

CHANGE TO HOUSES OF MULTIPLE OCCUPATION LEGISLATION

EXECUTIVE MEMBER: Cllr George Clements

LEAD OFFICER: Mike Tichford

REPORT AUTHOR: Debbie Cochrane

Summary: This report details the draft HMO Policy

Recommendation:	That the policy be approved and that as new guidance is received from central government it is amended accordingly.
------------------------	---

Impact on delivering the Corporate Plan:

Impact on other statutory objectives (e.g. crime & disorder, LA21): Tenancy agreement must state how anti-social behaviour will be dealt with and must be dealt with under these terms.

Financial and human resource implications:

Project & Risk Management: None

Key Decision Status

- **Financial:** N/A
- **Ward:** N/A

Other Ward Implications: None

1. INTRODUCTION

- 1.1 The Housing Act 2004 introduced a new mandatory licensing system for certain types of Houses of Multiple Occupation (HMO's). This paper sets out how we intend to meet the requirements of the new legislation and how we intend to deal with discretionary options. All of the local authorities in Cumbria are working in partnership to adopt this policy.
- 1.2 Most of the requirements for licensing are set by Government, but some can be enhanced or determined locally. Items that can be determined locally are highlighted in bold italic print.

2. HOUSES IN MULTIPLE OCCUPATION

- 2.1 A house in multiple occupation is any house or flat that 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 with the living accommodation the property will still count as a HMO. Self contained flats in converted buildings may also be HMO's if they are converted before 1991 and at least one third of the flats are occupied under short tenancies. HMO's

include bedsits, some shared housing, hotels and houses converted into flats. A household is made up of members of the same family.

3. HMO LICENSING

- 3.1 From April 2006 the owners of certain types of HMO's must apply to the Council to have their property licensed. HMO licensing will apply throughout the Borough.
- 3.2 The Council must maintain a register of licensed HMO's for the public to view.
- 3.3 A HMO must have a license if all three of the following apply:
 - It is three or more storey's high
 - It has five or more people in more than one household, and
 - The occupants share amenities such as bathrooms, toilets or cooking facilities
- 3.4 The following properties are exempt:
 - Where the whole property is in self-contained flats
 - Where the basement is in commercial use and there are only two residential storeys above
 - Where it is owned or managed by a Housing Association, Local Authority, Education, Police or Health Service.
- 3.5 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.

4. SUITABILITY FOR OCCUPATION

- 4.1 Licenses 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 license.
 - The license holder is a fit and proper person
 - The proposed license holder is the most appropriate person to hold the license
 - The proposed manager, if not the license 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

- 5.1 The Council is required to assess whether the applicant and any manager or person associated with them or formally associated with them are fit and proper people to own or manage a HMO. In making this assessment the Local Authority 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 HMO's otherwise than in accordance with any approved code of practice (yet to be published).

5.2 ***To help with assessment of fit and proper people, we will require licence applicants to carry out a Criminal Records Bureau (CRB) check and provide us with details of the results as part of their HMO license application. Where a landlord is applying for a license for more than one property, one CRB check will suffice.***

5.3 ***LA's can take other relevant matters into account, and our assessment will consider whether the applicant has:***

- ***Been refused a HMO licence or been convicted of breaching the conditions of a license***
- ***Been in control of a property subject to a HMO Control Order, an Interim Management Ord (IMO) or Final Management Order (FMO)***
- ***Been in control of a property where work in default was carried out by a local authority and 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 services***
- ***Not been deemed fit and proper by another local authority or***
- ***Not been compliant with the Tenancy Deposit Scheme (New National Scheme)***

6. MANAGEMENT ARRANGEMENTS

6.1 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

Management regulations are due to be published by government, these regulations will require HMO's to be kept in a reasonable state of repair, all installations and appliance (including those for fire safety) to be in good working order and the common part to be kept clean and in a reasonable state of decoration. We will include these regulations in our policy when they are published.

7. DURATION OF LICENSES

- 7.1 Licences will usually be valid for five years and will specify the maximum number of occupiers or households.

We may grant licence for shorter periods where there are concerns about the property or the manager.

