

New Legislation You Need To Be Aware Of!

Extension of Mandatory Licensing for Houses In Multiple Occupation (HMO)

Current position

Currently mandatory licensing only affects HMOs if they comprise all of the following:-

3 or more storeys

5 or more occupants

Some element of shared facilities (usually kitchens and/or bathrooms)

What's New?

The three storey element will be removed, so that one and two storey HMOs with 5 or more occupants sharing some facilities will need licensing

There are also some new requirements regarding minimum bedroom sizes, headroom, and waste management.

Minimum Bedroom Sizes (floor area) and Headroom

Single Bedroom 6.51 m²

Double Bedroom 10.22 m²

Bedroom for Child under 10 years 4.64 m²

Minimum Headroom Cannot include in the floor area of any room where the headroom is less than 1.5 m.

Due to these changes all applications must have each bedroom numbered on the plan, with the allowable floor area shown in m² to two decimal places. The licence will show the maximum allowable occupation for each bedroom, plus the total allowable occupation for the HMO. This total number might be less than the total of all the bedrooms added together if the facilities provided are insufficient.

Refusal Disposal

The Council waste management department can require licence holders to comply with the terms of its waste management scheme regarding the provision of facilities for the proper storage and disposal of domestic waste.

Fee Charges for 5year Licence

Normal Fee	£621
Discount for Accredited Landlord (first licence)	£521
Second or Subsequent Licence for all Applicants	£571
Supplement for Council Requiring Licensing of Unlicensed Property	+£200

Penalties for Not Licensing Qualifying Property

Rent Repayment Order

The Council/Tenant can reclaim all rent paid during the period the property should have been, but was not licensed.

Prosecution or Financial Penalty

The Council can prosecute anyone running an unlicensed HMO which ought to be licensed, or alternatively they can issue a financial penalty of £10,000.

Fit and Proper Person

Anyone subject to a prosecution or financial penalty is very unlikely to be considered a fit and proper person to hold an HMO licence and will most likely be required to find a suitable alternative licence holder.

Supplemental Fee

If Council officers are required to carry out work to investigate and require a qualifying property to be licensed after the due date there will be £200 supplement to the normal fee to reflect this extra work.

When is it Happening?

Council officers will be accepting applications and issuing licenses as from April 2018, but landlords of qualifying properties have until the **1 October 2018** to obtain a licence. All licenses issued prior to this date will be post-dated to the 1 October.

Should you own a qualifying HMO, please contact privatesectorhousing@stoke.gov.uk for a **new** application form. Do not use one of our old forms as it is no longer suitable.

More Newish Legislation You Ought To Be Aware Of!

Listed below is some relatively new legislation currently in force.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Requirements

That a smoke alarm is fitted to each floor of a rented property, and that a Carbon Monoxide alarm is fitted to all rooms containing solid fuel combustion device.

Alarms need to be checked and in working order on the first day of any new tenancy.

More complex properties such as HMOs will be subject to additional requirements.

If No or Insufficient Alarms are Found ?

Council officers will serve a Remedial Action Notice requiring the landlord to fit alarms where required.

The landlord then has 28 days to fit them or provide evidence to the officer that they have taken "all reasonable steps" to comply, but have been unable to do so.

Non Compliance with Remedial Action Notice

If the landlord simply ignores the Remedial Action Notice, the Council will attempt to carry out works in default, and will serve Penalty Charge Notice on the landlord. The charge is £2,500 for a first offence, and £5,000 for any subsequent offence, although in both cases there is a 20% discount for early payment within 14 days of issue of the notice. The landlord can request a review of this charge within 28 days if he believes it is unfair, and provide suitable evidence to the case officer.

The case officer and senior officer will review this evidence and will either, confirm the original notice, vary the notice to a lesser amount due to "exceptional circumstances", or withdraw the charge if it can be shown that they have not committed an offence. If the landlord disagrees with the review, they can appeal to the First Tier Tribunal within 28 days.

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

Requirements

All persons acting as a letting or managing agent other than for their own property needs to be signed up to one of three approved redress schemes.

Penalty for Non Compliance

Council officers coming across anyone failing to comply with the above requirement will serve a "Notice of Intent to Issue a Monetary Penalty". The respondent has 28 days to provide any evidence showing that they either are compliant or are not acting as a letting or managing agent. The case officer and senior officer will review this evidence and either issue a Final Notice or if the submission is accepted send a no further action letter. Anyone issued with a Final Notice may appeal to the First Tier Tribunal. Government guidance suggests that a penalty of £5,000 ought to be the norm for this offence.

Housing Act 2004 S249a Financial Penalties for Certain Housing Offences

These penalties were introduced under the Housing and Planning Act 2016 which amended the Housing Act 2004. It allows the Council to issue a financial penalty instead of a prosecution for the Housing Act 2004 offences listed below. Therefore the council officer has to have the same level of evidence to issue a financial penalty as they would for a prosecution.

Relevant Housing Act 2004 Offences

- S30 Failure to comply with an Improvement Notice
- S72 Failure to licence a property subject to Mandatory HMO Licensing
- S72 Breach of Mandatory HMO Licence condition/s
- S95 Failure to licence a property subject to Selective/Additional Licensing
- S95 Breach of Selective/Additional Licensing condition/s
- S139 Failure to comply with the terms of an Overcrowding Notice
- S234 Failure to comply with a requirement of the HMO Management Regulations

Financial Penalty Process

Once an offence has been established and a decision made on issuing a financial penalty instead of carrying out a prosecution, the following shows the sequence of events that occurs.

1. Issue 'Notice of Intention to Issue a Financial Penalty'
2. After 28 days review any representations received and amend penalty if indicated before issuing 'Final Notice: Issue of a Financial Penalty'.
3. Penalty must be paid within 29 days, or notice of appeal to the First Tier Tribunal given.
4. If penalty is not paid and there is no appeal, the Council will begin debt recovery through the courts.

Penalty Charges

The Council in co-operation with a number of other West Midlands Authorities has developed a charging matrix. Penalties vary according to the offence committed. See table below for normal starting point penalties.

Offence/	Occasion	First	Second	Third
Improvement Notice		£5,000	£15,000	£20,000
No licence		£10,000	£30,000	£30,000
Breach of licence condition (per breach)		£5,000	£5,000	£5,000
Overcrowding		£5,000	£15,000	£15,000
HMO Management Regs.(per regulation)		£1,000	£3,000	£3,000

Supplements and Reductions

A supplement of £2,500 to some of the above penalties will be levied in the following three, circumstances, high culpability, large housing portfolio, vulnerable occupier/significant harm. All three could possibly apply in a single case.

A reduction of 50% of the final penalty can be allowed where the perpetrator can prove to the Council that they are on a low income. Significant documentary evidence will need to be provided to fulfil this requirement and the Council may well serve a S235 Notice for provision of all relevant evidence, as failure to do so would be an offence.

Non Payment Recovery

If financial penalties are not paid by the due date, details will be passed over to our debtors section who will recover the penalty through the courts.