

CONSULTATION DRAFT

CITY OF LINCOLN COUNCIL

Mandatory Licensing of Houses in Multiple Occupation

**A scheme adopted for the purposes of
Part 2 Housing Act 2004.**

Date of adoption:

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Introduction

This Scheme has been adopted for the purposes of MANDATORY LICENSING and does not refer to ADDITIONAL LICENSING or SELECTIVE LICENSING.

The City Council has worked with the other district councils within Lincolnshire to ensure that as far as possible the mandatory licensing scheme is similar for each of the councils and is applied in a consistent manner allowing for the individual needs of each authority. The Lincolnshire district councils have worked with the Decent and Safe Homes project to help bring about a common interpretation of HMO licensing throughout the East Midland local housing authorities. In the drafting of this policy consideration was given to the advice provided by the national Regulatory Support Unit (formerly known as LACORS) and to the Statutory Regulators Compliance Code¹.

The main body of this document sets out the licensing framework, and where relevant the detail is provided by an appendix. Whilst the scheme attempts to apply a consistent standard, the City Council reserves the right to deviate from it in the case of any particular HMO or HMO licence application, should the circumstances demand it.

¹ Section 22 Legislative and Regulatory Reform Act 2006

Definitions

This document refers throughout to “person having control” and “person managing”. For the definition of both terms see **appendix 1**.

[Sections 263 and 66(7) Housing Act 2004 refer]

Properties to be licensed

Any building or part of a building which is deemed to be a “house in multiple occupation” and which is of a “prescribed description” shall be licensed, unless a temporary exemption notice, interim management order or final management order is in force.

For “house in multiple occupation” see test in **appendix 2**.

For “prescribed description” (and exemptions) see **appendix 3**.

For the circumstances as to when a temporary exemption notice may be granted see **appendix 4**.

[Sections 55, 61 and 62 Housing Act 2004 refer]

The Application

The application shall be either an application made in writing submitted on a form provided by the Council or else an application made on line using the Council’s web site, and in each case shall be accompanied by specified documents. The licence application shall incur a fee. An invoice for the fee will be raised upon determination of the licence application.

For the fee structure see appendix 5.

For details about the specified documents to accompany the application, see **appendix 6**.

The Council will make advice and assistance available. However, if the submitted application is incomplete, unintelligible, or is not accompanied by the relevant documents, then the package of forms may be returned in its entirety, and the application will be deemed not to have been made. This is important in that it removes a defence in the event of any proceedings for not having a licence.

[Sections 63(2) and (3) and 72(4) Housing Act 2004 refer]

The Licence Holder and the Manager

The Council may grant a licence to the applicant or some other person. Whether the proposed licence holder is the most appropriate person to be the licence holder shall be determined with regard to the matters in **appendix 7**.

[Sections 64 (2), (3) (b) (ii) and 66(4) Housing Act 2004 refer]

The licence may identify the manager. The factors to be taken into account in consideration of the proposed manager are described in appendix 8.

[Section 64(3) (c) (ii) and 67(5) Housing Act 2004 refer]

Fit and Proper Person

The Council if it is to issue a licence must be satisfied that the proposed licence holder is a fit and proper person to be a licence holder and that the proposed manager is a fit and proper person to be the manager of the house. Whether the proposed licence holder or the proposed manager is a fit and proper person shall be determined by reference to the matters in **appendix 9 and its annex**.

[Sections 64(3), and 66 Housing Act 2004 refer]

Management Arrangements

The Council if it is to issue a licence it must be satisfied that the proposed management arrangements for the house are satisfactory. Whether the proposed management arrangements for the house are satisfactory shall be determined by reference to the matters in **appendix 10**.

[Sections 64(3) (e), 66(5) and 66(6)) Housing Act 2004 refer]

Suitability for Occupation

The Council if it is to issue a licence it must be satisfied that the house is reasonably suitable for occupation by not more than a maximum number of households or persons, or that it can be made so suitable by the imposition of conditions. To be satisfied that the house is “reasonably suitable for occupation by a particular maximum number of households or persons” the Council is obliged to have regard to the “prescribed standards”. These are summarised in **appendix 11**

The Council may decide that a “house is not reasonably suitable for occupation” by a particular maximum number of households or persons, even if it does meet the prescribed standards. Regard shall be had to the matters

in **appendix 12** when deciding whether or not the house is reasonably suitable for occupation even though it meets the prescribed standard.

