



# **House in Multiple Occupation Licensing Policy**

**April 2008 (as amended)**

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\* NOTE: The specimen form does NOT form part of the Policy Framework as it will be subject to revision – Please contact the Council for the latest version at time of application.

## HMO LICENSING

### 1.1 Introduction

This Licensing Policy sets the framework for the application and licensing of Houses in Multiple Occupation (HMO). The policy will guide the Council in making fair, considered, consistent and transparent decisions that can be explained to our customers and, if necessary, defended on appeal.

This policy takes into account the prescription contained within the Housing Act 2004 and relevant statutory instruments which will at all times take precedence. The contents of the policy will automatically be amended at the instruction of the Secretary of State. Section 1.2 contains the general principles of the Council's Licensing Scheme and section 1.3 the specific details.

### 1.2 General Principles

#### 1.2.1 Licensing: The Legal Framework

The different types of licenses introduced in the Housing Act 2004 are:

- Mandatory Licensing for HMOs
- Additional Licensing for HMOs not subject to Mandatory Licensing.
- Selective Licensing of private rented property under certain conditions.

#### 1.2.2 What is an HMO?

The Housing Act 2004 has introduced a new definition of an HMO which is attached as Appendix A. In summary, a premise will be an HMO if it is one of the following:

- **A shared house** lived in by people who belong to more than one family<sup>1</sup> and who share one or more facilities<sup>2</sup>.
- **A house in bedsits** lived in by people who belong to more than one family<sup>1</sup> and who share one or more facilities<sup>2</sup>.
- **An individual flat** lived in by people who belong to more than one family<sup>1</sup> and who share one or more facilities<sup>2</sup>.
- **A building of self-contained flats** that do not meet 1991 Building Regulation standards.

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| <ol style="list-style-type: none"><li>1. Family – husband, wife, co-habitee, child, step-child, foster-child, grandchild, parent, step-parent, foster-parent, grandparent, brother, half-brother, sister, half-sister, aunt, uncle, niece, nephew, cousin.</li><li>2. Facilities – basic amenities: wc; wash hand basin, shower, bath; cooking facilities.</li></ol> |
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#### 1.2.3 Exemptions:

A premise does not constitute an HMO if:

- If it is occupied by only two people.
- If it is occupied by the owner (and their family if any) and one or two lodgers.
- If it is occupied by a religious community.
- If the occupiers have their main residence elsewhere<sup>3</sup>.
- If no one in the property is required to pay rent.
- If the owner or manager is a public body.
- If the owner or manager is an educational institution.
- A building of self-contained flats if two thirds or more of the flats are owner occupied.
- If the property is part of a guest house or hotel (unless an 'HMO Declaration' is made).

<sup>3</sup> Accommodation used by full time students while they are studying is taken to be their main residence.

#### 1.2.4 HMOs licensable under the Mandatory Scheme

An HMO must have a licence if **both** of the following apply:

- It is **an HMO** (see definition of HMO in Appendix A)
- it is occupied by **five people or more** who do not form a single household

All HMOs occupied by five or more persons forming two or more households and otherwise not exempted are required to be licensed. HMOs consisting entirely of **fully** self-contained flats, which are not occupied as flats in multiple occupation, are exempt.

When assessing the number of storeys in a premise, account will be taken of:

- All storeys of residential accommodation, whether above or below adjoining ground level, including attics.
- Any commercial storey at or above adjoining ground level.

Whilst Mandatory licensing excludes most self-contained flats, the exceptions to this will be where:

- it is a single flat above commercial premises or

In this case the flat would have to be occupied by 5 persons or more living as more than one household.

Guidance also indicates that all residential parts of a premise will be subject to these provisions where the property as a whole is eligible for licensing.

#### 1.2.5 Exemptions from Mandatory Licensing

A premise is exempt from mandatory licensing if:

- the whole property is in self-contained flats.
- the basement is in commercial use and there are only two residential storeys above.

## 1.2.6 Implementation

Mandatory licensing comes into force with effect from 6 April 2006. On that date, applications are required in respect of all HMOs subject to Mandatory Licensing.

## 1.2.7 Necessary Conditions for the Granting of a Licence

On receipt of a licence application, the Council must either grant, or refuse to grant a licence within a reasonable period.

A licence is to be granted where:

- The house is **reasonably suitable for occupation** having regard to amenity levels, available living space and general health and safety considerations
- **Management arrangements** are satisfactory. "Management arrangements" includes arrangements for monitoring and maintaining the property, ordering works, finance, and general manager competence.

