

# ARE YOU COMPLIANT WITH THE LAW? ONE THING TO CHECK THIS MONTH ...

By Tessa Shepperson of Landlord Law

**M**uch of the content of this magazine is about the business of investing and developing property to rent. However, sometimes people overlook the legal rules and regulations that landlords need to comply with.

Renting property to tenants is not just an investment project. It is a consumer service. And, as such, it is heavily regulated. Many of these regulations carry heavy penalties for non-compliance. So, your earnings as an investor will be dependent not only on your savvy investment skills but also on legal compliance so you avoid fines and penalties.

Every month we will be looking at one issue where, if you fail to comply, could cause you financial loss.

Let's start with:

## Obtaining a license from the Council

People associate licensing with HMO (House in Multiple Occupation) properties, and it is true that most HMO properties will require a license from their Local Authority or Council.

The trouble is that many landlords, although they may be vaguely aware that HMO properties will require a licence, erroneously believe that their property is not an HMO.

I did a fairly detailed article on HMOs in the November 2022 issue, but in short it is where three or more people who do not form one 'household' share living accommodation.

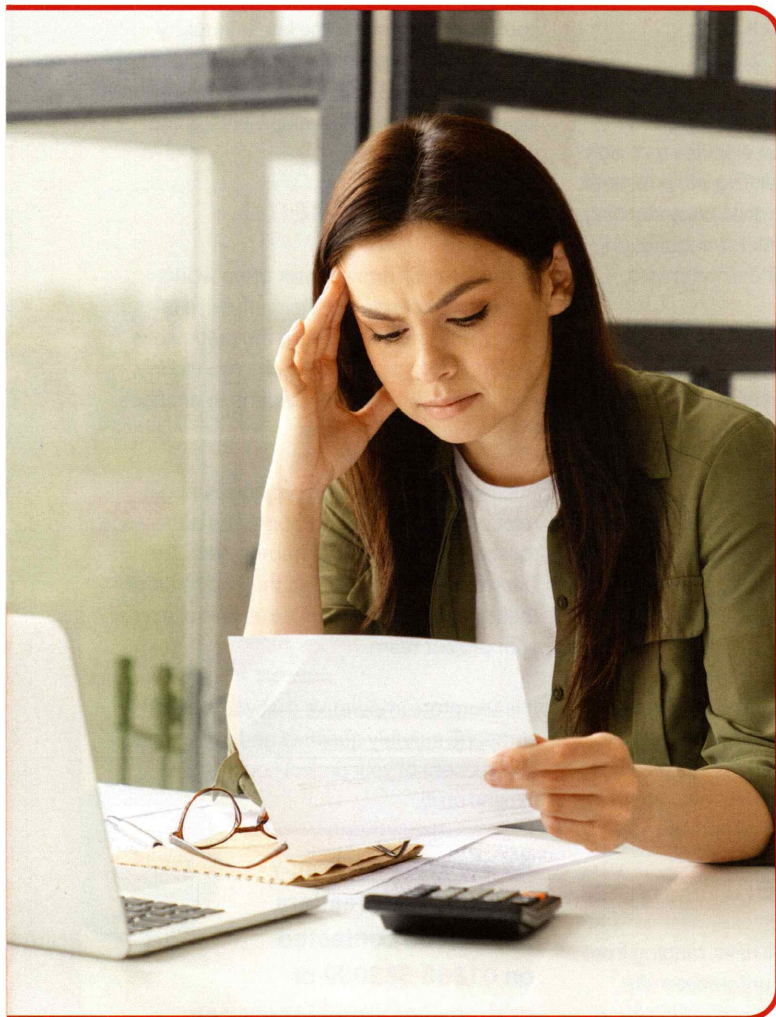
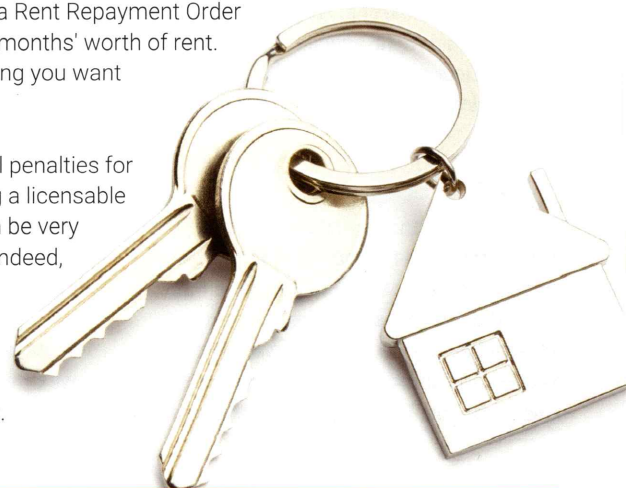
'Household' means family (including half-blood relatives, and step children) and can also include people living in the property who perform a paid domestic service, such as live-in nannies and carers).