[Sections 64(3) (a), 65 and 67 Housing Act 2004 refer]

Licence Conditions – Mandatory

All licences must contain the conditions required by Schedule 4 of the Act. These conditions and how they are to be satisfied are described in **appendix 13**.

[Section 67(3) Housing Act 2004 refers]

Licence Conditions - Discretionary

The Council may include licence conditions which it considers appropriate for regulating the management, use, and occupation of the house concerned, and its condition and contents. The City Council considers that there are other conditions that are appropriate for the regulation of all licensable houses in multiple occupations, and these are listed in **appendix 14**. They shall be attached as conditions to all licences.

[Section 67(1), (2) & (4) Housing Act 2004 refers]

Where a particular HMO is not reasonably suitable for occupation by a particular maximum number of households or persons but can be made so suitable by the imposition of a condition then the Council may make such a condition. There are no standard conditions in such circumstances and each will be suited to the particular HMO.

[Sections 64(3)(a) and 67 Housing Act 2004 refer]

Condition of the House in Multiple Occupation

Where an application for a licence is made then the HMO will be inspected for the purposes of:

1. determining whether the house is reasonably suitable for occupation by a particular number of households or persons, and
2. identifying whether there are any circumstances, which would require the Council to use its Part 1 powers (powers of enforcement), and
3. noting visual evidence of the quality of the management.

In determining whether or not the Council should use its enforcement powers to remove or reduce hazards regard will be had to the contents of **appendix 15**.

[Sections 55(5) & (6), 64, 65(5) & (6) and 67(4) Housing Act 2004 refer]

Fire Safety

The Lincolnshire district councils and Lincolnshire Fire and Rescue have adopted a protocol, which establishes the principles and describes the joint working arrangements to deliver the objective of improved fire safety.

It is recognised that in general fire safety measures especially structural measures, are not to be introduced through HMO licensing but through powers known as 'Part 1 functions'. Nevertheless, there are some specific references to fire safety within the licensing scheme.

For the purposes of clarification the Council when using part 1 enforcement powers in relation to fire safety will endeavour to apply the national guidance known as "*Housing –Fire Safety. Guidance on fire safety provisions for certain types of existing housing*" and published by LACORS, and any successor guidance.

Duration of the Licence

No licence may have a duration of greater than 5 years. Normally licences issued by the Council will have a duration of 5 years, but some licences may have a duration of less than 5 years. In determining whether to issue a licence of duration less than 5 years regard will be had to the contents of **appendix 16**.

[Section 68 Housing Act 2004 refers]

Variation of Licences

The Council may vary a licence if there has been a change in circumstances, or with the agreement of the licence holder. A fee will be charged. For the fee structure see **appendix 5**.

[Section 69 Housing Act 2004 refers]

Revocation of Licences

The Council may revoke a licence with the agreement of the licence holder, or it may do so if there is a serious breach of the conditions, or if it no longer considers the licence holder to be a fit and proper person. In determining

whether to revoke a licence, the Council will have regard to its Housing Services Enforcement Policy and the provisions of the Act.

[Sections 70, and 93 Housing Act 2004 refer]

Steps to ensure that applications for licences are made

The Council must take all reasonable steps to secure that applications are submitted for all licensable HMOs in its area.

The Council will endeavour to make persons having control of or managing HMOs aware of the licensing requirements by undertaking a range of activities in accordance with best practice.

Where the Council has reason to believe that a property could be a HMO that should be licensed it will write to the person or persons thought to have control or managing the house.

[Section 61(4)) Housing Act 2004 refers]

Enforcement

The Council will take enforcement action in respect of unlicensed HMOs where they should be licensed, breaches of licence conditions and any other offence for the purposes of licensable HMOs

The Council's Housing Services Enforcement Policy will guide any enforcement actions.