The licensee, manager and others involved in the running of the property are fit and proper persons. There are certain criteria to be met before an applicant can be considered to be a fit person to manage a HMO. When deciding whether an individual is a **fit and proper person** the Council has to consider whether there is evidence that they have committed an offence of fraud, dishonesty, violence or drugs or an offence under Schedule 3 of the Sexual Offences Act 2003. The Council also has to consider whether there is evidence that they have practised discrimination on grounds of sex, colour, race, ethnic or national origins or disability in connection with any business, or evidence that they have contravened housing or landlord and tenant law.

In granting a licence, the Act prescribes mandatory licence conditions relating to:

- provision of annual gas safety certificates
- safety of electrical appliances and furniture
- provision and maintenance of smoke alarms
- provision of written tenancy agreements
- Minimum sizes of room which may be occupied as sleeping accommodation and the number of people
- Refuse storage disposal

In addition, the Council will:

- where it considers appropriate, impose its own license conditions
- grant a licence for a lesser period than the standard period (normally 5 years) where it considers it appropriate
- make a charge for the costs incurred in granting a licence
- follow the appropriate route for consultation on the licence and its contents with relevant people described by the Act and within relevant guidance

When the Council is satisfied that the premise is in a satisfactory condition, the people controlling and managing it are fit to do so and the management arrangements are satisfactory, a licence will be prepared for issue to either the applicant or some other person by agreement. Where it is not satisfied that these conditions are met, the licence application will be refused.

Only the person having control of a premise is able to be issued with a licence. A separate licence is required for each property they control.

## 1.2.8 Offences

The Act lays down a number of licensing-related offences and corresponding penalties, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows: fine of up to **Unlimited or civil penalty up to £30,000**
- Breach of a licence condition: fine of up to **Unlimited or civil penalty up to £30,000**
- Supplying incorrect information in a licence application: fine of up to **£5,000**

In addition, a landlord who operates an unlicensed HMO can be made the subject of a Rent Repayment Order (RRO) by a Residential Property tribunal. An RRO requires the repayment of rent received by the landlord over a period of up to 12 months. Furthermore, the introduction of The Housing and Planning Act 2018 has introduced further offences including banning orders and civil penalties up to a maximum of £30,000.

## 1.3 HMO Licensing: Policies

### 1.3.1 Property Standards

In approving a licence the Council will determine whether the HMO is suitable for occupation by the number of persons stated in the application form. If the arrangements are unsatisfactory, then a licence may be granted for a lesser number, or a licence condition imposed requiring that specified works be carried out.

The standards that will be considered include those relating to bathrooms, showers, WCs, wash hand basins, cooking facilities, and living space. Until such time as definitive standards are determined nationally, the current NWLDC Housing Standards for Houses in Multiple Occupation will form the basis of the housing standard for licensing HMOs. The exception to this will be the fire safety standards which will be assessed using the HHSRS. The guidance standard for fire safety will be those agreed by the housing authorities within Leicestershire and the Leicestershire Fire and Rescue Service.

Compliance with standards set by other legislation, for example the Approved Documents to the Building Regulations, will not imply compliance with the standards for licensing of HMOs.

### 1.3.2 “Fit and Proper Person”

The Council will assess whether the applicant, any manager or any person associated with them or formerly associated with them are fit and proper people to manage an HMO. A person will be considered fit and proper if the Council is satisfied that:

- they have no unspent convictions relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
- they have not practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business
- they have no unspent convictions relating to housing or landlord and tenant law
- they have not been refused an HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the approved code of practice under S233 of the Act within the last five years

- they have not been in control of a property subject to an HMO Control Order an Interim Management Order (IMO) or Final Management Order (FMO) or work in default carried out by a local authority within the preceding five years
- they have not been subject to legal proceedings by a local authority for
- breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation
- there is no evidence of any offence referred to above having been committed within the previous five years.

**All Applicants are required to present to the Council information obtained from DBS check to prove unspent convictions as part of the Council’s assessment of ‘fit and proper’.**

Where simultaneous applications are made for the same person to be the licence holder of more than one property, only one disclosure will be necessary provided that no more than 12 months has elapsed between applications.

