

Appendix 2

Overseas Licence Holder Policy

Housing Act 2004

Licensing requirements (general)

One of the primary objectives of licensing is to ensure there is a suitable person, or company, who is legally accountable for managing the property and complying with the licence conditions. Therefore, a licence holder must either reside in the UK, or if a company, be registered in the UK. The person or company named as licence holder is responsible for complying with the licence conditions and if they fail to do so, legal action can be taken against them.

Before granting a licence, the council must be satisfied that there are proper management arrangements and systems in place for dealing with (amongst other matters):

- day to day emergencies.
- carrying out repairs to the property when a problem is reported, or if the council identifies a hazard. This includes systems in place for funding such works,
- carrying out regular property checks and routine maintenance,
- responding to and dealing with complaints about antisocial behaviour.

Every licence contains legally binding conditions that regulate these matters, and it is the licence holder's responsibility to ensure that the property is being managed in accordance with the licence.

Licensing requirements for overseas landlords who live outside the UK

Landlords who either reside overseas or where the company is registered overseas (including offshore companies) are required to appoint a UK based person or company to hold the licence on their behalf. The overseas landlord would not be named on the licence, the appointed person or company will be, and they will be legally accountable for managing the property and complying with the licence conditions. However, under this arrangement, if the overseas landlord changes the licence holder during the term of the licence (normally 5 years), they will have to apply for a new licence. This is because the licence is not transferrable.

When determining the licence application, the council must be satisfied that the person or company that the overseas landlord has proposed to be the licence holder and manager agrees to be the licence holder of the property and is 'fit and proper' and competent to comply with the licence conditions and that the proposed management structures are satisfactory. The council may request to see the signed contract/management agreement in place to ensure that any appointed person or company is able to comply with all the licence conditions.

Proposed licence holder considerations

When deciding who to appoint as licence holder and manager of the property, an overseas landlord should consider the matters listed below (this is not an exhaustive list).

- i. Are they members of an accreditation or industry led body e.g. Unipol, DASH, ARLA, NRLA, EMPO, Safe Agent, NALS, RICS, TPI, UKALA, BLA, Guild of Residential Landlords Property Mark?
- ii. How are repairs dealt with? Is there a maintenance and repair process in place to deal with requests for service, repair and maintenance works raised by tenants?
- iii. How are works authorised and who is responsible for ensuring that the works have been completed to an acceptable standard?
- iv. Do the routine inspections consider ongoing maintenance issues that require programmed work, including the external condition, which may result in higher than agreed budget expenditure?
- v. Does the proposed licence holder have sufficient funds in place to undertake repairs and maintenance and what process is in place for the agreement of work that is in excess of the agreed repair budget?
- vi. What process is in place to ensure that the proposed licence holder can provide any information/records demanded by the council in accordance with the licence conditions?
- vii. Is the proposed licence holder and managing agent authorised to find tenants, obtain references, issue tenancy agreements and complete the necessary paperwork, including complying with the tenancy deposit requirements on behalf of the overseas landlord?
- viii. Are there written anti-social behaviour procedures in place to deal with complaints of anti-social behaviour and is the licence holder able to demonstrate what reasonable and practical steps can be taken to prevent or reduce anti-social behaviour?
- ix. Can the proposed licence holder demonstrate that the requirements for licence holder training can be met?

Frequently Asked Questions

Q. I am a landlord of a licensable property who lives outside the UK. Do I need to licence my property and what should I do?

A. Yes, if your property requires a licence, you must make sure it is licensed. You must appoint a person or company in the UK who can hold the licence for you.

Q. Will I be taking a risk if I agree to hold the licence for an overseas landlord?

Yes, it is a risk because you will take on legal liability for complying with the licence conditions or receiving statutory notices from the Council. This risk can be minimised by ensuring that there are robust management arrangements in place before you agree to be licence holder/manager of the property.

Q. If I become the licence holder on behalf of an overseas landlord, what happens if something goes wrong? Will the Council take legal action against me?

The Council may take enforcement action against you. In the first instance, the council will usually attempt to work with the licence holder to rectify any problems at the property without formal enforcement action, however, this will depend on the seriousness of the breach. All enforcement action is considered on a case-by-case basis in accordance with the council's Enforcement Policy.

Q. I am an overseas landlord and have appointed an agent to hold the licence for my property. What happens if I want to change agent?

If you want to change agent during the term of the licence, you will need to make another licence application because a licence may not be transferred to another person (section 91(6) of the Housing Act 2004). Therefore, prior to appointing an agent you should discuss the proposed management arrangements fees, etc. with the agent to make sure that you are completely satisfied with them being the licence holder for the full licence period.