[Sections 72, 73, 74 Housing Act 2004 refer]

Procedural Matters

The procedures for licensing houses in multiple occupation are those set out in Housing Act 2004, and those described within this scheme.

The detailed administration will be that determined by the City Council in its method statements and appropriate to the proper management of the scheme.

In managing the scheme regard will be had to:

- The Council's Enforcement Policy (July 2003 and any amendments thereafter);
- Housing Services Enforcement Policy (March 2005 and any amendments thereafter);
- The Council's Equality and Diversity Policy.

Standards

The standard of service adopted by the Council will be that described in **appendix 17**.

Appeals

Many decisions relating to HMO licensing include a right of appeal to the Residential Property Tribunal. This right of appeal is time limited. In addition to the statutory appeals any decision made by an officer may be considered within the Council's own appeals procedures.

Appendix 1

Definition of person having control

The person having control of a premises is the person who receives the rack-rent or who would receive it if the premises were let at the rack rent² charged, whether on his own account or as an agent or trustee for another person.

When considering an HMO licence application any reference to a “person having control” includes any person proposing to have control at the time when the proposed licence would come into force.

[Section 263(1), (2) and section 66(7) Housing Act refer]

Definition of person managing

The person managing an HMO can be any of the following:

- a. The owner or lessee of the premises who receives rents or other payments directly from the tenants or licensees of parts of the premises;
- b. The owner or lessee of the premises who receives rents or other payments, via an agent or trustee, from the tenants or licensees of parts of the premises;
- c. An owner or lessee who would receive the rents or other payments but has entered into an arrangement whereby another person who is not an owner or lessee receives the rents or other payments;
- d. Where the rents or other payments are received via another person as agent or trustee, that other person.

When considering an HMO licence application, any reference to a person managing the HMO includes any person proposing to manage the house at the time when the proposed licence would come into force.

[Section 263 (3) and section 66(7) Housing Act refer]

² “rack rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

Appendix 2

Definition of a house in multiple occupation

The definition of a house in multiple occupation is complex. It is important to realise that what constitutes a house in multiple occupation for the purposes of general enforcement powers is not the same as for licensing, where certain circumstances will exempt a building from the definition.

The descriptions below summarise the main provisions of the Act. The circumstances of any particular case will be determined by the facts, and by reference to the Act and supporting Regulations or Orders.

There are 5 sets of circumstances to determine whether a building is a house in multiple occupation:

1. The standard test

- a. The building has one or more units (**not self-contained flats**) of living accommodation.
- b. The living accommodation is occupied by persons who do not form a single household.
- c. The living accommodation is occupied by persons as their only or main residence
- d. Their occupation of the living accommodation constitutes the only use of that accommodation.
- e. Rents are payable, or other consideration is provided in respect of at least one of those person's occupation of the living accommodation.
- f. 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 254(1), (2) Housing Act 2004 refers]

2. The self-contained flat test

A self-contained flat which meets all of (b) to (f) above.

[Section 254(1), (3) Housing Act 2004 refers]

3. **The converted building test**

- a. The building is a converted building.
- b. It has one or more units of living accommodation (**not self-contained flats**).
- c. The living accommodation is occupied by persons who do not form a single household.
- d. The living accommodation is occupied by persons as their only or main residence.
- e. Their occupation of the living accommodation constitutes the only use of that accommodation.
- f. Rents are payable or other consideration is provided in respect of at least one of those person's occupation of the living accommodation.

[Section 254(1),(4) Housing Act 2004 refers].

4. **Converted blocks**

A building is an HMO where it has been converted into a block of self-contained flats which did not comply with and still does not comply with Building Regulations 1991 (SI 1991/2768), **and** less than two thirds of the flats are owner-occupied.

[Sections 254(1) (e), 257 Housing Act 2004 refer].

5. **HMO declarations**

Where all the other factors in the standard test, or the self contained flat test, or the converted building test are satisfied, but it is unclear whether households are occupying the building as their only or main residence, the Council can declare the building to be an HMO to remove any doubt.

[Section 255 Housing Act 2004 refers]

Appendix 3

Description of HMO which shall be licensed

The descriptions below summarise the main provisions of the Act.

