

GUIDANCE NOTES

MANDATORY LICENSING

The Housing Act 2004 came into force in Wales on 30th June 2006. Part 2 of the Act requires that Houses in Multiple Occupation (HMOs) consisting of:

- 3 or more storeys
- and occupied by 5 or more persons who constitute more than 2 household
- where there may be sharing of facilities but not necessarily

must be subject to the requirements of mandatory licensing.

This scheme is known as **The Denbighshire County Council (Licensing of Houses in Multiple Occupation) Regime 2006**

ADDITIONAL LICENSING

The Housing Act 2004 Section 56 allows a Local Housing Authority to designate areas as subject to **additional licensing**, thereby allowing them to deal with those properties which could not be dealt with under the Mandatory Scheme

Denbighshire County Council has designated the electoral wards of **Denbigh, Llangollen, Prestatyn and Rhyl** as subject to Additional Licensing, this designation was made on the 28th July 2020.

This scheme will be known as **The Denbighshire County Council Additional Licensing (Houses in Multiple Occupation) Scheme 2020**. The designation is in accordance with the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006.

The Scheme to which the designation applies has General Approval of the Welsh Assembly Government under the Housing Act 2004 (Additional HMO Licensing Wales) General Approval 2007 of which came into force on 13th March 2007. Accordingly by virtue of Section 58 subsections (1) (b) and (7) of the designation need not be confirmed and will come into effect on a date specified in the Designation.

The Scheme will work in conjunction with the Mandatory Licensing of Houses in Multiple Occupation Regime referred to above. The Scheme will be effective from **1st December 2020** and unless revoked beforehand or extended will cease to have effect on **30th November 2025**.

This Scheme shall be applied to the area described above and will include properties that meet **all** of the criteria, within either one of the following two categories:

- any type of HMO as defined by Section 254 of the Housing Act 2004 which does not fall within the mandatory licensing scheme, occupied by three or more persons, forming two or more households
- HMO properties which are defined within the scope of Section 257 of the Housing Act; HMO's created by converting buildings into flats, but do not meet the 1991 Building Regulations and they have not been subsequently brought up to the relevant standards

The Scheme shall not be applied to those properties exempted by relevant sections of the Act and those already licensed under the Mandatory Licensing of Houses in Multiple Occupation Scheme.

FIT & PROPER PERSON

The proposed licence holder and any other persons involved with the management of the house must be fit and proper persons within the definition of Section 66 of the Housing Act 2004.

The licence holder must also satisfy the Authority that a proper management structure exists in terms of management competence and funding for the effective operation of the house.

FIRE SAFETY

Under the Regulatory Reform (Fire safety) Order 2005 (RRO) the responsible person (licence holder) must ensure a fire risk assessment is carried out by a competent person and produce a written record of the significant findings. The licence holder will be required to submit their risk assessment to the **Public Protection (HMO Licensing)** when requested.

SUBMITTING YOUR APPLICATION – WHAT HAPPENS NEXT

Please check through the application form to ensure that all relevant sections have been completed and that all documentation listed on the page 2 check list (if applicable) have been enclosed, including the requisite licensing fee. (Full application must be received in order to qualify for discounts)

Following submission of your fully completed application for a licence, we aim to notify you of our decision in relation to your application within 6 weeks of receiving your completed application. The authority must serve a notice upon you stating our proposed decision stating any Conditions attached to the licence, you will be giving an opportunity to make representations regarding that decision.

Further opportunity is given to make representation when the authority serve upon you the decision to grant a licence with any conditions attached.

How will licensing work?

The Authority must grant 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 licensed holder is a fit and proper person and the most appropriate person to hold the licence
- the proposed manager, if there is one, is a fit and proper person to be the manager
- the management arrangements are satisfactory
- the financial structure for the management are suitable

What is in a licence?

The licence will be subject to conditions relating to its management, use, occupation, content and condition.

- The licence will specify the maximum number of people who may live in the HMO.

It will also include the following 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.

