

**CIVIC GOVERNMENT (SCOTLAND) ACT 1982  
HOUSES IN MULTIPLE OCCUPATION (HMO)  
INFORMATION FOR APPLICANTS**

The *Civic Government (Scotland) Act 1982* ("the Act") introduced a system for licensing certain activities.

The detailed arrangements for HMO licensing are contained in the *Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000* (as amended in 2002 and 2003)

**If you are not sure whether you need an HMO licence for your property, you should contact the local authority for advice. It is a criminal offence to operate an HMO without a licence.**

**Who needs a licence?**

A person needs a licence if they give permission for a house to be occupied as an HMO, ie if they allow people to live in the property in line with the definition below. The need for a licence does not depend on rent being paid, or on any formal tenancy arrangements being in place.

The application for a licence must be made by the owner, even if the property is leased to or managed by another person or organisation.

**What is the definition of an HMO?**

A *house* is an HMO if it is the *only or principal residence* of three or more *qualifying persons* from three or more *families*.

In this context, "*house*" includes any building, or any part of a building occupied as a separate dwelling. The legislation covers not only ordinary shared houses or flats and bedsits, but all residential accommodation, including hostels, student halls of residence, staff accommodation in hotels or hospitals, and so on.

Separate units within a building which share use of a toilet, personal washing facilities or cooking facilities, are taken to form part of a single house. For example, a house with six rooms which each have their own en-suite bathroom, but share a kitchen, would be treated as one HMO with six occupants.

The law does not define "*principal residence*". The Order only specifies that a student's term-time residence is to be taken as their principal residence, and that a hospital is not the principal residence of patients. It is generally agreed that principal residence is not simply a matter of the number of days spent at an address, but that it depends on the "quality of occupation". Even a hostel where people stay for only a few months may be their principal residence for that period.

Where an owner of a house lives there and lets out rooms, or shares with friends, the owner is not counted as a "*qualifying person*", nor are any members of their family that live with them. An owner is any person who has a heritable right of ownership in the property. This usually means they are named on the title deeds. It does not matter how small their share of ownership may be.

Two people are members of the same family if:

- they are married to each other or live together as if they were married to each other (including same-sex couples)
- one is the other's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece. This also includes relationships by marriage or by half-blood, and children who are fostered, adopted or otherwise brought up as a member of the family.

## **Are there any exemptions from licensing?**

There are four main classes of property that are exempt from the HMO licensing scheme.

- Properties where all the occupants (or at least one member of each family) are owners.
- Properties owned by communal groups, established as a co-operative housing association, the management of which is undertaken by general meeting.
- Properties occupied by members of a religious order.
- Accommodation provided as part of a service registered with the Care Commission as:
  - A care home service
  - An independent health care service
  - A school care accommodation service, or
  - A secure accommodation service.

For these categories, the Care Commission sets and monitors standards for the accommodation in which the service is provided, as well as the service itself. In other categories, particularly housing support services, the Care Commission only regulates the service provided, and the accommodation is not exempt from HMO licensing.

Crown property is also exempt, but all other HMOs must be licensed, including those operated by local authorities and other public bodies.

## **What sanctions are there for operating an HMO without a licence?**

It is a criminal offence to operate an HMO without a licence. The maximum penalty is level 5 (currently £5000).

## **How are property managers or letting agents affected by licensing?**

If the day-to-day management of the property is carried out by someone other than the owner, they will be named on the licence as a joint licence-holder.

Letting agents or property managers should check that their clients are licensed where necessary. It is a criminal offence for anyone to act as an agent for an unlicensed owner of a licensable HMO, by doing anything "which directly permits or facilitates the occupation of that house" as an HMO.

If a licensing authority suspects that a house is an HMO, they may ask the agent for the owner's name and address, and it is an offence to fail to comply with such a request.

## **How to apply for a licence**

The application form should be completed in ballpoint pen or typed. The owner of the property must make the application or where there is more than one owner, it must be made by one of the co-owners. The application may be made in the name of (1) an individual (2) a voluntary organisation or (3) a company or commercial organisation. Applicants should complete sections 1, 2 or 3 on the front page of the application form. All other questions on the application form should be answered.

New applications for licences will be granted for one year only, renewals will normally be granted for three years unless there is good reason to issue for a shorter period. The fee is £550.00, which must be submitted with the application. In the event of the Council refusing your application or in the event of you withdrawing your application the fee is non-returnable.

A site notice must be displayed for a continuous period of 21 days from the date of submission of the application at or near the premises where it can be seen by the general public. A copy of this notice is enclosed along with a compliance notice, which should be returned to the Council after 21 days to certify that you have complied with the display requirement. A site notice may not be required for certain applications such as women's refuges and if you are unsure of the requirement for a site notice you should contact the Council for advice on alternative arrangements.

All applications require copies of safety certificates for Heating Systems, Electrical and Gas Installations and any Electrical or Gas Appliances supplied by the applicant. Copies of any standard lease, tenancy agreement, house rules or any licence in relation to the premises are also required. For new applications 4 copies of a detailed plan of the premises should also be submitted.

The completed form, the fee and all supporting documentation should be returned to the Council at the address below.

### **Grant or refusal of application**

In addition to its own investigation the Council will consult with the Chief Constable, the Chief Fire Officer, and such other person(s) as the Council think fit in respect of your application, who will carry out their own enquiries and inspection where relevant and report to the Council. You will be told of the nature of these enquiries and the results of them may be taken into account in coming to a decision on your application. Any objections made will be reported to the Licensing Committee and you will be given an opportunity to be heard by the Committee before a decision is made on your application.

The Council is allowed up to 12 months from the date of application to issue a licence. If however there are no objections, your application will normally be dealt with under delegated powers and a licence issued as soon as reasonably practicable after the conclusion of the consultation process. You may not operate as a House in Multiple Occupation until you have been issued with a licence. Each application will be dealt with on its own merits.

The Council may impose such conditions on the grant of a licence as they consider reasonable and if a licence is granted, you will be advised of the conditions which must be observed at all times. The standard conditions approved by the Council are attached for your information. You are entitled to seek variation of any of these conditions or such other conditions imposed by the Council once a licence has been granted.

The Council may refuse an application:-

- If they consider that the applicant is not a fit and proper person to hold a licence
- Where the premises are not considered suitable for the proposed activity
- For any other good reason

Where an application is refused, the applicant may appeal to the Sheriff and you may care to seek the advice of a Solicitor.

If you need any help completing the forms or need any advice, please do not hesitate to contact this service.

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