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South & East Lincolnshire Councils Partnership

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APPENDIX 2

HOUSES IN MUTLIPLE OCCUPATION (HMO) LICENSING POLICY

2026 - 2029

HOUSING STANDARDS

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INTRODUCTION

Councils have powers and responsibilities to assess housing conditions and enforce minimum standards through a range of measures. The Council will seek to tackle poor housing conditions using actions that are appropriate to individual situations. The purpose of this policy is to outline the Council's approach to the licensing of houses in multiple occupation (HMO) under Part 2 of the Housing Act 2004. In ensuring compliance with legal regulatory requirements, the Council will ensure that all actions are taken in a fair, equitable and consistent manner.

The Council recognises the importance of the private rented sector in providing valuable good quality accommodation and meeting housing need. The Council recognises that the majority of landlords maintain their properties to a good standard, however there are some who neglect their responsibilities and put their tenants at risk due to the poor condition of their properties. Substandard housing can have a profound impact on mental and physical health of its occupants, and poorly maintained property also negatively impacts on its surrounding neighbourhood.

The Council's primary role is to educate and advise owners, landlords and agents on the standards they are expected to meet in their properties, to seek to assist tenants in understanding their rights and responsibilities, and to encourage dialogue between parties to resolve issues amicably and without recourse to formal action.

SCOPE AND SERVICE STANDARDS – INCLUDING LEGISLATIVE CONTENT

This policy covers how the Council will apply the relevant legislation to applications for licences for houses in multiple Occupation (HMO). For the context of this policy an HMO is that as defined by the Housing Act 2004 and subsequent legislation relating to the description of licensable HMOs.

This policy covers the following aspects in relation to HMOs:

- Licensing under Part 2 of the Housing Act 2004
- The Council's approach to determine "fit and proper person" status
- The fees and charges applicable to licensable HMOs

Whenever the Housing Standards team interact with service users or other stakeholders in relation to any of the above, or other relevant functions, they will do so clearly and with suitable regard to all relevant information relating to this specific function, including the reason for any intervention and any proposed future actions.

This policy is intended to provide information for officers, businesses, landlords, residents, and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

This policy sets out the structure of the Mandatory HMO Licensing scheme as well as the fees and charges and criteria the Council will apply to all licences.

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The overarching approach to enforcement by the Housing Standards team is laid out in the Council's Corporate Enforcement Policy as well as the Housing Standards Enforcement Policy in addition to the Enforcement Concordat. This policy is intended to be used in conjunction with those policies/guidance and the principles contained therein.

Legal Framework

This policy is guided by the following legislation (in addition to local and national guidance), and the Council shall act within the scope of these to uphold housing standards and deliver the mandatory licensing scheme:

- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Police and Criminal Evidence Act (PACE) 1984
- Housing Act 1985
- Home Energy Conservation Act (HECA) 1995
- The Enforcement Concordat 1998
- Housing Act 2004
- The Management of Houses in Multiple Occupation (England) Regulations 2006
- Energy Act 2011
- The Redress Schemes for Lettings Agency Work and Property Management Work (England) Order 2014
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Housing and Planning Act 2016
- The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017
- The Housing and Planning Act 2016 (Database of Rogue Landlords and Property Agents) Regulations 2018
- Crown Prosecution Service Code for Crown Prosecutors' 2018
- The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Order 2018
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- The Smoke and Carbon Monoxide (Amendment) Regulations 2022

DEFINITIONS

Where the term "Council" has been used, this refers to the relevant council applicable across the South & East Lincolnshire Councils Partnership (SELCP) being either; East Lindsey District Council, South Holland District Council or Boston Borough Council. This policy has been adopted across the three and therefore aligns all standards and working practices.

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Under Part 2 of the Housing Act 2004 there are two types of licensing schemes that relate to Houses in Multiple Occupation (HMOs), the national Mandatory HMO Licensing scheme and Additional Licensing of HMOs.

Under the national Mandatory HMO Licensing scheme all properties that meet the following criteria will require a mandatory HMO licence, which is defined in section 4 Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018:

- Is occupied by five or more persons
- Is occupied by persons living in two or more separate households and meets:

- the standard test under section 254(2) of the Housing Act 2004:
    - it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
    - the living accommodation is occupied by persons who do not form a single household (see section 258);
    - the living accommodation is occupied by those persons as their only or main residence, or they are to be treated as so occupying it (see section 259);
    - their occupation of the living accommodation constitutes the only use of that accommodation; *
    - rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
    - two or more of the households who occupy the living accommodation share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities.