Denbighshire County Council may also apply the following 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, these will need to be carried out as outlined in your licence
- A requirement that the responsible person attends an approved training course.

Please refer to **Licensing Conditions (Minimum Standards for Houses in Multiple Occupation)** for full details of your requirements. As part of your licence you may be required to carry out work in order to comply with the licensing conditions.

How long will it last?

A licence will be valid for a maximum period of **5 years**, will relate to **one HMO only** and **will not be transferable**. If the property is sold, transferred to another person a new licensing application form will need to be completed. Licences may be granted for less than 5 years if concerns are raised regarding poor management, persistent non-compliance with works required or fit and proper person concerns.

Licensing inspections

The authority will also carry out inspections of houses to validate the content of completed application forms and to confirm that licence conditions are being maintained during the period of the licence.

Can I change my licence once it has been issued?

Yes, where a licence holder wishes to alter the terms of their licence, they may apply for a **variation** to the licence by making a written request to the Public Protection (HMO Licensing).

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 Wales (RPT), normally within **28 days**. A fee of £150 must accompany your application.

The contact address for the RPT Wales is:

The Residential Property Tribunal Wales, Oak House, Cleppa Park, Celtic Springs, Newport, NP10 8BD.

Telephone - 03000 252 777. E-mail - rpt@gov.wales. Fax: 03000 256 146

Planning & Building Regulations

In line with the Authorities policies, please ensure that you seek the necessary Planning and / or Building Regulations approval before you undertake any works or changes of use to the property. It is also advised that you seek clarification from the Planning Section, in order to ensure that the property has HMO status.

Housing Health and Safety Rating Scheme

The Authority is also required, as a general rule, to address health and safety issues in the house through Part 1 functions of the Housing Act 2004. This involves an inspection by Public Protection Officers applying the **Housing Health & Safety Rating System (HHSRS)**. The inspection can be carried out at any time within the 5 year of receiving the licensing application. You may be required to carry out work to comply with these health and safety standards.

Temporary Exemption Notice

If it is your intention to take particular steps to secure that the house is no longer required to be licensed, you may apply for a Temporary Exemption Notice (TEN). In order to apply for a TEN you must notify the Authority when returning your application form, by providing details of the proposed measures to be taken, to secure that the house is exempt from mandatory licensing.

If granted, a Temporary Exemption Notice will negate the requirement to licence the house during the period the TEN is in force.

A Temporary Exemption Notice is in force for a period of 3 months beginning on the date of service. If the Authority receives a further notification, and consider that there are exceptional circumstances that justify the service of a second TEN in respect of the house, this would take effect from the end of the period of 3 months applying to the first Notice. No further Notice can be served following the expiry of the second TEN.

If the Local Authority decides not to serve a TEN in response to a notification they must inform the applicant of:

- a) The decision
- b) The reasons for it and the date on which it was made
- c) The right to appeal
- d) The period within which an appeal may be made

The licence holder will be required to satisfy the authority that reasonable procedures are in place to deal with and reduce anti-social behaviour problems that may occur within the premises. The licence holder will be expected to apply the procedures and manage these issues effectively.

Licensing Penalties

Section 21 Notice

In relation to assured shorthold tenancies, a landlord who is required to have a licence in respect of an HMO, but who does not have a licence, forfeits the right to automatic possession by use of Section 21 of the Housing Act 1988.

Fines

Failure to apply for a licence for a licensable house will be an offence liable on summary conviction **to an unlimited fine**.

The house must be reasonably suitable for occupation by a particular maximum number of households or persons. It will be a criminal offence liable on summary conviction, to increase the occupancy level of a house above that stated in the licence.

Breaking any of the licence conditions can result in fines of up to **£5,000**.

Giving false or misleading information can result in fines of up to **£5,000**

Management Orders

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 his/her 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.

Rent Repayment Orders

A Landlord who receives rent while operating an unlicensed property could be liable to a penalty equivalent to any rent received during the period of the offence up to a maximum of 12 months. The Residential Property Tribunal (RPT) has the power to make a "rent repayment order" where it determines that an offence has been committed. The Authority is also entitled to make an application to the RPT for a rent repayment order in respect of housing benefit paid during the period where an offence has been committed, irrespective of whether there has been a prosecution.