An HMO must have a licence if:

- a. It, or any part of it, comprises **3** storeys or more, and
- b. It is occupied by **5** or more persons, and
- c. It is occupied by persons living in **2** or more households.

NOTE: If (c) did not apply, it would not be an HMO.

Calculation of Storeys

The following are taken into account:

- Basements used wholly or partly as living accommodation.
- Basements constructed, converted, or adapted for use as living accommodation.
- Basements used with, or are an integral part of the HMO.
- Basements if it is the only or main entry into the HMO.
- Attics used wholly or partly as living accommodation.
- Attics constructed, converted or adapted for use as living accommodation.
- Attics used with, or are an integral part of the HMO.
- All storeys occupied by a business.
- Mezzanine floors used as, or in connection with living accommodation.
- Any other storey used as, or in connection with living accommodation, or are integral to the HMO.

- Refs: 1. *Section 55(3) Housing Act 2004.*
2. *The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006.*

Exemptions from licensing

1. Buildings managed by:
 - a. A local housing authority.
 - b. A registered social landlord (most commonly a housing association).
 - c. A police authority.
 - d. A fire and rescue authority.
 - e. A health service body.

[Paras. 1 and, 2 Schedule 14, Housing Act 2004 refer]

2. Buildings regulated otherwise than under the Act.

These are listed in The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006, and its amendments and any successors

[Para. 3, Schedule 14, Housing Act 2004 refers]

3. Buildings occupied by students, and which are managed by an educational establishment, or a specified person, and where an approved Code of Practice has been adopted.

[Section 233 and para. 4, Schedule 14, Housing Act 2004 refer]

The Housing (Approval of Codes of Management Practice) (Student Accommodation)(England) Order 2008 and its amendments and any successors.

The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2008 and its amendments and any successors

4. Buildings occupied by religious communities. This exemption does not apply to a converted block of flats.

[Para. 5, Schedule 14, Housing Act 2004 refers]

5. Buildings occupied by the owner and a member of his household, and up to two others. This exemption does not apply to a converted block of flats.

[Para. 6, Schedule 14 Housing Act 2004, and regulation 6(2), The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 refer]

6. Buildings occupied only by 2 persons who form 2 households.

[Para. 7 Schedule 14, Housing Act 2004 refers]

7. If the building is a converted block of flats.

[Section 257 Housing 2004 and article 1(1) The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 refers]].

Appendix 4

Temporary Exemption

The Council may serve a temporary exemption notice if a person having control of, or managing an HMO which requires a licence but which is not licensed, notifies the Council of his intention to take particular steps to make the premises no longer licensable

The temporary exemption will last 3 months from the date the notice is served, and during this period a licence will not be required.

The council may grant a further three months temporary exemption notice if the person having control or managing the HMO makes a further declaration, but only if there are exceptional circumstance. There is no definition of “exceptional circumstances” and the Council will consider each case on its merits.

The maximum period of exemption is six months and the council cannot serve a third exemption notice.

[Section 62 Housing Act 2004 refers]

Appendix 5

Licence Fee

The licence fee will be structured around the amount of time required to process a typical application, and take account of Government guidance.

The basic fee is published separately with all other Council charges, and together with all other Council charges will be reviewed annually. Any adjustments will be made as part of the corporate review of fees and charges.

The fee charged in respect of any one licence application will be that which is current at the time of the complete application.

Multiple Application Discount

Where an application is received within 12 months of the date of receipt of a previous successful application, and the fit and proper person check was undertaken for the earlier application then the charge will be reduced by an amount attributable to the fit and proper person test.

Variation of Licence

Where an application is varied and does not require detailed consideration of the building then there will be a reduced fee.

Charitable organisations

The Council may in certain circumstances decide to waive the fee or to reduce it. Those circumstances relate to charitable organisations with limited funds. Any application for a reduced fee will need to be in writing, and will be considered on an individual basis.

Landlord and rented property accreditation schemes

Where a licence application is made in respect of a premises or person participating in a City Council recognised accreditation scheme then the amount of fee may be reduced by an amount attributable to the fit and proper person test, provided that it was undertaken for the accreditation scheme within the previous 12 months, and made the same requirements as the licensing scheme (See also appendix 6, paragraph 6).

