

Housing Act 2004 HMO Licensing Policy

1. Background

The Housing Act 2004 introduced a new mandatory licensing system for certain types of Houses in Multiple Occupation. Following the consultation by central government in late 2015 the Statutory Instrument 2018 No 221 was issued. From 1st October 2018 the scope of licenses has been increased to include all Houses in Multiple Occupation occupied by 5 or more people in 2 or more households. This paper sets out how South Holland District Council meets the requirements of the new legislation.

The Policy and Procedure for licensing HMO's has not been updated since 2004 but was reviewed in 2009. This Policy replaces the previous policy taking into account the regulatory requirements.

2. Houses in Multiple Occupation

A house in multiple occupation (HMO) is any house or flat which is occupied by more than one household who share (or lack) kitchen, bathroom or toilet facilities. If these facilities are for exclusive use but they are not self-contained within the living accommodation, the property will still count as an HMO. Self-contained flats in converted buildings may also be HMOs if they were converted before 1991 and at least one third of the flats are occupied under short tenancies. HMOs include bedsits, some shared houses, hostels and houses converted into flats. A household is made up of members of the same family.

This is a summary definition. Full definitions can be found in the Housing Act 2004 (sections 254 to 259).

3. HMO Licensing

From April 2006 the owners of certain types of HMOs must apply to the Council to have their property licensed. HMO licensing will apply throughout the district. The Council must maintain a register of licensed HMOs for the public to view.

An HMO must have a licence if the following apply:

- It has five or more people in two or more households, and
- The occupants share amenities such as bathrooms, toilets or cooking facilities.

The following properties are exempt:

- Where the whole property is in self-contained flats
- Where it is owned or managed by a housing association, local authority, education authority, police or health services.

The responsibility for licensing rests with the person having control of, or the person managing, the property. This is basically the owner, or the person who lets the property and collects the rent.

The full definitions regarding licensing can be found in the Housing Act 2004 section 55 and the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 SI 2018 No 221.

4. Suitability for occupation

Licences must be granted if the Local Authority (LA) is satisfied that:

- The HMO is reasonably suitable for occupation by the number of persons permitted under the licence
 - The licence holder is a fit and proper person
 - The proposed licence holder is the most appropriate person to hold the licence the proposed manager, if not the licence holder, is fit and proper and
 - The proposed management arrangements are satisfactory, including that the person involved in the management of the house is competent and the funding for management is suitable.

5. Fit and proper person

The Council is required to assess whether the applicant and any manager or person associated with them or formerly associated with them are fit and proper people to own or manage an HMO. In making this assessment the LA must have regard to

- Any previous convictions relating to offences involving violence, sexual offences, drugs or fraud
- Whether the proposed licence holder has contravened any laws relating to housing or landlord and tenant issues
- Whether the person has been found guilty of unlawful discrimination practices whether the person has managed HMOs otherwise than in accordance with any approved code of practice

To help with our assessment of fit and proper person, we may require licence applicants to carry out a Disclosure and Barring Service (DBS) check and provide us with details of the results as part of their HMO licence application. Where a landlord is applying for a licence for more than one property, one DBS check will suffice.

LAs can take other relevant matters into account, and our assessment will consider whether the applicant has:

- been refused an HMO licence or been convicted of breaching the conditions of a licence
- been in control of a property subject to an Interim Management Order (IMO) or Final Management Order (FMO)
- been in control of a property where work in default was carried out by a local authority and the debt is outstanding
- been convicted of Housing Benefit fraud or subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation;
- any outstanding debt with the Council in relation to Housing Service
- unsuitable management arrangements (e.g. long distance)
- not been deemed fit and proper by another LA or
- not been compliant with the Tenancy Deposit scheme (new national scheme).

6. Management arrangements

Satisfactory management arrangements under section 4 above will consist of

- a system for tenants to report defects (including emergencies) and arrangements for responding
- a system of periodic inspections to identify repair or maintenance matters
- a declaration from the owner, where he is not the manager, that adequate funding will be provided to the manager to deal with repairs
- compliance with The Management of Houses in Multiple Occupation (England) Regulations 2006 which include a requirement to for HMOs to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept clean and in a reasonable state of decoration.

