

**SUBJECT: REVIEW OF MANDATORY HMO LICENSING SCHEME**

**DIRECTORATE: COMMUNITIES AND ENVIRONMENT**

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## **1. Purpose of Report**

- 1.1 To review the council's scheme for the mandatory licensing of houses in multiple occupation.

## **2. Executive Summary**

- 2.1 The Housing Act 2004, Part 2, introduced mandatory licensing of Houses in Multiple Occupation in 2006. The Council adopted a Scheme outlining how the private housing team would interpret the relevant legislation. The scheme was reviewed in 2012 to deal with the renewal of existing licences.
- 2.2 New legislation comes into force on 1 October 2018 extending the criteria for the types of HMO that need a licence, and imposing minimum room sizes and new mandatory conditions to be applied to all licences.
- 2.3 The adoption of amenity and space standards for the district clarifies the Council's expectations for the standard of shared housing in Lincoln, helping landlords to know what they need to provide, and supporting officers to respond to challenge.

## **3. Background**

- 3.1 Houses in Multiple Occupation (HMOs) include student house shares, bedsits, poorly converted flats and hostel type accommodation. They are an important, affordable and flexible housing solution, but often house occupiers who are vulnerable due to low income, mental ill health or dependency, or naivety as they are new to independent living. HMOs have a higher fire risk than single occupied homes, and can pose a risk to health and wellbeing where the shared bathing, toileting and kitchen amenities are inadequate for the number of occupiers. The density of occupation can lead to antisocial behaviour and noise problems for the surrounding community.
- 3.2 Part 2 of the Housing Act 2004 introduced a mandatory duty to licence HMOs meeting a defined criteria. The existing HMO Licensing scheme covers the licensing of HMOs with shared amenities, occupied by five or more unrelated people over three or more storeys.
- 3.3 The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 extends this duty to one and two storey HMOs from 1 October 2018. Larger blocks of purpose built flats (like the large student

developments) are excluded from licensing. The City's Stock Modelling Survey prepared by the Building Research Establishment estimates that the number of licensable HMOs in Lincoln will increase from 300 to 900 under the new definition.

- 3.4 Further statutory instruments define the information that must be submitted with a new or renewal HMO Licence application, prescribe minimum amenity standards that must be applied to all HMOs leaving the council with the discretion to adopt higher standards if it sees fit, and detail mandatory conditions that must be applied to every HMO Licence.
- 3.5 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 amended the mandatory condition for HMO landlords to provide smoke alarms on each floor, and carbon monoxide alarms where there are solid fuel burning appliances (like open fires).
- 3.6 The Council adopted a Trusted Landlord Scheme in March 2017 which recognises good landlords and rewards them with concessions with regards to HMO Licensing checks and fee discounts.
- 3.7 The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 introduce new mandatory conditions relating to minimum bedroom sizes and waste disposal provisions.

#### **4. Main Body of Report**

##### **4.1 Mandatory Licensing of HMOs Scheme**

The proposed amended City of Lincoln Council scheme for the Mandatory Licensing of Houses in Multiple Occupation is attached at Appendix A. The scheme comprises a main body of text explaining the relevant legislation, and a series of appendices giving more detail of how City of Lincoln Council will interpret the relevant matters.

##### **4.2 Licensing Criteria**

The definition of a licensable HMO in Appendices 2 and 3 to the scheme has been amended to reflect the new legislation. The number of storeys is no longer relevant. A house or flat must have a licence if it:

- Has one or more units of accommodation that are not self-contained flats
- Is occupied by five or more people forming two or more households
- Those people occupy the HMO as their only or main residence and pay rent
- Two or more households share a bathroom, WC or kitchen, or the living accommodation lacks one of these amenities
- Is not a purpose-built flat in a block of three or more purpose-built flats

Appendix 4 of the scheme dealing with Temporary Exemption provisions is unchanged.

##### **4.3 Applications**

The Licence Fee framework in Appendix 5 has been updated to reflect changes made by the Trusted Landlord Scheme giving a discount to trusted landlords to reflect the lower amount of work needed and to encourage accreditation. The variation fee has been removed and the costs of processing variations included in the licence fee, following case law. The setting of the actual fee amount is done through a separate fees and charges process. Fees are to be paid on application.