      *Section 260 of the Housing Act 2004 in conjunction with national guidance will be applied when determining “only use” which is defined as 10% or more.
- the self-contained flat test under section 254(3) of the Housing Act 2004 but is not a purpose-built flat situated in a block comprising three or more self-contained flats:
    - it consists of a self-contained flat; and
    - paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).
- the converted building test under section 254(4) of the Housing Act 2004:

    - it is a converted building;

    - it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

    - the living accommodation is occupied by persons who do not form a single household (see section 258);

    - the living accommodation is occupied by those persons as their only or main residence, or they are to be treated as so occupying it (see section 259);

    - their occupation of the living accommodation constitutes the only use of that accommodation; and

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- rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

LICENSING OF HOUSES IN MULTIPLE OCCUPATION (HMO)

Part 2 of the Housing Act 2004 requires certain HMOs to have a licence to operate. When an application is made, the Council must either grant a licence to the applicant or another person if both agree or refuse to grant a licence[1].

In order for a licence to be granted, the Council must be satisfied that the requirements of the Act[2] have been met.

All licences will come with conditions that the Council considers appropriate for regulating the management, use and occupation of the house and its condition and contents. All conditions must be complied with during the period of the licence.

There is a suite of HMO regulations. These cover all HMOs[3] and place duties on property managers in relation to the management and safety of HMOs. The same regulations also place duties on occupiers. Enforcement action for non-compliance with HMO regulations will be considered in each case[4].

Additionally, there are a separate set of regulations[5] that apply to licensed HMOs only, and place duties on both managers as well as occupiers. Enforcement action for non-compliance with these regulations will be considered in each case and is outlined within the Housing Standards Enforcement Policy.

A fee will be charged for all licence applications as detailed within Appendix A. This fee will be reviewed annually, reflective of costs incurred and inflation.

HMO licences may be issued for up to a maximum of 5 years[6]. The Council will consider making a grant of a licence for periods of 5 years from the date of decision to grant a licence.

5-year licences will be issued in most circumstances; however, the Council will issue licences for a shorter period if appropriate to do so. Each application will be considered on its individual merits and arrangements proposed.

This may include considerations such when the proposed HMO property is subject to a lease, the length of the licence may be restricted to the length of the lease agreement if less than 5 years. Consideration to the type of lease and whether it is appropriate to restrict the licence length to the lease will be had, when determining the appropriate length of licence.

In addition to the management arrangements, previous enforcement history or compliant history of the property and proposed licence holder.

[1] Section 64(1) Housing Act 2004
[2] Section 64(3) Housing Act 2004
[3] Section 234 Housing Act 2004
[4] HMO Licensing Policy & Housing Standards Enforcement Policy
[5] The Management of Houses in Multiple Occupation (England) Regulations 2006
[6] Section 68(4) Housing Act 2004

During the licence period the property will be re-inspected periodically based upon the individual property circumstances.

HMO Licence Conditions

All licensed HMOs must include conditions relating to minimum bedroom floor areas. The details of which are outlined within Appendix B.

Amenity and Space Standards for HMOs

All licensed HMOs must include standards relating to amenities. The details of which are outlined within Appendix C.

Fit and Proper Person

As part of the HMO licensing process the Council is required to ensure that the proposed licence holders and those involved in the management are fit and proper persons. The details of the procedure that the Council will use are outlined within Appendix D.

Disclosure and Barring Service (DBS)

A DBS check may be obtained by the council under circumstances where a signed declaration identifies any areas of concern or where information is believed to be falsified and/or withheld.

Limited Companies and Body Corporate

Where a limited company or body corporate applies for a licence in this context the company will be treated as "a person" for the fit and proper person and the licence may be issued to the company. In these circumstances it requires the appropriate person within the company such as a director or person with significant control to be able to provide the relevant information on behalf of the company.

In these circumstances the person of sufficient position will be determined on a case-by-case basis as they are answering the fit and proper person declaration on behalf of the company to declare in effect that all persons employed by the company who will have direct involvement with the HMO to be licenced are fit and proper.

The application may be refused on the grounds that the applicant is not the person of sufficient position to apply on behalf of the company of body corporate.

Suitability for Multiple Occupation

When determining the suitability of properties for occupation as HMOs the authority will apply relevant statutory prescribed standards where possible in addition to having regard to its own amenity standards.

Current statutory standards exist in relation to minimum bedroom sizes for use by a number of persons and these have been incorporated into the Council's own amenity standards. The maximum number of occupants ultimately is determined by the Council and will be based upon either the number requested within the application if the property standards permit this

number, or alternatively the Council will set the maximum based upon the provisions of facilities and the permissible maximum number of persons.

See Appendix C for amenity and space standards.

Inspections – Including Future Programmed Inspections

The Council utilise a reinspection risk assessment matrix to generate the next programmed inspection over the duration of the license. The factors taken into consideration of scoring include:

1. Number of Households (0-75)
2. Number of Storeys (0-50)
3. Type of Building (0-50)
4. Type of HMO (0-50)
5. Additional Licence Conditions Imposed (0-50)

Additionally, where a licence holder has not previously held a licence with the Council, an additional inspection will be carried out within the first year of the license.