7. Duration of licences

Licences will usually be valid for five years and will specify the maximum number of occupiers or households. We may grant licences for shorter periods where there are concerns about the property or the manager.

8. Mandatory licence conditions

An HMO licence will specify the maximum number of occupants who may occupy an HMO. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. It will also include conditions requiring the licence holder to

- Produce gas safety certificates obtained within the last year and on an annual basis
- Keep electrical appliances in a safe condition and supply on demand to the LA a declaration to that effect
- Keep furniture made available by the licence holder in a safe condition and supply on demand to the LA a declaration to that effect
- Ensure that smoke alarms are installed and keep them in proper working order and supply on demand to the LA a declaration as to the condition and positioning of such alarms
- Supply the occupiers with a written statement of the terms on which they occupy the property.

9. Discretionary licence conditions

In addition to the mandatory licensing conditions, the Council will apply the following discretionary conditions to all licences

- HMOs will comply with the Management of Houses in Multiple Occupation (England) Regulations 2006
- Owners or managers must provide copies of up to date reports of fire detection, alarm system and emergency lighting to the Council annually
- a requirement for regular maintenance of the property and facilities
- The name, address and telephone number of licensee or manager is to be displayed in the common parts of the HMO
A copy of the licence must be displayed in the common parts

- the building must be adequately insured
- Tenancy agreements must set out how owners or managers intend to deal with anti-social behaviour from tenants or visitors
- Any anti-social behaviour arising in the HMO is dealt with under the terms of the tenancy agreement.

Specific conditions relevant to particular properties may also be applied such as restrictions or prohibitions pertaining to parts of the property, requirements for facilities or equipment at the property, or works to be undertaken within a particular timescale.

10. HMO Space Standards

The standards for sharing of kitchen and bathroom facilities are set out in The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. To comply with the regulations, each unit of living accommodation and all bathrooms must have adequate heating. One bathroom is required for every five sharing occupiers. Kitchen facilities are also required for each unit of accommodation or with adequate facilities for the number of occupiers sharing. Our policy requires a set of kitchen facilities for every five sharing occupiers.

The Council will determine the number of people an HMO is licensed for in accordance with our relevant HMO space standards for room sizes which are as follows and have not changed since they were determined in 1990. These standards relate to all HMOs, not just licensable properties.

Bedroom Requirements	1 Person Room	2 Person Room	3 Person Room	4 Person Room
Bedroom with no lounge/dining space elsewhere and cooking facilities not provided in bedroom	10 square metres	15 square metres	20 square metres	25 square metres
Bedroom with adequate lounge or dining space elsewhere and cooking facilities not provided in bedroom	8 square metres	12 square metres	17 square metres	22 square metres
Bedrooms with cooking facilities provided in the room	14 square metres	18 square metres	23 square metres	28 square metres

Kitchen Requirements	7 square metres if used by 1 to 5 persons
	For over 5 persons an additional 3 metre square per person sharing the kitchen
Dining Space Requirements	2 square metres per person for those sharing the space
	Any dining space shared or exclusive use shall be suitable and conveniently located

Licence applications will need to include dimensions of rooms and details of the kitchen and bathroom facilities to enable assessment of the number of occupiers permitted under the licence. This is for guidance only and each application will be assessed on its own merits.

11. Bed and Breakfast Hotels

The Council will regard bed and breakfast hotels as HMOs if they are housing any people who use the hotel as their main residence for more than 30 consecutive days. We believe that where this accommodation is used as a main residence, the same standards as for other HMOs should be met.

12. Inspection Policy

Officers will not always visit HMOs when an application is received, but they must inspect the property within five years of the application. Each application will be risk assessed on receipt and high risk HMOs and properties not previously known to the Council will be visited as priority.

Inspections will be carried out with regard to licensing requirements. If additional licence conditions are required after an inspection of an HMO, the licence will be varied to include such conditions.

An inspection of each HMO will also be carried out under the Housing Health and Safety Rating System (HHSRS), which is set out in the Housing Act 2004. This will include a risk assessment of the effect of housing conditions on the health and safety 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 remedy the defect. If less serious “category 2” hazards are found, the Council has discretionary power to require action.

Where category 1 or 2 hazards are found, informal action will be used to encourage owners to carry out works, but if this fails enforcement action will be taken in accordance with the Act and our enforcement policy.

