

Thurrock Council

House in Multiple Occupancy

Temporary Exemption Notice policy

March 2020

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Introduction

This document sets out Thurrock Council's (the "Council") policy on Temporary Exemption Notices and the way in which this will be managed by Thurrock Council.

The council seeks to improve the quality of life in the borough for tenants, private landlords, leaseholders and shared owners to create safe, secure and sustainable communities.

The policy is set out in line with legislation on the classification of being a house in multiple occupancy (HMO):

- how HMO licenses can be obtained
- the council's process on issuing a Temporary Exemption Notice
- the reasons why a Temporary Exemption Notice could be refused

Section 1 – House in multiple occupancy

A rented property is considered a house in multiple occupation (HMO) if the property is occupied by three or more people, forming two or more households, who also share facilities such as the kitchen or bathroom. When a house is let to sharing occupants who are not a family unit, landlords must ensure that the property complies with rules around HMOs.

It is mandatory for a landlord to apply for a licence if their property is occupied by 5 or more persons forming more than one household, regardless of the number of storeys the property has.

A household is defined as either a single person or members of the same family who live together. A family includes people who are:

- married or living together, including same-sex couples
- relatives or half-relatives – for example, grandparents, aunts, uncles, siblings
- step-parents and step-children

Licenses last for 5 years unless there is a change in circumstances during this time. Any changes will need a new application and payment of a new fee. Details of the fees payable can be found on the council's website at www.thurrock.gov.uk/houses-in-multiple-occupation/fees-and-charges

From June 2019, the rules in Thurrock changed, which meant that in some areas of Thurrock a licence is still required if the property is occupied by 3 or 4 people living in 2 or more households.

Details of these areas can be found at:

www.thurrock.gov.uk/houses-in-multiple-occupation/additional-licensing-for-hmos

It is a criminal offence to operate a licensable HMO without having either a license or a Temporary Exemption Notice.

Section 2 – Exemption from HMO regulations

Certain buildings that fulfil the criteria to be defined as an HMO under the Housing Act 2004, are exempt from the licensing provisions and the management regulations. This comprises buildings that are:

- managed or controlled by private registered providers of social housing, a co-operative society, local authorities and other specified public sector bodies
- buildings regulated under other legislation – for example, boarding schools, prisons, accommodation centres for asylum seekers and care homes
- occupied by religious communities, unless they are Section 257 HMOs
- halls of residence – or other accommodation occupied by students – that are managed or controlled by one of the educational establishments listed in the regulations
- only occupied by an owner/occupier, members of their household and no more than 2 tenants or licensees – this exemption does not apply to section 257 HMOs
- only occupied by 2 people who form 2 households
- properties subject to a Temporary Exemption Notice or an interim management order

Section 3 – Temporary Exemption Notice

Thurrock Council can issue Temporary Exemption Notices for licensable properties that are not licensed and where particular steps are being taken that will exempt the property from requiring a license under Part 2 or 3 of the Housing Act 2004.

A TEN only applies to one house.

Only the owner or person in control of the property can submit an application for a TEN. This can be done by submitting an application for temporary exemption from licensing by completing the notification of temporary exemption form at:

www.thurrock.gov.uk/houses-in-multiple-occupation/temporary-exemption-notices

The applicant must provide detailed explanation supporting the request for a temporary exemption, including any steps they intend to take. The 2004 Act does not indicate what those steps might be, except they must be "particular" and made with the intention that the property will no longer be licensable. Thus, in the council's view, the intention must be firm and there must be evidence as to how the steps are intended to be achieved.

Examples might include:

- putting the property on the market for sale with vacant possession – for example, instruction from estate agent)
- evidence that the applicant intends to occupy the property as his/her own home in single occupation
- proposed change of use of the property from residential to some other use
- planning permission to convert an HMO into a single dwelling house

Evidence will need to be attached to support any statements made. This should include:

- gas safety certificate
- energy performance certificate
- tenancy deposit scheme certificate/evidence
- tenancy agreement
- management contract
- Section 8 eviction notice
- death certificate
- supporting information for specific steps to be taken e.g. planning application/permission, condition of sale, estate agency listing

It is a criminal offence to knowingly supply information that is false or misleading for the purposes of obtaining a TEN. Evidence of any statements made in the application about the property concerned may be required at a later date.