Renewal of licences

The Council will handle a licence renewal as if it were a new licence application; consequently the fee charged will be the same. However the offset of fees for multiple applications and accreditation schemes will remain.

Appendix 6

Documents to Accompany the Application

An application for an HMO licence shall be in writing or provided electronically, and on a form supplied by the Council or in a format designed by the Council whichever is appropriate. It will be accompanied by the following documents.

1. A sketch drawing of the house, which provides a reasonable representation of each floor level, and identifies each room and its use, individual lettings, the position of smoke alarms and any other fire detection and alarm systems, the kitchen, bathing, washing and toilet facilities.
2. If gas is supplied to the house a gas safety certificate produced by a Gas Safe registered installer for the purposes of gas safety, which relates to the HMO, and which has been produced during the period 12 months before the date of receipt of the application. The report shall include comment on the condition and safety of any gas appliances within the HMO and state that all gas appliances and installations are safe to use.
3. A declaration which itemises (i.e. lists by make and model) the furniture supplied by the licence holder and makes reference in each case as to whether the furniture meets the requirements of the *Furniture and Furnishings (Fire Safety) Regulations 1998* (or any regulations which subsequently replaces them).
4. A declaration which itemises (i.e. lists by make and model) all the electrical appliances supplied by the licence holder, and states that the appliances are kept in a safe condition.
5. A periodic inspection report on the condition of the electrical wiring produced by a competent person and issued no later than 5 years from the date of the HMO licence application.
6. For the purposes of the fit and proper person test:
 - a. A Basic Disclosure document issued by Disclosure Scotland in respect of the proposed licence holder and proposed manager identified in the HMO application form, or
 - b. a disclosure containing at least the same level information issued by the English Criminal Records Bureau , or
 - c. evidence provided by the Police National Computer containing at least the same level information, or
 - d. a reference from an accreditation scheme recognised by the Council and which has required the same level of information.

In each case the document should be no older than 2 months from the date of the complete application unless an application in respect of another property has been submitted within the previous 12 months.

7. Documentary evidence of the management arrangements referred to in **appendix 8**

Appendix 7

The most appropriate person to be the licence holder

In deciding whether a person is the **most appropriate person to be the licence holder** reference will be had to:

- The name put forward in the application for licence.
- The person having control of the HMO.

The Council must assume that the **person having control of the house** is a more appropriate person to be a licence holder than a person not having control.

Factors that will be taken into account when determining the identity of the person having control of the house:

- Does the proposed licence holder receive the rack rent for the premises?
- Is the proposed licence holder the owner of the property?
- If the proposed licence holder is not the owner what financial interest does he have in the property?
- Is the proposed licence holder an agent acting on behalf of someone else?
- If the proposed licence holder is an agent what power does he have to ensure compliance with the licence conditions?
- Does the proposed licence holder have an address in England or Wales where notices may be served³?

The City Council is minded to decide that an agent is only the person having control if he has demonstrable authority to ensure compliance with the licence conditions, including the retention of sufficient funds.

The City Council is minded to decide that a person normally resident outside England and Wales would not be a person having control, unless there is a business address in England or Wales and a demonstrable means of receiving correspondence sent to that address.

[Section 66(4) and 263 Housing Act 2004 refer]

³ This is to be consistent with section 48 Landlord and Tenant Act 1987 and to facilitate enforcement action if necessary

Appendix 8

Factors to be taken into account in consideration of “the proposed manager”

The Council has to be satisfied that the proposed manager of the houses is either

1. the person having control of the house, or
2. is an agent or employee of the person having control of the house has control of the house.

The person having control of the house will normally be the licence holder. In the first instance therefore the licence holder will also be named as the manager. If, however, someone else has been proposed as manager and has been given authority to ensure compliance with the licence conditions that person may be accepted as manager.

The Council will require evidence that the proposed manager has given consent for his name to be put forward.

The Council has to be satisfied that the proposed manager has signed the HMO licence application form.

Where the Council intend to impose licence conditions on a manager who is not the proposed licence holder, the council will require the express written consent of the manager to the imposition of the restrictions and obligations.