An unspent conviction or other failure is not necessarily automatic grounds for refusing a licence; other circumstances (e.g. training undertaken by the landlord or subsequent cooperation with the local authority) will be taken into account. Equally, the legislation refers to evidence of an offence; it is not therefore necessary for the Council to demonstrate that a conviction has been obtained when refusing to accept someone as a fit and proper person.

Evidence of “spent” convictions, i.e. those to which the Rehabilitation of Offenders Act 1974 applies, is not taken into account.

Where the Council have cause to question the ‘fit and proper’ status of an applicant, it will invite applicants to submit an explanation of their circumstances. The applicant will be required to account for the failure to comply with legislation, and satisfy the Council that this will not recur.

The decision to accept them as being a fit and proper person will be taken on the basis of:

- The severity of the breach
- The number of breaches
- The time which has elapsed since the last breach and their conduct since it occurred
- The relevance of the breach to the management of HMOs and their occupation
- The evidence that the applicant has accepted the need to conduct his business in accordance with the appropriate standards (including whether there have been satisfactory arrangements made for the repayment of debts associated with statutory responsibilities)
- The training received since the breach occurred.

### **1.3.3 Management Arrangements**

The Council will at all times be guided by The Management of Houses in Multiple Occupation (England) Regulations 2006 as may be amended by the Secretary of State.

Specifically, the Council will require an applicant/licensee to have satisfactory arrangements and funding in place for the management of an HMO.

These arrangements include but are not limited to:

- a system for tenants to report defects, including in emergencies
- arrangements for periodic inspections to identify where repair or maintenance is needed
- arrangements to respond to defects reported by tenants and found during periodic inspections
- a protocol for dealing with anti-social behaviour occurring within the HMO by tenants or their visitors
- where the licence holder is a managing agent, the clear delegation of authority
- to make decisions (including those related to expenditure) on all matters concerning the health, safety and wellbeing of occupiers and good management.

In addition, the Council require the applicant/licensee to have arrangements in place for ensuring that employees, contractors and others having occasion to visit the HMO in connection with its management and/or maintenance are fit and proper persons for the functions they carry out. Licence applicants will be required to declare as part of the application that proper funding arrangements for the HMO exist. The Council will need to be satisfied that adequate financial resources to maintain the HMO are available.

In verifying declarations, the Council will have regard, amongst other things to:

- outstanding debts for work in default and charges for statutory notices
- County Court judgements
- outstanding debts for Council Tax, Housing Benefit and other services

Where there are indications that the applicant will have insufficient funding or authority to manage the property, the Council will seek further clarification through the use of Credit Referencing organisations. Where satisfactory assurances cannot be provided then there is a duty to refuse the application.

### **1.3.4 Applications**

Although it is the responsibility of the landlord to apply for a licence, there is a duty on the Council to ensure that applications are made. Together with any direction from the Secretary of State, a valid application for an HMO licence will comprise:

- the application form, fully completed, signed and dated.
- inclusion of all required forms or schedules, duly completed, signed and dated.
- inclusion of all required documents as proof of compliance with relevant standards or regulations.
- a DBS Certificate, duly completed, signed and dated.
- the relevant fee.

Incomplete applications may be accepted at the discretion of the Council. The only accepted omissions being documents of proof. The applicant must attest, in writing, to the absence of any information. The applicant must also be reminded of the consequences of not providing the information.

### **1.3.5 Contents of the Application Form**

- There are certain matters which must be included and appear on an application form, which may, from time to time, be amended by the Secretary of State.

### **1.3.6 Application Process**



All necessary forms will be included in an application pack provided by the Council. There will be clear guidance on the requirements of the application included within the pack.

The pack will include:

- The application form
- A schedule containing a declaration that the applicant has notified various people.
- Guidance on making the application

### **1.3.7 Verification**

The proposed licence holder should present the completed application form, and all enclosures by hand in person at the Municipal Buildings. The receiving officer will examine the documents to ensure that all relevant paperwork is present, signed and dated. In relation to the Disclosure Scotland application, the identity of the proposed licence holder will be verified at this point. The receiving officer shall take a photograph (digital or analogue) of the person submitting the documents.

All the information presented on the application form will be subject to verification processes as required. This will take the form of site inspection, interdepartmental liaison, sample verification and (where there are indications of a misleading application) detailed examination of all information given.

Much of this will take place after the application has been approved.

