

# **HMO Licensing**

**Mandatory licensing** is for all HMOs within the County which have three or more storeys and are occupied by five or more persons forming two or more households and share at least one basic facility (bathroom, toilet or kitchen).

**Additional licensing** is for all other types of HMOs in Pensarn, Colwyn Bay, Craig y Don and Llandudno which are not subject to mandatory licensing.

## **Frequently Asked Questions**

**Q. My flats are fully self-contained and there is no sharing of facilities. Does this mean the property is not an HMO?**

A. If the property was converted from a house/building into self-contained flats with the benefit of Building Regulations 1991 (from June 1992 onwards) and complies with those standards then the property is not deemed to be an HMO. If the property was converted prior to this date then it is highly likely not to meet these standards and is therefore deemed to be an HMO and is required to be licensed, provided it is not 2/3rds owner occupied.

**Q. All the flats in our block have their own entrances and there are no communal areas (hallways, stairs, landings).**

A. The property is still deemed to be an HMO unless it meets the relevant Building Regulation standards or is 2/3rds owner occupied.

**Q. All the flats in the building have been sold off on separate leases**

A. Provided it isn't 2/3rds owner occupied or meets the relevant Building Regulation standards then it is an HMO.

**Q. I own a flat and a relative (son, daughter, father, mother etc) lives in it. Does this make the flat owner occupied?**

A. No, unless you live in the flat with them, it is not deemed to be owner-occupied.

**Q. I own a building with three flats in it, I occupy one, my tenant occupies another and the other flat is empty. Does this mean the property is owner-occupied and therefore exempt from licensing?**

A. No, you are only occupying a third of the building and so therefore the property is an HMO should there be more than 2 of you occupying the whole building.

**Q. I don't want to licence the property and so am going to give one of my tenants Notice of Possession in order to reduce the number of occupants in the building to a level where it is not deemed to be an HMO.**

A. You will not be able to do this. Section 75 of the Housing Act 2004 states:-

"Other consequences of operating unlicensed HMOs: restriction on terminating tenancies

(1) No section 21 notice may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO.

(2) In this section—

- a "section 21 notice" means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (c. 50) (recovery of possession on termination of shorthold tenancy);
- a "shorthold tenancy" means an assured shorthold tenancy within the meaning of Chapter 2 of Part 1 of that Act;
- "unlicensed HMO" has the same meaning as in section 73 of this Act."

**Q. I only own the freehold of the building and not the leases for the flats within. Why have I been asked to licence the property?**

A. Statutory Instrument 2007 No.3231 states that in relation to an HMO where long leases (exceeding 21 years) have been granted, the person having control is the person who falls within the first paragraph of subsection (8), taking paragraph (a) of that subsection first, paragraph (b) next, and so on:-

- (a) Has acquired the right to manage the HMO under Part 2 of the Commonhold and Leasehold Reform Act 2002(1);
- (b) Has been appointed by the Leasehold Valuation Tribunal under section 24 of the Landlord and Tenant Act 1987(2);
- (c) Is the person who is the lessee of the whole of the HMO under a lease between him and a head lessor or the freeholder, or is the freeholder of the HMO

**Q. There is sharing of facilities in the property, but it is not 3 storeys, does this mean it is Mandatory licensable?**

A. No, it is not mandatory licensable. However, it is required to be licensed under our Additional Licensing Scheme if it is located within Pensarn, Colwyn Bay, Craig y Don or Llandudno.

**Q. There are 2 flats in my building with only 1 person in each flat, is it an HMO?**

A. No it's not. As soon as there is a third person (a baby/child counts as a person) within the building it will be an HMO as long as both flats are occupied also.

**Q. I renovated the building (existing flats) to a high standard a few years ago. Does this mean I am exempt from licensing?**

A. Not necessarily. You would have to provide evidence as to what standard the building had been renovated to, for example, noise insulation, fire precautions etc. To discuss the matter please contact the Housing Enforcement Section on email [HMOLicensing@conwy.gov.uk](mailto:HMOLicensing@conwy.gov.uk).

**Q. My property was registered under the Authority's 2002 Registration Scheme. Does this mean I don't have to licence the property?**

A. No. The Registration Scheme no longer exists, and you are therefore required to licence the property.

**Q. Can I pay the licensing fee in installments?**

A. You can pay over two installments, but this incurs an additional administration fee. You can pay by BACs Transfer, credit or debit card. Please email [HMOLicensing@conwy.gov.uk](mailto:HMOLicensing@conwy.gov.uk)

**Q. I don't own all the flats within the building. Do I have to provide the required paperwork with the licensing application for those flats as well as my own and the communal areas?**

A. No, we would only expect you as the licence applicant to provide us with paperwork relating to the flat(s) you own and the communal areas. Paperwork for separately owned flats will be sought by us from the individual owners of those flats.

**Q. Can I nominate someone else to be licence holder?**

A. Yes, providing that person is happy to be the licence holder and understands their responsibilities in that regard fully and is deemed to be fit and proper.

**Q. There is a missing/absent freeholder for our building, what should we as leaseholders do?**

A. You should collectively look at forming a management company or apply for the right to manage the property under Part 2 of the Commonhold and Leasehold Reform Act 2002(1).

**Q. What happens if I don't licence my property?**

A. Failure to apply for a licence is a criminal offence and can result in a fine of up to £20,000. In certain cases, rent from housing benefit or from a tenant can be reclaimed if a landlord is operating without a licence.

In certain situations where an HMO is not licensed, the council has a duty to issue an Interim Management Order (IMO). This allows it to step in and manage the property, including collecting the rent. This order can last for a year, until suitable permanent arrangements can be made. If the IMO expires and there is no likelihood of a positive change in the circumstances, then the council can issue a Final Management Order. This removes the property from the control of the owner for a period of up to five years and can be renewed.