[Section 64(3) (c) and section 67(5) Housing Act 2004 refer]

Appendix 9

Factors to be taken into account when determining whether the PROPOSED LICENCE HOLDER or the PROPOSED MANAGER is a FIT AND PROPER PERSON for the purposes of the licence

Reference:

Section 66 Housing Act 2004

Section 233 Housing Act 2004 (Approved Code of Practice, if made)

Regulation 7(2) (b) and Schedule 2 para 3, The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006

Introduction

When deciding upon an application for a licence the Council has to consider whether the proposed licence holder and the proposed manager are “fit and proper persons”. In considering this question the Council has to have regard to, amongst other things, evidence relating to criminal offence. This appendix sets out the Council’s response should there be any such evidence.

Wherever a person is to be subject to the fit and proper person test, then the licence application shall be accompanied by any of the following documents:

- a Basic Disclosure in respect of each person and obtained from Disclosure Scotland, or
- the results of a subject access search under the Data Protection Act 1998 of the Police National Computer by the National Identification Service available by application to the relevant person’s local police service, and

in any case such certificate or search results shall be issued no earlier than two calendar months⁴ before the giving of the application to the relevant licensing authority.

The Council cannot require a Criminal Record Bureau disclosure for the purposes of the Housing Act 2004 but if it has been made available for any other purposes the Council will accept it *in lieu* of either of the two documents specified above. The Council does not require information about spent convictions.

Where a public company is the proposed licence holder or manager of the property, the basic disclosure will usually be required for the company secretary. Alternatively a basic disclosure or other record mentioned above

⁴ For taxi licensing and personal licensing purposes the time is limited to 1 calendar month

may be submitted by a director or senior manager where this person has direct involvement with the HMO and the company secretary does not

Information collected for the purposes of the fit and proper person test will be shared with other authorities in the East Midlands region, subject to the requirements of the Data Protection Act 1998. The information shared is limited to:

- Name and address
- Role of relevant person
- Name of local housing authority
- Date licence granted or refused
- Reason for refusal

The Council's guidelines, below, relate to the relevance of convictions and these will be referred to when determining applications. The guidelines do not deal with every type of offence; however similar offences will be taken into account in accordance with those in the guidelines.

Persons who have convictions within the guidelines will be required to attend a hearing of the Hackney Carriage and Private Hire Licensing Sub-Committee (the Sub-Committee) to have their application considered. The onus is on the applicant or other person to demonstrate to the Sub-Committee why it should depart from its policy when considering previous convictions.

It is acknowledged that where a managing agent is acting on behalf of a number of landlords, or where a landlord is dealing with a large portfolio of properties the need to provide an up to date disclosure for each application can be onerous. This has to be balanced against the Council's responsibility to safeguard public safety. For the purposes of this policy therefore where an application for an HMO licence has been submitted within 12 months of an earlier application, and the earlier formal disclosure is no older than 12 months at the time of the later application then this will be accepted as evidence. See also Appendix 6 paragraph (6) (documents to accompany the application) and appendix 5 (fees)

ANNEX TO APPENDIX 9-GUIDELINES RELATING TO THE RELEVANCE OF PREVIOUS CONVICTIONS and OTHER MATTERS

General Policy

Each case will be decided on its merits. A person with a current conviction need not be excluded from being considered as a “fit and proper person”. A series of offences over time is more likely to give cause for concern than an isolated conviction of the same description.

Details will not be required of spent convictions for the purposes of the Rehabilitation of Offenders Act 1974. The aim is not to punish twice but to ensure public safety is not compromised in the management of houses in multiple occupation.

The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those named within the HMO licence are fit and proper to be the licence holder, or the manager, or both

A person with a current conviction for a crime as described below need not be permanently barred from obtaining a licence or being described as a manager but should be expected to:

- remain free of conviction for an appropriate period; and
- show adequate evidence of good character from the time of the conviction.

Simply remaining free of conviction will not generally be regarded as sufficient evidence of good character.

Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account.

(a) Offences of fraud or other dishonesty

HMO licence holders and managers of HMOs are expected to be persons of trust. Tenants not only expect to be safe within their home but also expect that their property is safe too, that the terms of their tenancy agreement are reliable and that any deposits are properly dealt with.