- 4.4 The scheme has been amended to provide for applications to be made electronically allowing for the council's investment in new software. The documents that a landlord needs to submit with his application outlined in appendix 6 have been amended to reflect recent case law and regulations that prescribe and restrict what the council can request in a HMO licence application and renewal.
- 4.5 Minor changes to Appendices 7 and 8 explain in simpler terms how the council determines the most appropriate person to hold a HMO licence by considering who has control of the HMO and who has authority to manage it. The fit and proper person check at appendix 9 explains how officers will determine the relevance of convictions.
- 4.6 The consideration of satisfactory management arrangements at Appendix 10 has been changed to better reflect the HMO management regulations and to allow a landlord to submit evidence electronically. The scheme reflects the provision in the Trusted Landlord Scheme to passport accredited landlords through the management arrangements check, as they have already agreed to an appropriate code of practice.

**4.7 Adopted Amenity and Space Standards**

The council has previously issued guidance on amenity and space standards for HMOs but has not adopted standards. This leads to a risk of inconsistent standards being applied, especially as the team grows and the work is spread between different professional officers. Appendices 11 and 12 of the proposed new scheme adopt standards that must be met in every licensed HMO in the City, providing clarity to both landlords and enforcement officers and minimising disputes that can occur when standards are more subjectively applied. These standards are consistent with those adopted by other councils in Lincolnshire and the East Midlands, so that landlords with stock across different local authority boundaries are treated equally.

**4.8 Licence Conditions and Inspections**

Appendix 13 and 14 of the Scheme have been updated to include new licence conditions relating to Mandatory and Discretionary conditions that will be applied to every HMO Licence. As required by regulations, the mandatory conditions include changes to the wording of the smoke and carbon monoxide alarm condition, minimum national room sizes, and provision for the storage and removal of waste. It should be noted that the new adopted standards go further than the national minimum standards by requiring additional space in rooms that are used for living, dining or cooking as well as for sleeping, which will be enforced by specifying in the licence the maximum numbers of occupiers for each room. The Community Services team and Public Protection ASB and Licensing Manager were consulted on the wording of the condition relating to waste provisions.

- 4.9 Appendix 15 has been amended to reflect the policy decision under the Trusted Landlord Scheme to passport lower risk premises through to being licensed prior to their inspection. The new IT system being procured to deal with HMO licensing has a risk rating element that can allow the Private Housing Team to inspect the

highest risk properties first. Where landlords can evidence compliance through the application responses or accreditation, HMOs may be inspected after the licence has been granted to verify the property information and check if there are hazards. This allows work to be spread over the five years of a standard licence term

- 4.10 Appendix 16 clarifies how the council will use its discretion to grant licences for less than the maximum five year term, to disincentivise landlords stalling to submit applications and to consider a record of non-compliance that is not serious enough to fail the fit and proper person test. Appendix 17 explains that although the team works to determine applications within a three month service standard, licences cannot be automatically approved if this is missed, due to the safety risk that this would cause.

## **5. Strategic Priorities**

### **5.1 Let's drive economic growth**

The Sincil Bank priority neighbourhood contains a high density of Houses in Multiple Occupation, which provide a flexible housing option for single people working in the city. A robust yet proportionate HMO Licensing Scheme feeds into the Sincil Bank revitalisation programme without over-burdening landlord businesses.

### **5.2 Let's reduce inequality**

Houses in Multiple Occupation are one of the most affordable and accessible housing options for single people, and house some of the most vulnerable residents who can be exploited by unscrupulous landlords. A safe, secure home is an essential foundation on which a person can improve their life chances. A robust HMO Licensing Scheme protects the health, safety and wellbeing of young, low-income, and vulnerable persons.

### **5.3 Let's deliver quality housing**

The HMO Licensing Scheme aims to improve standards in privately rented accommodation. It reduces overcrowding by setting robust amenity and space standards, and sets standards above the legal minimum for the management of houses in multiple occupation. Changes to the HMO Licensing Scheme link with the Trusted Landlord Scheme to encourage self-regulation by the private rented sector allowing officers to focus on enforcement against the worst landlords.

