing agent, they shall inform the Council in writing if the person who is specified as the main contact ceases to be employed by them, and inform the authority of a new contact within 21 days of such a change.
- 10.4 If the licence holder is a managing agent, they shall inform the Council in writing if they cease to have an interest in the property within 21 days of such a change.

## 11 **Fit and Proper Person**

- 11.1 The licence holder shall inform the Council in writing if, since becoming the licence holder, he/she commits any of the actions described within paragraphs a) to d) below. Notification to the authority shall be within 21 days of such a contravention.
- 11.2 The licence holder shall inform the Council in writing, if the person managing the property contravenes any of the sections a) to d) below. This shall be done within 21 days of such a contravention.
- 11.3 The following is the criteria by which the Council assessed whether the licence holder or manager is a fit and proper person:
- a) Committed an offence involving:
    - fraud
    - dishonesty
    - violence
    - drugs
    - Sexual Offences Act Schedule 3.
  - b) Practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in connection with a business.
  - c) Contravened any provision of housing or landlord and tenant law.  
In particular:
    - subject to proceedings by a local authority
    - where the local authority has had to carry out works in default
    - subject to a management order under the Housing Act 2004
    - or been refused a licence or breached conditions of a licence.
  - d) Acted in contravention of any Approved Code of Practice.

## 12 **Storage and Disposal of Refuse**

- 12.1 The licence holder shall comply with Derby City Councils waste collection scheme relating to the storage, collection and disposal of waste arising from the HMO.
- 12.2 The licence holder shall apply for, fund and maintain a 'Trade Waste Agreement' where directed by the local authority for the disposal of waste arising from the HMO.
- 12.3 The licence holder shall provide and maintain an adequate number of waste wheeled bins for the number of households and rubbish produced.
- 12.4 The licence holder shall ensure that there is adequate off street storage for all waste receptacles between collections and that bins are not unnecessarily left on the street between collection days
- 12.5 The licence holder shall ensure that all occupiers of the HMO are provided with adequate information on the appropriate disposal of refuse, the relevant days of collection and any reasonable recycling schemes imposed by the local authority.
- 12.6 The Licence holder shall ensure that all internal and external refuse bins and bin storage areas,



structure and hard standings are maintained in a clean and serviceable condition

**13 Maximum Permitted Occupation**

13.1 The Licence holder shall ensure that the maximum permitted occupancy of X Households and X Persons in occupation within the HMO are not exceeded.

13.2 The Licence holder shall ensure that the maximum permitted number of persons in each bedroom/bedsit detailed in the chart below does not exceed the permitted number indicated.

Room Number	Room Location	Maximum permitted number of households.	Maximum permitted number of Adults / Children.
1.			
2.			
3.			
4.			
5.			

13.3 Persons of the opposite sex and aged 10 or over should not generally be permitted to share the same room for sleeping purposes unless they are married or living as partners.

However it is recognised that for short term emergency accommodation where there is no other appropriate accommodation available the placing of families with children over 10 in a family room may be the only option available. In such circumstances and where the Authority have no safeguarding concerns such occupation may be permitted but all available steps shall be taken to ensure that the family's stay is kept to a minimum. Such occupation of family rooms must only be for temporary accommodation and occupation must be limited to a maximum of 42 nights unless there are exceptional circumstances agreed by the Local Authority Housing Standards Team.] *To be inserted in appropriate cases.*

13.4 [The licence holder shall ensure that the maximum number of households/occupants specified in the licence conditions is not exceeded and shall confirm with the Local Authority that placements will not cause the number of permitted occupants to be exceeded.] *To be inserted if necessary*

13.5 Only rooms designated as bedrooms may be used for sleeping accommodation.

13.6 Rooms containing cooking facilities within the room itself are not suitable to accommodate families with children below the age of 5 years.

**14.0 Any other condition**  
(to be used if necessary)

14.1 Derby City Council imposes the following additional condition[s] on the [licence holder]. The[se] condition[s] [are] [is] to regulate the management, use and occupation of the house concerned and its condition and contents.

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