### **1.3.8 Licence Approval, Conditions and Duration**

An HMO licence will normally run for a period of 5 years from the date of approval. The Council may, however, issue a licence for such lesser period as we consider appropriate, having regard to:

- any management deficiencies
- the need for works to be carried out to put the house into a satisfactory condition
- concerns as to the Fit and Proper Person status of the relevant person(s)

A shorter term licence may also be granted due to local circumstances, for example if the property is in a designated clearance area. Also the applicant may make a case for a shorter term licence, or North West Leicestershire District Council may be directed by the outcome of an appeal.

Before granting a licence for a period of less than 5 years, the Council will discuss its decision with the HMO licence applicant. Where a shorter licence is granted, subject to satisfactory performance, a further licence will be issued. The duration of the first and second licence periods will not exceed five years in total. No additional fee will be required for the second licence.

The Council will normally apply licence conditions requiring:

- the attainment and maintenance of proper standards of management and maintenance of facilities and equipment. In particular, the licence will require compliance with statutory Management Regulations within either 3 months of them coming into effect or of the date of issue of the licence as appropriate.
- that the HMO manager attend an approved training course in HMO management practice
- compliance with laid down amenity standards
- that the specified documents be made available to tenants for viewing on request

- that the licence document, licensee or manager's name, address and telephone number be displayed in a common area of the property.

Other conditions will be laid down as appropriate, including conditions restricting occupation of parts of the house on the grounds of lack of amenities or usable space as appropriate.

The Council have the right to refuse, vary or revoke a licence. When deciding on any of these courses of action, appropriate notices will be served on the relevant people giving the reasons for the action. There are rights of appeal to these notices through the Residential Property Tribunal, but barring any appeal, the action will be executed at a specified time after the appeal period.

### **1.3.9 Licence Fees**

The Council will charge for HMO licences in accordance with the published fee scale. Fees have been set to cover the Council's costs of licensing HMOs.

### **1.3.10 Appeals**

Applicants and licence holders have a right of appeal to the Residential Property Tribunal where they are dissatisfied with decisions made by us in relation to the issue of licences, HMO declarations, notices or orders, including variations, revocations or refusals.

The Council will consult with the relevant persons at all stages of involvement to work to a satisfactory solution to the situation at hand.

Relevant persons will be made aware at all appropriate points where there is a right of appeal, and will be told of the procedure, including time limits, of lodging an appeal. This will normally take the form of notes appended to notices or orders.

Where the Council is dissatisfied with the outcome of an appeal, it will itself consider an appeal to the Lands Tribunal or the Court of Appeal as appropriate.

### **1.3.11 Specific HMO Actions**

The Act gives the Council a range of powers to serve notices and take action within the Mandatory Licensing framework. The following sets out how the Council can use its powers.

#### **Temporary Exemption Notices (TEN)**

The Council may grant a TEN where:

- the owner of a licensable HMO states in writing that he/she is acting to make it non-licensable; and
- the Council is satisfied that it will be non-licensable within 3 months of the date of receiving the written notice

In deciding whether to grant a TEN, the Council will have regard to the proposals for the property, any Planning considerations and arrangements for meeting the needs of occupiers including those likely to be displaced. The Council will only grant a second TEN in exceptional and unforeseen circumstances.

Where a TEN is not issued, the Authority must inform the manager or person having control by way of a notice, stating the decision and why it has been made, and providing details of rights of appeal.

Licences are not transferable. Provisions exist to treat the licence as a Temporary Exemption Notice for a period of 3 months following the licence holder's death. During that three month period, the representatives of the licence holder may request an extension of time of three months. If this is agreeable, the Council will serve notice to this effect.

### **Rent Repayment Orders**

Where the Council is satisfied that a landlord has operated a licensable HMO without the benefit of a Licence and the rent is paid as Housing Benefit, it will usually apply to the Residential Property Tribunal for a Rent Repayment Order. In such circumstances, the Council will advise tenants of their rights, which may include that of applying for a Rent Repayment Order in respect of non-Housing Benefit rental payments.

### **Interim Management Orders**

The Council will make an Interim Management Order (IMO) where it considers it necessary to secure that appropriate measures are in place in relation to the management of an HMO which is required to be licensed.

An IMO may be made to take steps to protect the health, safety or welfare of occupants of the house, or of neighbours or people having an interest in neighbouring properties, or any other management steps the Council consider appropriate pending the grant of a licence or issue of a final management order.

The Council will make an IMO where the property is an HMO which is required to be licensed but is not and it is considered that there is no reasonable prospect of it being licensed in the near future, or that the making of an interim management order is necessary to protect the health, safety or welfare of occupants of the house or neighbouring occupants or those having an interest in neighbouring properties. This could include the threat to evict a tenant in order to avoid the need to licence a property.