FURTHER INFORMATION

If you require more information regarding licensing, or if you are unsure whether your property needs to be licensed, please contact:-

Public Protection (HMO Licensing)

Denbighshire County Council,

PO Box 62,

Ruthin, Denbighshire, LL15 9AZ

Telephone: 01824 706389

E-mail: envhealth@denbighshire.gov.uk

Website:

www.denbighshire.gov.uk

<https://www.denbighshire.gov.uk/en/business/licences-and-permits/hmo-licence.aspx>

This guide is also available in Welsh, please contact us if you need a copy. Mae'r daflen wybodaeth hon ar gael hefyd yn yr iaith Gymraeg, am gopi cysylltwch a ni.

These notes are provided for general information only. All owners, landlords or agents of properties should seek advice from the Local Authority regarding Licensing of Houses in Multiple Occupation. However where applicants require clarification regarding interpretation of the legal content of this application form, they should seek professional legal advice.

This Part explains some of the terms used in the application form, it also give general guidance, please refer to this while completing the form

A person bound by a condition of the licence	Could be any person who is involved in the management/ and/or maintenance of the property. This will also depend on the licence conditions.
Agent	Someone appointed by the landlord to carry out some or all of the duties on behalf of the landlord. This could be a professional property manager, associate or relation of the landlord. The agent could or could not be paid by the landlord.
Building Regulation Approval	Means a document issued by the Local Authority which, following the submission of plans and/or specifications indicates that any work to be done in the property which requires Building Regulation Approval has been assessed by the Local Authority and approval given to the works proceeding.
Building Regulations Completion Certificate	Means a certificate issued by the Local Authority which indicates that specified building work carried out in the building has been completed to a standard which complied with the Building Regulations in force at the time the work was done.
Certificate of Electrical Inspection	Means a certificate completed and signed by a competent person indicating the state of the electrical installations, electrical switchgear and accessories and all fixed and portable electrical appliances provided by the landlord. Appliances provided by the landlord include any appliances left by previous tenants and not removed by the landlord.
Fit and Proper Person	In deciding whether someone is fit and proper the council must take into account: <ul style="list-style-type: none"> • Any previous convictions relating to violence, sexual offences, drugs and fraud. • Whether the proposed license 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.
Freeholder	Means the same as owner i.e. the person entitled to sell the property.
Gas Safe Register	Gas Safe Register is the hallmark for gas safety. They manage the register of gas engineers who are properly qualified to work with gas in Great Britain and Isle of Man. To carry out work on gas installations and appliances safely and legally, gas engineers must be on the Gas Safe Register.
Habitable Room	Means rooms capable of being used for everyday activities. Such rooms would include all living accommodation and sleeping accommodation but would exclude kitchens, bathrooms, conservatories porches etc., and unconverted basements.
Household	<ul style="list-style-type: none"> • Persons married to each other or living as husband and wife (or in an equivalent relationship in the case of persons of the same sex) • Relatives living together, including parents, grandparents, children, (and step children), grandchildren, brothers, sisters, uncles, aunts, nephews, nieces or cousins