13. Licence fees

LAs have powers to set a fee for licences which are usually issued for a five year period. The Council can license properties for shorter periods when there is concern about the property or the manager.

A full schedule of fees is set out on our website.

14. Interim and final management orders

Where there is no prospect of an HMO being licensed, the Act requires the Council to make an Interim Management Order. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended as a Final Management Order to five years with the Council also having the power to grant tenancies.

We will only use these powers in exceptional circumstances. Any proposed action will have to be agreed by the Head of Housing. In addition Orders can only be made with the authorisation of the First Tier Property Tribunal.

15. Temporary exemption notices

Where a landlord is, or shortly will be, taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. A TEN will be served where an owner of a licensable HMO states in writing that she/he is taking steps to make an HMO non- licensable and states that the HMO will not be licensable within three months.

The Council does not wish these notices to be used routinely, and a second notice will only be allowed in exceptional and unforeseen circumstances. Any exception to the policy will be agreed by the Head of Housing.

16. Penalties for non-compliance

The Housing Act 2004 makes it a criminal offence if a person controlling or managing an HMO does not have the required licence. A person found guilty of such an offence will be subject to a fine up to a maximum of £20,000. Breaching any condition of a licence is also an offence, punishable by a fine not exceeding level 5 on the present scale unlimited fine.

The Housing and Planning Act 2016 has amended the Act to introduce the ability for the Council to seek to impose a civil penalty as an alternative to prosecution. A maximum fine of £30,000 can be imposed for each individual breach of the HMO management regulations

We will encourage owners to apply for licensing through advice and persuasion, but where they fail to apply as a result of such informal action we will take legal proceedings with a view to prosecution by the courts and/or the issue of a civil penalty. Similarly any breach of conditions will initially be dealt with informally, but if the breach continues legal proceedings will be started.

Fuller details relating to penalties can be found in SHDC Private Sector Enforcement Policy

17. Rent Repayment Orders

The new legislation allows applications to the First Tier Property Tribunal for a Rent Repayment Order (RRO), under the Housing and Planning Act 2016. Please refer to the Private Sector Housing Enforcement Policy and the Rent Repayment Policy.

18. Discretionary HMO licensing

We do not intend to apply for additional discretionary powers to extend the licensing of all HMOs in a specific area where HMOs are so badly managed as to give rise to particular problems from tenants or members of the public, such as anti-social behaviour. Such powers are not necessary in this District at present as there are no areas where several HMOs are linked to anti-social behaviour.

Similarly we do not intend to apply for new powers to introduce selective licensing for all private sector housing (including non HMOs) in designated areas. These powers enable LAs to license properties in an area where there is low housing demand or anti-social behaviour. These additional powers are not necessary as there are no areas of low housing demand in the District and no problems with anti-social behaviour associated with particular types or areas of housing at present.

19. Appeals

The Council will enable licence applicants to make representation to the Head of Housing if they are aggrieved with an officer's decision to set particular conditions or to refuse, revoke or vary a licence. They will also be able to make representations against an intention to serve an IMO.

A landlord may appeal formally to the First Tier Property Tribunal if the Council decides to:

- Refuse a licence
- Grant a licence with conditions
- Revoke a licence
- Vary a licence or
- Refuse to vary a licence.

The Residential Property Tribunal has quasi-judicial status and is made up of housing lawyers, valuers, surveyors and lay people. Members qualified to chair committees and tribunals are appointed by the Lord Chancellor and other members are appointed by the ODPM. Three members usually sit on each committee or tribunal. An appeal against the decision of the First Tier Property Tribunal is to the Lands Tribunal and can only be made with the permission of the First Tier Property Tribunal or the Lands Tribunal.

20. Further development

This policy was developed following consultation and will be revised and reviewed as appropriate. It is linked to our private sector housing enforcement policy, and our private sector housing renewal policy. All of these policies are undergoing reviews as a result of the Housing Act 2004, Housing and Planning Act 2016 and Retaliatory Eviction and the Deregulation Act 2015, Smoke and Carbon Monoxide Alarm (England) Regulations 2015, Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

Policy Name:	HMO Licensing Policy		
Responsible Executive:		Date of signing:	
Responsible Office:		Date of signing:	
Policy Register Number:		Service Area:	
Adopted:		Reviewed:	