

Guide to Property Licensing

1. Types of property licences

1.1. Mandatory HMO Licensing

Presently mandatory licensing under Part 2 of the Housing Act 2004 requires all houses in multiple occupation comprising three or more storeys, occupied by five or more persons, living in two or more single households to be licensed. From the 1 October 2018, mandatory HMO licensing will apply to all HMOs occupied by five or more persons in two or more households, regardless of the number of storeys.

NB On the 24th September 2017 the Council made an Article 4 Direction that removed the permitted development rights for the change of use from a dwelling house (use class C3) to a small HMO (not more than 6 people) (use class C4).

We would therefore advise that if you are converting your property into an HMO that you speak to planning by emailing DevelopmentControl@bexley.gov.uk before starting works as you are likely to require planning permission. Further details of the Article 4 Direction can be found at <http://democracy.bexley.gov.uk/ieDecisionDetails.aspx?ID=2646>

1.2. Selective Licensing

The London Borough of Bexley designated a selective licensing scheme on the 16 April 2018, which was subsequently revised on the 30 May 2018 applying to all private rented properties, which will include HMOs not covered by the new mandatory scheme, in four defined areas: Thamesmead North, Abbey Wood, Lower Belvedere and parts of Erith. The scheme comes into force on the 1 October and the council will start accepting applications from the 1 July.

If you are unsure if your property is within a selective licensing area then you can use the online lookup to see if your property requires a licence, which can found on www.bexley.gov.uk/rentitright

1.3. Exemptions to property licensing

Various dwelling and lettings will be excluded from the licensing requirements, for example:

- where the tenancies or licences are granted by registered social landlords and housing providers, including most housing associations and the Council
- tenancies or Licences granted by police, fire brigade or health service body

- where the tenancies and licences are subject to a prohibition order whose operation has not been suspended. (s.20/s.21 Housing Act 2004)
- commercial lettings
- premises that are licensed for alcohol consumption (not off licences)
- certain agricultural tenancies
- university/ college accommodation occupied by students and controlled by the university / college
- where the owner or their relatives occupy a property on a long leasehold
- holiday homes and lets
- where a family member rents the property from you (evidence will need to be provided, for example birth certificates or an affidavit)
- long lease tenancies, where a landlord grants a lease for a term of over 21 years to a tenant
- properties leased to a local authority on a private sector lease and used as temporary accommodation.

1.4. What type of licence to apply for

1. Is your property an HMO? If yes go to 2, if no go to 3
2. Do you rent the property to five or more people? If yes go to 4, if no go to 3
3. Is the property located in a selective licensing area? (if you are unsure please go to www.bexley.gov.uk/rentitright and use the online lookup tool) – if yes go to 5, if no go to 6
4. You need to apply for a **Mandatory HMO Licence**
5. You need to apply for a **Selective Licence**
6. You do not need to apply for any property licence

Clarifications

- If you have an HMO anywhere in the borough, including the selective licensing areas, with five or more people you need to apply for a mandatory HMO licence.
- If you have a privately rented property, including HMOs with fewer than five people, in one of the selective licensing areas you will need to apply for a selective licence.
- If you have a privately rented property, including HMOs with fewer than five people, that's not in one of the selective licensing areas you don't need to apply for a licence.
- If you own a building that has multiple licensable properties within it, you must apply for a licence for each of these properties and pay a separate licence fee for each of them.

2. Pre-application

The council has produced an online application form to enable landlords to complete their application, upload documents relevant to the application and pay the application fee. As part of the licence application process you are able to provide copies of the following documents (if appropriate):

- a simple plan of the property
- Electrical Installation Condition Report (EICR)
- Gas Safety Certificate (if gas is supplied to the property)
- current Fire Detection and Alarm System Inspection and Servicing Report
- Emergency Lighting Certificate
- Energy Performance Certificate
- tenancy agreement

3. Public Register

The Council has a duty under section 232 of the Housing Act 2004 to maintain a public register of all Houses in Multiple Occupation (HMO) licences and Selective licences, together with any temporary exemption notices served and details of any interim or final management orders made.

One of the requirements is that the council is required to provide the name and address of licence holders and any management agents who appear on the licence. The council will use the name and address from the application form for the register, however landlords or agents are able to provide an alternative address.