Tenants may comprise of young adults unfamiliar with the respective responsibilities of rented accommodation, and vulnerable people of any age who are dependant for their safety and welfare on good property management.

For these reasons a serious view is taken of any convictions involving dishonesty. In general, a period of 5 years free of conviction will be

required before a relevant person can be held to be a fit and proper person.

In particular the test will normally be regarded as having failed where the relevant person has a conviction for an offence of:

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception

and the conviction is less than 5 years prior to the date of the HMO licence application.

Between 3 and 5 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(b) Offences involving Violence

A person's home is generally regarded as a place of safe refuge. HMO licence holders and managers of HMOs have a control over that home, and may have to deal with landlord and tenant disputes. They should not therefore present a threat to tenants, and in general a period of 5 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will be required before a relevant person is deemed to be fit and proper.

In particular:-

(i) The fit and proper person test will be deemed to have been failed where the relevant person has a conviction for an offence of:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Arson with an intent to endanger life
- Malicious wounding or grievous bodily harm (*s.20 Offences Against the Person Act 1861*) which is racially aggravated (*s.29 (1)(a) Crime and Disorder Act 1998*)
- Actual bodily harm (*s.47 Offences Against the Person Act 1861*) which is racially aggravated (*s.29 (1)(b) Crime and Disorder Act 1998*)

and the conviction is less than 10 years prior to the date of application.

(ii) The fit and proper person test will be deemed to have been failed where the applicant has a conviction for an offence of:-

- Grievous bodily harm with intent (s.18 Offences Against the Person Act 1861)
- Grievous bodily harm (s.20 Offences Against the Person Act 1861)
- Robbery
- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Racially-aggravated s.4 Public Order Act 1986 offence (fear or provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress) (s.31(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)

and the conviction is less than 8 years prior to the date of application.

Between 8 and 10 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(iii) The fit and proper person test will be deemed to have been failed where the relevant person has a conviction for an offence of:

- Common assault
- Common assault which is racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
- Assault against the police
- Racially aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)
- Riot
- Violent disorder
- Affray
- Fear or provocation of violence
- Harassment, alarm or distress
- Putting people in fear of violence
- Possession of offensive weapon
- Possession of firearm
- Criminal damage

- Obstruction
- Resisting arrest

and the conviction is less than 5 years prior to the date of application.

Between 5 and 8 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(c) Offences involving drugs

Tenants are entitled to expect that HMO licence holders and managers of HMOs will be in a position to take responsible decisions, and that they will not be exposed to drug abuse as a consequence of renting their home. It is for these reasons that the fit and proper person test will be deemed to have been failed where:

the relevant person has a conviction for a drug-related offence
and the conviction is less than 5 years prior to the date of application.

In addition relevant persons will normally be required to show a period of at least 5 years free from taking drugs and/or 5 years after detoxification treatment if the relevant person was an addict.

(d) Sexual Offences

Tenants expect to be safe within their home. They may comprise of young adults, and vulnerable people of any age. HMO licence holders and managers of HMOs have access to the tenants' homes and may have close personal contact. They are therefore expected to be persons of trust. For that reason the fit and proper person test will be deemed to have failed where the relevant person has a conviction for an offence of:

- Any listed in Schedule 3 to the Sexual Offences Act 2003
- Soliciting, importuning, indecent exposure or any sexual offence

Relevant persons with convictions will normally be deemed to have failed the fit and proper person test until they can show a substantial period (usually between 5 and 10 years) free from any such conviction.

In particular the fit and proper person test will be deemed to have been failed if the relevant person has a conviction for an offence involving certain sexual offences such as:-

- Rape, and
- sexual assaults

and the conviction is less than 10 years prior to the date of the application.

(e) Unlawful discrimination.

Licence holders and HMO managers are expected to be even handed in the manner in which they deal with tenants. They are expected not to have practised unlawful discrimination and will act in accordance with current statutory requirements⁵ in the carrying on of their business.

Where there is a formal finding of unlawful discrimination as described above then it is expected that a period of 5 years will have lapsed from the date of the application otherwise the fit and proper person test will be deemed to have failed.