	<ul style="list-style-type: none"> • Half-relatives will be treated as full relatives. A foster child living with his foster parent is treated as living in the same household as his foster parent. • Domestic staff are included in the household if they are living rent-free in the accommodation provided by the person for whom they are working. <p>Therefore, three unrelated friends sharing living accommodation are considered to be three separate household. A couple sharing with a third unrelated person would constitute two households. A family renting a property is a single household. If that family had an au pair to look after their children that person would be included in their households.</p>
Is a two-storey property above business premises defined as an HMO?	Yes, where living accommodation is situated in a part of a building above or below business premises, each storey of the business premises is counted as a storey .
Landlord	Means the person who has the legal right to let and terminate tenancies in the house. This could be by virtue of being the freeholder , being a leaseholder with rights to let, or as the result of some form of agreement with the freeholder . If no manager is appointed then the landlord will also be the manager .
Landlord Gas Safety Record	Means a form completed and signed by a property qualified and competent person indicating the state of repair and appropriateness of the gas installation and appliances. The report must cover the whole of the installation and all gas appliances including necessary venting requirements. These certificate are now issued under the banner of Gas Safe Register , to find a registered installer visit: www.gassaferegister.co.uk or contact 0800 408 5500
Licence Holder	Means a person entitled to apply for, or has been awarded, a licence in respect of the HMO . The licence holder needs to be the person who can authorise, organize and pay for essential repairs. They also must be reasonably available for tenants to contact in case of problems that may arise with respect to the property and they must have the means to resolve them. The proposed licence holder will often be the landlord or it could be a manager to whom the rent is paid to and who has authority from the owner to effectively manage the property. Overall it is the person in control of the property. A proposed licence holder may appoint an agent to control the property and hold the licence if they are not considered to be a fit and proper person. This licence holder should also have the authority to authorise and pay for works or repairs as they will be liable for any breaches of the licence. Organisations that are landlords must nominate an appropriate person to be the licence holder. This person will be responsible for ensuring that there are no breaches of the licence.
Manager	Means a person, or company appointed by the landlord expressly for the purpose of managing the house. The manager could be an employee of the landlord . If no separate manager is appointed the landlord will also be the manager . The manager will act under the instructions of the landlord and will have powers and duties given to him by the landlord . The manager must have, at least, the following powers: <ul style="list-style-type: none"> • to let to tenants and terminate tenancies in accordance with the law;

	<ul style="list-style-type: none"> to access all parts of the premises to the same extent as the landlord; and be authorised to approve reasonable expenditure necessary for repairs etc. (note that the manager is not expected to authorise such expenditure but that he or she has the authority to do so if there is a reasonable need) <p>The manager must be able to travel to the property within a reasonable time unless there are arrangements in place to cover every eventuality that may otherwise demand his or her presence.</p>
Non-Self Contained	Some sharing of amenities, for example, separate kitchen / lounge, separate bedroom & shared bathroom amenities or rooms are not behind one closed door.
Owner	Means the person entitled to sell the property.
Person	Includes persons of all ages including newly born children. Give the number of people including children who live in the house now and the number that you anticipate will live there in the future.
Planning Consent	Means a document issued by the Local Authority which, following the submission of plans and/or specifications and/or information indicates that the building complies or will comply with relevant planning criteria.
Rent Smart Wales	Rent Smart Wales process landlord registrations and grant licences to landlords and agents who need to comply with the Housing (Wales) Act 2014. In order to apply for a HMO Licence you must be registered, and if applicable, licenced under the Rent Smart Scheme. More information about Rent Smart can be found at: www.rentsmart.gov.wales
Self-Contained Flat	A flat which has all rooms such as bedrooms / lounge / kitchen / bathroom etc all located behind one closed door .
Spent conviction	A conviction becomes spent after a certain length of time, which changes depending upon the sentence and the age of the person at the time of the conviction. The periods are halved if the conviction took place when aged 17 or less. If a person is sentenced to more than 2.5 years in prison, his/her conviction can never be 'spent'. If you have any doubts whether you have to declare a previous conviction, you should contact your local Probation Office, Citizens Advice Bureau or a solicitor.
Storeys	Attics, Loft Conversions, basements and mezzanine floors count as storeys if they are used as living accommodation i.e. living rooms and bedrooms, or if they are used in connection with the HMO i.e. kitchen, bathroom, w/c, storage room, laundry, or used for gas / electric intake meters and water mains. Commercial storeys must also be included, except for basements in purely commercial use.
What is classed as an HMO?	HMO stands for House in Multiple Occupation, which means a building or part of a building, such as a flat, that: <ul style="list-style-type: none"> 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 Regulations, and at least one third of the flats are occupied under short tenancies.

	<ul style="list-style-type: none">• 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.• By other purposes prescribed by the government.
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