If we subsequently discover something that is relevant and that you should have disclosed, or which has been incorrectly stated or described, your TEN may be revoked or other appropriate action taken.

There is no cost for a Temporary Exemption Notice.

The Temporary Exemption Notices can only be granted for a maximum of 3 months. In exceptional circumstances, the council can allow for the TEN to be renewed for an additional 3 months on further application to the council.

Once the application is submitted, the council will contact the applicant to arrange an appointment to visit the property to assess hazards under the Housing Health and Safety Rating System as defined in part one of the Housing Act 2004.

The council will then consider the application and give notification of a decision in writing within 28 days of the application. If approved it will commence on the date it is granted.

By law, the council has to keep a public register of Temporary Exemption Notices issued in relation to property licensing. This can be viewed online at:

www.thurrock.gov.uk/houses-in-multiple-occupation/temporary-exemption-notices

Section 4 – TEN extension

A TEN can be given by a local authority for 3 months, after which the landlord can apply for an extension in exceptional circumstances.

The council can grant a TEN for a further 3 months, however this must be made before expiry of the existing temporary exemption and further evidence must be provided to the council to consider a renewal.

No further applications can be made thereafter and the landlord is required to ensure that they have complied with the particular steps advised in their TEN application when the application expires, or they have submitted an application for a HMO license.

Section 5 – Refusal of TEN

The council can refuse to issue a TEN, during which the applicant will be notified of the decision, the reasons why the TEN was refused and how to appeal the decision. Reasons why the council may refuse the TEN can include:

- non-specific steps have been stated
- there have already been 2 TENs granted in the past 12 months
- the TEN is only to reduce numbers to take the property outside of the licensing regime
- providing incorrect or false or misleading information – this is an offence
- not supplying sufficient supporting evidence – that is, the tenancy agreement, deposit protection details, management contract
- not following the steps specified in a previous TEN application – that is serving Section 21 notice and applying for a possession order
- not a person managing or having control of the premises
- TEN already issued
- HMO licence application already received

The applicant can appeal the decision within 28 days of the date the decision was made. Details of how an applicant can appeal will be included in the refusal notice.

Section 6 – Licensing offences

It is a criminal offence to manage or have control of an HMO that is required to be licensed and that is not so licensed. Such an offence can be committed by, for example, a landlord, licensor or any person acting in such a capacity, including an agent for that person.

On summary conviction, a person found guilty of such an offence may be issued an unlimited fine. The council can issue a civil penalty notice of up to £30,000 per offence.

An offence is not committed – that is to say, there is an absolute defence against it – if either:

- a valid and effective application for a licence has been made to the council, or there has been a valid and effective notification for a Temporary Exemption Notice, and the local housing authority (LHA) has either:
 - not determined the application or the notification
 - determined the application or notification, and the period for appealing against the decision, has not expired
- an appeal has been made against the decision, until such time as it is determined or withdrawn

It is also an offence if a licence holder, or a person who has agreed to be bound by the licence, breaches a condition of a licence without a reasonable excuse. On summary conviction, that person can face an unlimited fine of the council can issue a civil penalty notice of up to £30,000 per offence.

A separate offence is committed by a breach of each individual condition. Where the breach is serious the council may – in addition to, or instead of – instigate a prosecution, revoking the licence in certain circumstances.

In respect of a HMO, it is an offence for a person managing or having control, to knowingly permit it to be occupied by more persons or households than the maximum number of such persons or households permitted under the licence. Unlike any other offence relating to a licence, the offence can be committed not only by the licence holder – and any person bound by the licence – but also by the manager under the licence or any person acting as an agent for those persons.

A person who commits such an offence is liable, on summary conviction, to an unlimited fine or the council can issue a civil penalty notice of up to £30,000 per offence.