

## **ENFORCEMENT POLICY APPENDIX 2**

### **DEFINITION OF AN HMO**

The legal definition of HMO is contained in sections 254 to 259 of the Housing Act 2004 and associated regulations. The definition is complex and contains a number of exemptions. In general terms, a building is a HMO if it fulfils any of the following tests:--

#### **1. THE STANDARD TEST**

Any building which consists of one or more units of accommodation which are not self contained and where two or more households share one or more basic amenities, or where the accommodation is lacking basic amenities.

#### **2. THE SELF CONTAINED FLAT TEST**

Any part of a building that is a self contained flat which consists of one or more units of accommodation in which two or more households share one or more basic amenities or where the accommodation is lacking basic amenities.

#### **3. THE CONVERTED BUILDING TEST**

Any building which has been converted and contains one or more units of accommodation which are not self contained (whether or not the building also contains one or more self contained units)

#### **4. CERTAIN CONVERTED BLOCKS OF FLATS**

Any building which has been converted in to and consists entirely of self contained flats , but the standard of conversion does not comply with appropriate building standards, ( that is the Building Regulations 1991 ) and less than two thirds of the flats are owner occupied ( that is one third or more of the flats must be let on short tenancies )

In all cases, the accommodation must be the only or main residence of the occupiers and rent or other consideration must be payable.

Household is generally defined as members of the same family but also includes others such as foster children, au pairs, nannies etc.

Houses managed by Registered Social Landlords and other publicly funded organisations, such as the NHS, Police , Fire Service etc as well as premises subject to other regulatory regimes , such as Registered Care Homes , plus local authority premises are exempt from the definition of HMO and thereby also exempt from mandatory licensing.

## **HMOs REQUIRING A LICENCE**

HMOs falling within the mandatory licensing requirements are defined in the 'Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (SI 371: 2006)

A HMO or any part of it is licensable if:-

- It comprises three storeys or more and
- It is occupied by five or more persons and
- Those persons live in two or more households.

In determining what counts as three stories, basements, attics and mezzanine floors are included where they are used wholly or partly as living accommodation or as an integral part of the HMO. Floors used as business premises are also counted.

The regulations do however leave a great deal of scope for interpretation and so far no definitive statements have been issued by DCLG with respect to a number of questions posed by local authorities from around the Country. In Birmingham the following interpretation will be applied:-

**BASEMENTS / CELLARS** will not be counted where they are used purely to access service meters (gas, electric and water meters) or for occasional storage. They will however be counted where they are in more frequent use, such as games / tv rooms etc.

**CONVERTED ATTICS AND SECOND FLOOR ACCOMMODATION** will be counted even if not actually occupied at the time of application or when the licence is granted if the floor is still generally accessible to the other residents. In order to be discounted, the accommodation at second floor level will need to be physically separated from the two floors below by the construction of timber stud partitioning or equivalent across the access stairway to the second floor. (or first floor if there is a countable basement)

A locked door at the foot or head of the stairway to the second floor will not be sufficient for this purpose. A removable access hatch within the partition screwed in to position may be provided in order to ensure that access to the second floor is still available for maintenance purposes.

**MEZZANINE FLOORS** will only be counted where there is a significant difference in floor level between the ground and first floors. Many traditional pre 1919 terraced type houses have a two storey wing addition building which may be accessed from the first floor landing by two or three steps up or down. This will not be counted as a mezzanine floor level. As a general guide, a change in floor level of five to six steps would constitute a mezzanine floor level or where the positioning of a wing building or other intermediate structure results in the floor level of any first floor room being 4.5 metres or more above the adjoining ground level.

SELF CONTAINED FLATS which meet the self contained flat test and are occupied by five or more persons and are situated at second floor level or above within a purpose built block of flats (for example cluster flats in student halls of residence) could be regarded as meeting the mandatory licensing description. Advice from LACORS and consultation with other local authorities around the Country and within the West Midlands region indicates that in such cases, the floor levels below the flat in question (that is, the potentially licensable HMO) are not counted as they are not used in connection with or as an integral part of it, even though access to the flat must be via stairways which pass through the floors below.

Whilst this interpretation is not fully conclusive, a decision has been made that in Birmingham such flats will not be subject to mandatory licensing but could become subject to additional licensing at some time in the future if the area in question were to be declared an additional licensing area.