When an IMO is made, the Council will take any immediate steps to protect the health, safety and welfare of the occupants of the house and its neighbours and the proper management of the house.

Whilst an IMO is made, the Council will collect rents and can deduct from this income any relevant expenditure and sums due in compensation to a third party. Any residual income, with interest if relevant, must then be paid to the landlord or other recognised recipient at a frequency determined by us.

An IMO may be varied where appropriate.

An IMO may be revoked where the house ceases to be a HMO, a licence is subsequently issued, a Final Management Order is made or in other circumstances as appropriate.

An IMO when in force is a local land charge.

The Council reserves the right to appoint an agent to fulfil these functions.

## **Final Management Orders**

The Council will consider making a Final Management Order (FMO) to secure the long term management of an HMO in accordance with a management scheme detailed in the order.

A FMO can be for a maximum duration of 5 years.

A FMO when in force is a local land charge and, the Council can also apply to the Chief Land Registrar for the entry of an appropriate restriction in the register in respect of the order.

If it is necessary to protect the health, safety and welfare of the occupants and neighbours on a long term basis, FMOs will be made to replace IMOs on their expiry if the property is required to be licensed but cannot be licensed or if it is not required to be licensed.

New FMOs will be made to replace existing ones under the same circumstances.

An FMO will contain a management scheme for the property.

When a FMO is made, the Council will take appropriate steps in relation to the long term management of the property. The Council will periodically review the order and the management scheme contained in it and consider whether keeping the order in force is the best course of action.

Following the review we may vary or revoke the order or issue a licence in respect of the property.

When a FMO is in place, the Council have the right to:

- Take possession of the house
- Do anything, and authorise a delegated person to do, which a person having an interest in the house would be entitled to do.
- Create a leasehold or occupancy licence. Such tenures cannot extend beyond the period of the FMO, nor can the notice to quit or termination be more than 4 weeks.
- Create an assured shorthold tenancy as long as it starts more than 6 months before the expiry of the order.

(The time elements in the 3rd and 4th bullet can be waived with the written consent of the person who would be managing the property if the order were not in force.)

The Council reserves the right to appoint an agent to fulfil these functions.

### **1.3.13 Registers**

The Council will maintain registers of Licences, Temporary Exemption Notices, Interim and Final Management orders. These registers will contain all the relevant information required by regulation as well as any other information the Council consider relevant.

The information will be stored electronically with the ability to be transcribed when required.

The information will generally be made available to the public in accordance with the relevant provisions of the Data Protection Act and the Freedom of Information Act.

Personal callers will be advised of the availability of any paper versions of the relevant registers for inspection. This will be during office hours at the Council.

### **1.3.14 Enforcement**

The separate enforcement policy appropriate to a Housing Health and Safety Rating System (HHSRS) will be followed where relevant.

In deciding on the most appropriate enforcement action in any particular case, the Council will follow the parameters of both the Corporate Enforcement Policy and the Housing Enforcement Policy.

This policy includes general powers of entry, requisition of documents, issue of documents and any other relevant matter.

HHSRS does not have to be considered before a licence is issued.

We will consider whether we have a duty to act under HHSRS (i.e. for an identified category 1 hazard) as soon as practicably possible but in any case not greater than 5 years following the issue of a license.

The assessment of hazards in HMO's is made for each unit of accommodation, and each assessment will reflect the contribution of conditions in the common parts.

If an enforcement notice is served on an HMO and it reverts to a single occupation, the Council will consider whether the impact of the hazard has diminished and take appropriate action.

### **1.3.15 Other Requirements**

Standard is replaced by a Housing Health and Safety Rating System (HHSRS), which involves a risk assessment of the effect of housing conditions on the health of occupiers.

The HHSRS involves the assessment of 29 potential hazards and scoring their severity to decide whether improvements are needed. If more serious "Category 1" hazards are found the Council has a duty to require the owner to take appropriate action. If less serious "Category 2" hazards are found, the Council is obliged to take appropriate action as provided for within its enforcement policies. Councils are required to assess licensable HMOs to ensure that there are no Part 1 (HHSRS) functions that ought to be exercised by them. This has to be done within five years of a licence being issued.

These deficiencies may be dealt with in accordance with the Enforcement Policy before a licence can be issued.