### **5.4 Let's enhance our remarkable place**

A new mandatory condition makes landlords responsible for ensuring waste is correctly stored and presented for collection, supporting the council's waste and environmental enforcement teams to keep city streets clean.

### **5.5 High performing services**

The new HMO Licensing Scheme allows for online submission of applications, moving towards digital service delivery.

## **6. Organisational Impacts**

### **6.1 Finance (including whole life costs where applicable)**

The scheme itself has little financial impact. A separate report has covered the mandatory duty to licence larger numbers of HMOs and the resource requirements

from this. The scheme focuses on how the legislation will be interpreted and implemented.

## 6.2 Legal Implications including Procurement Rules

Part 2 of the Housing Act 2004 places a mandatory duty on the Council to license specified types of Houses in Multiple Occupation. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 extends this duty to one and two storey HMOs from 1 October 2018 and the updated HMO Licensing Scheme provides for this change.

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(Amendment)(England) Regulations 2012 amended the information prescribed in The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 that can be requested from a landlord renewing an existing licence. The new scheme incorporates these requirements and limitations.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 prescribed a mandatory condition for HMO landlords to provide smoke alarms on each floor, and carbon monoxide alarms where there are solid fuel burning appliances. The new scheme has been updated with this change.

The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 introduce new mandatory conditions relating to minimum bedroom sizes and waste disposal provisions. The new scheme incorporates these minimum requirements, and uses the council's discretion to set higher standards for amenity and space and the management of HMOs, while remaining proportionate and steering away from using HMO licensing to deal with problems that are more appropriately addressed through other legislation.

## 6.3 Equality, Diversity & Human Rights (including the outcome of the EA attached, if required)

The scheme has positive effects for young people occupying HMOs and disabled landlords by improving accessibility of the application process. The EIA is attached at Appendix B.

## 6.4 Significant Community Impact – **Only to be completed if the report contains a change in policy/strategy or the way the service is delivered**

## 6.5 Corporate Health and Safety implications – **Only to be completed if Corporate Health and Safety implications are identified.**

## 7. Risk Implications

### 7.1 (i) Options Explored

#### **To implement the mandatory legal requirements only**

The Housing Act 2004 outlines minimum standards and procedural requirements for the licensing of Houses in Multiple Occupation. These do not consider the

issues found specifically in Lincoln's housing stock, and as a University city with a large proportion of HMO accommodation, following this mandatory framework alone is not considered adequate to uphold standards.

#### **To make no changes to the existing HMO Licensing Scheme**

The original Lincoln HMO Licensing Scheme was adopted in 2006, and updated in 2012. A raft of new legislation has come into force since the last revision, and it would be legally incorrect not to update the scheme to reflect these requirements.

#### **To adopt the scheme as appended**

The proposed new scheme not only implements the legislative changes that have come into force since 2012, including the widened definition of a licensable HMO. It also makes the best use of the council's discretionary powers to set good standards of amenities and room sizes, and use licence conditions to uphold good property management practices. This reflects the Council's Vision 2020 priorities to improve the standard of private sector housing in the city and tackle rogue landlords.

### **7.2 (ii) Key risks associated with the preferred approach**

#### **Challenge from Proposed Licence Holders**

There is a right of appeal to the First Tier Tribunal (Property Chamber) against the granting or refusal of a HMO licence. By setting higher than minimum standards, there is an increased risk that landlords will appeal against conditions requiring them to provide additional amenities or reduce occupier numbers for example. The scheme and standards within it were prepared by a panel of experienced officers, with benchmarking against other local council's standards, to ensure proportionality and consistency, reducing the risk of a successful appeal by a landlord to low.

## **8. Recommendation**

- 8.1 That Members approve the proposed City of Lincoln scheme for Mandatory Licensing of Houses in Multiple Occupation at Appendix A.

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| <b>Is this a key decision?</b>   | Yes |
| <b>Do the exempt information categories apply?</b>                               | No  |
| <b>Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply?</b> | No  |
| <b>How many appendices does the report contain?</b>                              | 2   |

**List of Background Papers:**

HMO Licensing Scheme  
Equality Impact Assessment for HMO Scheme

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