If landlords or agents have concerns about this then they should contact the Rent it Right Team to discuss.

4. Fit and proper test

Once the council has received a completed licence application form, it will carry out a test to decide whether the licence holder or the person managing the property is a fit and proper person. Section 66 of the Housing Act 2004, sets out the evidence that the council must have regard to:

- committed an offence involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003
- practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or in connection with the carrying on of a business
- contravened any provision of the law relating to housing or landlord and tenant law
- the code of practice set out in section 233 of the Housing Act 2004

The council must also consider whether any person associated or previously associated with the licence holder has done any of the things listed above.

Landlords and managing agents who have a previous poor management record or have failed in the past to comply with the Council's requirements to manage their properties may not be able to hold a licence or may be given a shorter-term licence and subjected to more frequent checks. In the event that the council grants a licence on shorter terms or refuses to grant a licence the decision may be appealed and details of how to appeal to the residential property tribunal will be provided.

If someone is found not to be a fit and proper person, this will usually remain the case for a period of 5 years. In cases where the person is not considered fit and proper and the property is to continue to be rented, an alternative person will have to apply to be the licence holder, such as a suitable management agent. If a suitable licence holder cannot be found, then under part 4 of the Housing Act 2004 the council has powers to take over the management of the property by making an interim management order.

Have you ever contravened any provision of any laws relating to Housing, Public Health, Environmental Health or Landlord and Tenant law (including harassment illegal eviction) which led to any civil or criminal proceedings resulting in a judgement against them?

Where this is the case, careful consideration should be given to an application for a licence. Account will be taken of among other things, evidence of poor management leading to contraventions, prosecutions, simple cautions, judgements and other matters where relevant, in particular under:

- The Public Health Acts 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Act 1976 and 1982
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004
- The Landlord and Tenant Act 1985

5. Licence process

Provided the test in section 5 is satisfied and the correct application fee has been paid the following process will be followed:

5.1. Selective Licence

A draft licence will be issued and an invoice for the enforcement fee. If the Gas Safety Certificate has not been provided, a condition will be added giving the licence holder a short period of time to submit them to the council or it may be proposed that the licence may be granted for a limited period only until the relevant documents are submitted.

The draft licence and copies will be sent to all relevant persons. Under the Housing Act 2004, a relevant person is one of the following:

- a person having an estate or interest in the property
- a person managing or having control of the property

The relevant persons will be given a minimum of 14 days to make representations to the Council about the draft licence. If no representations are made then the Council will issue the full licence and copies will be

sent to the relevant persons. If the council receives representation, then they will be considered, and the Council will either:

- issue an amended licence and the relevant persons who will have a minimum of 14 days to make further representations, or
- proceed to issue the full licence

The licence will expire on the 31st August 2023, which is the date the selective licensing scheme ends, regardless of when it was granted.

Following the granting of a licence, the applicant or any relevant person may appeal the decision if they object to any of the terms of the licence. Details of how to appeal to the residential property tribunal will be provided.

5.2 Mandatory HMO Licence

The property will usually be inspected after the application form has been received and before a draft licence is issued.

If there are any missing documents such as a Gas Safety Certificates, a condition will be added giving the licence holder a short period of time to submit them to the council or it may propose that the licence is granted for a limited period only until the relevant documents are submitted.

If the property does not comply with the council's HMO standards additional conditions will be added to the licence requiring the landlord to carry out any works necessary to secure compliance.

The draft licence and copies will be sent to all relevant persons and an invoice will be sent to the licence holder covering the enforcement fee. Under the Housing Act 2004, a relevant person is one of the following:

- a person having an estate or interest in the property
- a person managing or having control of the property

The relevant persons will be given a minimum of 14 days to make representations to the Council about the draft licence. If no representations are made then the Council will issue the full licence and copies will be sent to the relevant persons. If the council receives representation, then they will be considered, and the Council will either:

- issue an amended licence and the relevant persons who will have a minimum of 14 days to make further representations
- proceed to issue the full licence

The licence will last for five years. Following the granting of a licence, the applicant or any relevant person may appeal the decision if they object to any of the terms of the licence. Details of how to appeal to the residential property tribunal will be provided.