8. MANDATORY LICENCE CONDITIONS

- 8.1 A HMO licence will specify the maximum number of occupants who may occupy a 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 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 a declaration to that effect
- Ensure that smoke alarms are installed and to 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

- 9.1 ***In addition to the mandatory licensing conditions, the Council will apply the following discretionary conditions to all licences.***

HMO's will comply with the statutory Management Regulations within three months

Owners or managers must provide copies of up to date reports of fire detection, alarm system and emergency lighting to the Council annually,

The name, address and telephone number of licensee or manager is to be displayed in the common parts of the HMO.

A copy of a valid gas safety certificate must be displayed in the common parts

Tenancy agreements must set out how owners or managers intend to deal with anti social behaviour from tenants and their visitors.

That any anti-social behaviour arising in the HMO is dealt with under the terms of the tenancy agreement.

9.2 *Specific conditions relevant to particular properties may also be applied such as a requirement for facilities or equipment at the property, or works to be undertaken within a particular timescale.*

10. HMO SPACE STANDARDS

10.1 The Government is to issue guidance with regard to standards for sharing of kitchen and bathroom facilities, which will be included in this policy when published.

11. DIFFICULTIES WITH LICENCING

11.1 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 a HMO and become responsible for running the property and collecting rent for up to one 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.

11.2 *We will only use these powers in exceptional circumstances. Any proposed action will have to be agreed by the Chief Executive and the Head of Regeneration. In addition, Orders can only be made with the authorisation of the Residential Property Tribunal (see section 15 for details)*

11.3 *We will develop a procedure with partners RSL's so that they can manage such properties on behalf of the Council.*

12. TEMPORARY EXEMPTION NOTICES

12.1 Where a landlord is, or shortly will be, taking steps to make a 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 only be served in exceptional circumstances. A TEN will be served where the owner of a licensable HMO states in writing that he/she is taking steps to make an HMO non-licensable and states that the HMO will not be licensable within three months.

12.2 *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 must be agreed by the Head of Regeneration.*

13. PENALTIES FOR NON COMPLIANCE

13.1 The Housing Act 2004 makes it a criminal offence if a person controlling or managing a HMO does not have the required license. 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 license is also an offence, punishable by a fine not exceeding level 5 on the present scale (£5,000 currently).

13.2 *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. Similarly any breach of conditions will initially be dealt with informally, but if the breach continues legal proceedings will be instigated.*

14. RENT REPLAYMENT ORDERS

- 14.1 The new legislation allows applications to the Residential Property Tribunal (RPT) for a Rent Repayment Order (RRO) where a landlord is convicted for failure to licence. ***If rents were paid through Housing Benefit, the Council will use its powers under the Act to seek RRO's for repayment of twelve months' housing benefit or for the period since the landlord was required to licence the HMO, if less. We will also provide tenants with information about how to apply for an RRO.***

15. DISCRETIONARY HMO LICENSING

- 15.1 ***We do not intend to apply for additional discretionary powers to extend the licensing of all HMO's in a specific area where HMO's 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 Borough as there are no areas where several HMO's are linked to anti-social behaviour.***
- 15.2 ***Similarly we do not intend to apply for new powers to introduce selective licensing for all private sector housing (including non HMO's) in designated areas. This is to enable LA's to licence 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 Borough and no problems with anti-social behaviour associated with particular types or areas of housing.***

16. APPEALS

- 16.1 ***The Council will enable licence applicant to make representation to the Head of Regeneration where 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.***
- 16.2 A landlord may appeal formally to the Residential 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
- 16.3 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 RPT

is to the Lands Tribunal and can only be made with the permission of the RPT of the Lands Tribunal.

17. GRANTS

- 17.1 *The Council does not provide grants to landlords to help towards the cost of improvement works. This will be addressed during the review of the grants policy.*

18. FURTHER DEVELOPMENT

- 18.1 This draft policy is subject to consultation and further guidance from central government and will be revised and reviewed as appropriate. It is linked to our private sector renewal policy which is undergoing a review as a result of the Housing Act 2004.

List of Appendices

NONE

List of Background Documents:

List of Consultees: Corporate Team, Brian Kirkbride, Vic Emmerson, Mike Tichford