The period(s) of reinspection are determined by the sum of all factors mentioned above:

- 0 – 50 = 4 years
- 51 to 125 = 3 years
- 126 – 200 = 2 years
- 201 + = 1 year

Fees

As part of a valid application the Council can set a fee payable to cover the costs in administering a licence. Without the applicable fee being paid any application is deemed incomplete and will not be processed.

The fees are set outside of this policy and reviewed periodically. The fees set in relation to the licensing of HMOs reflect the actual cost of this process and can be found at Appendix A.

TEMPORARY EXEMPTION FROM LICENSING

Where the Council have been notified of particular steps being taken that will result in a dwelling no longer required to be licensed, the Council may serve a Temporary Exemption Notice under the requirements of the Housing Act 2004, section 62.

ADDITIONAL LICENSING

Under section 56 of the Housing Act 2004, additional licensing of HMOs covers those HMOs that are not licensed under the mandatory scheme but where the Council has used its power to designate areas of the Borough/District subject to additional licensing of HMOs.

The Council do not currently operate an additional licensing scheme but maintain the right to introduce this if considered appropriate during the course of this policy.

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REGISTER OF LICENSED HMOs

As per the requirements outlined within section 232 of the Housing Act 2004 ("the Act"), all licenses under Part 2 of the Act which are in force and all temporary exemption notices under section 62 of the Act will be made available to view at any reasonable time by the public.

Printed/digital extracts of the above as well as copies in full, are charged at a fee outlined within the "Fees" section above.

An abridged version of the full register of licensed HMOs and temporary exemption notices is available to view on the Council's website.

ENFORCEMENT

Enforcement decisions shall be consistent, balanced, fair, and relate to common standards. In order to achieve and maintain consistency of enforcement, officers will have regard to the Council's Corporate Enforcement Policy as well as the Housing Standards Enforcement Policy in addition to the Enforcement Concordat. This policy is intended to be used in conjunction with those policies/guidance and the principles contained therein.

Factors to be considered in reaching an enforcement decision include;

- the seriousness of the offence;
- the past history of the offender;
- the confidence in management and the degree of wilfulness involved;
- the consequence of non-compliance;
- mandatory/discretionary duties;
- public interest/benefit.

There is a suite of HMO regulations under the Housing Act 2004, including management regulations. The management regulations cover all HMOs and place specific requirements on property managers in relation to management and safety of HMOs. Enforcement action for non-compliance with HMO regulations, in particular the HMO Management regulations will be considered in each case in accordance with this policy and the each of the Council's Enforcement Policies.

Enforcement options for HMO licensing should include the following:

- Temporary exemption notices under section 62 of the Housing Act 2004.
- Power to revoke licenses under section 70 of the Housing Act 2004.
- Prosecution under section 72 of the Housing Act 2004.
  Financial penalties (CPNs) under section 249A of the Housing Act 2004 derived from the Housing and Planning Act 2016.

APPEALS

An applicant may appeal a decision of the Council. Any appeal must be made within 28 days of the decision to the First-tier Residential Property Tribunal. Any right of appeal against a decision will be communicated to the applicant in the decision letter, ensuring they have regard to relevant guidance documents and procedures.

Under Schedule 5 of the Housing Act 2004 a licence holder or any relevant person can appeal in relation to the Council's decision:

- to refuse to grant the licence, or
- to grant the licence – relating to any of the terms of the licence.
- to vary or revoke a licence, or
- to refuse to vary or revoke a licence.

DELEGATED AUTHORITY AND COMPETENCY OF OFFICERS

All officers involved with the enforcement of legislation covered by this policy will be competent to perform their duties in accordance with the legislation and agreed internal procedures and will carry out continuous professional development to do so. The Council has delegated the authority to serve notices/orders under various Acts and Regulations where the Safer Communities Group Manager has in turn delegated the service of some of these directly to enforcement officers. All notices/orders will be served having regard to this delegation scheme.

Officers authorised under section 113 of the Local Government Act 1972, are able to carry out Council functions outside of their sovereign council.

GOVERNANCE AND REVIEW

The Council's Safer Communities Group Manager is authorised to make amendments to the policy to ensure the Policy remains up to date and to reflect statutory requirements in consultation with the Portfolio Holder.

Version Control			
Issue No	**Author**	**Issue date**	**Reason For Issue**
1.0	Group Manager – Safer Communities		Full update of prevailing legislation, plus alignment of all policies to a single policy across the South & East Lincolnshire Councils Partnership (SELCP)

Approval		
Issue	**Approval Authority**	**Approval Date**
1.0	(ELDC) (BBC) (SHDC)	

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APPENDICES

- APPENDIX A – Fees and Charges
- APPENDIX B – HMO Licence Conditions
- APPENDIX C – Amenity and Space Standards for HMOs
- APPENDIX D – Fit and Proper Person: Relevant Offences

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