Note by the way that the important thing is how many occupiers there are and whether they form one or more 'households'. It is irrelevant whether they sign one tenancy agreement between them or have their own separate tenancy for their own room and shared parts of the property.

Or indeed whether they have a tenancy. The HMO rules apply equally to residential licenses and, indeed, lodgers (although the rules are slightly different for lodgers – see my Lodger Landlord website at <https://www.lodgerlandlord.co.uk/> for more about lodgers).

The other thing to bear in mind is that if your property is licensable and you don't have a license, Local Authority fines and prosecutions are not the only penalty. Your tenants can also apply to the First Tier Tribunal for a Rent Repayment Order for up to 12 months' worth of rent. Not something you want to happen.

The financial penalties for not licensing a licensable property can be very substantial indeed, so this is something all landlords need to take into account.





## When does HMO licensing apply?

There is often a lot of confusion over when a property does or does not require a licence.

### Mandatory licensing

This will apply to all properties (apart from most flats where the rules are different) where there are five or more occupiers forming two or more households.

So, if you rent to a family of four – parents and two children – this will not be an HMO and you will not normally need to get a licence. But what if they, without asking you first, rent their spare room to a lodger? This will immediately turn the property into a licensable HMO and you can be prosecuted and fined if the Local Authority find out about it.

This is one reason why regular property inspections are so important. You need to know who is living at your property so you can check that it is not been turned into a licensable HMO.

### Additional licensing

This is where the Council have obtained approval to require properties which do not fall within mandatory licensing, to be licensed.

So, this will include HMOs where there are three or four occupiers. Many landlords deliberately only let their properties to three or four tenants so they can avoid licensing. However, this won't work if the Council have an additional licensing scheme in their area.

Additional licensing schemes are also often set up to bring flats (which might otherwise not require licensing) into scope.

### Selective licensing

This is where the Local Authority has permission to require ALL properties to obtain a licence, whether they are an HMO or not.

Sometimes this will be borough wide, sometimes it will apply to just one ward. However, if your property is in that ward you can be fined if you don't obtain a licence.

## What you need to do

Before renting out ANY property, you need to check to see if licensing requirements apply to you.

There is not a lot of point in carefully calculating the profit on your rented property if you have not taken the cost of licensing into account. It could make the let unviable.

So, you should always make enquiries at your Local Authority first – maybe even before purchase. If you don't know who your Local Authority/Council are, you can find this out at <https://www.gov.uk/find-local-council>.

Then see which department deals with HMO licensing. You may be able to find out about the licensing requirements online, otherwise ring them up and ask them.

However, there is no point in just checking once. Licensing requirements change. Properties with just four tenants may not need a license in January 2024 but this could have changed by October, when a new additional licensing scheme could have been introduced.

See if you can sign up for an information mailing list or newsletter with the Council. They sometimes offer this.

I would also recommend that you diarise to check every six months, just to make sure. Remember – ignorance of the law is no defence. Plus, you don't want to give your tenants an opportunity to apply for a Rent Repayment Order!

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