(f) Contravention of the law relating to housing or landlord and tenant law.

A “contravention” shall be regarded as having been a conviction of an offence in a court of law. The law relating to housing shall be regarded as including not just the Housing Acts but law such as the Health and Safety at Work Act 1974 where the conviction relates to housing matters.

Tenants should not be at risk of intimidation by their landlords. Where a person has been convicted of harassment for the purposes of the Protection from Eviction Act 1977 then a period of 8 years free of conviction should lapse before the relevant person is deemed to be a fit and proper person.

Failure to comply with the law relating to housing will be regarded as indicative of an inability, for whatever reason, to properly manage housing accommodation. A person with such a conviction will be expected to have a period of 5 years free of conviction before being deemed to be a fit and proper person.

(g) Other things

The matters referred to in parts (a) to (e) above deal with specific circumstances listed in the Act to which the local housing authority must have regard. These specific circumstances are “amongst other things” and below are outlined other things which the City Council will have regard to.

Housing management

In part (e) above reference is made to contraventions of the law, and contraventions in that context are regarded as synonymous with “convictions”. However the Council will also have regard to the frequency and number of actions that its officers have to take in dealing with poor accommodation whether by way of informal actions such as letters, or formal actions such as the service of statutory notices. The Council will also take into account the

⁵ Equality Act 2010. See Equality and Human Rights Commission website: www.equalityhumanrights.com

degree of risk to health relevant to each of the enforcement actions, the willingness or otherwise to remedy the situation and the number of dwelling houses controlled or managed by the relevant person.

Where, within a period of 4 years from the date of the application, there is compelling evidence that the relevant person is unable to provide satisfactory living conditions without persistent intervention by the local housing authority or other statutory bodies then the relevant person will be deemed not to be a fit and proper person.

Road Traffic Offences

Road traffic offences can be indicative of a person's attitude to safety and responsibility to others. A conviction for a major traffic offence such as dangerous or careless driving, driving without due care and attention, and driving without insurance will require careful consideration and relevant persons will be interviewed by the Sub-Committee who would expect a period of at least 3 years free from conviction to have elapsed before being deemed fit and proper. When considering motor traffic offences the Sub Committee will have regard to the advice⁶ adopted for the purposes of the Council's Statement of Licensing Policy.

Associates

The term "associates" is not defined in the Act. The Council will consider any person or organisations involved with the management or control of the relevant person's residential property or of his or her other business interests as likely to be an "associate". This may be in the form of a written contract or on an informal basis.

After the licence has been issued

During the period of the licence a landlord may be convicted of a relevant offence, or may contravene housing or other law, which would make him or her not a fit and proper person to hold a licence. To help deal with such circumstances the Council has introduced a standard discretionary condition which requires the licence holder to notify the council of any relevant change in circumstances.

⁶ "Guidelines Relating To The Relevance Of Previous Convictions"

Appendix 10

Satisfactory Management Arrangements

When determining an application for a licence the Council has to decide, amongst other things, whether the proposed management arrangements are satisfactory. Satisfactory arrangements for management will include the factors described in column 1 of the table below, and column 2 gives details of the evidence required.

Management arrangements	Evidence
A system for tenants to report defects, including emergencies.	Document given to tenants with contact details of owner or agent. A notice to the same effect clearly displayed on the premises.
A system to respond to reports of defects and emergencies.	Document detailing proposed response times and whether arrangements in place with a named contractor or contractors. A notice to the same effect clearly displayed on the premises.
A process for dealing with claims of anti social behaviour arising from the tenants or their visitors.	Evidence within tenancy contract or other document indicating how anti-social behaviour will be dealt with.
Arrangements in place for periodic inspections to identify where repair or maintenance is required.	Document detailing frequency and extent of proposed inspections.
Where the manager is not the proposed licence holder an agreement between the owner and the manager giving sufficient authority to the manager for maintenance and other management functions	A document describing the agreement between the owner and the letting agent detailing the level of authorisation.
The proposed funding arrangements are suitable. <i>[Section 66(6)(c) refers]</i>	A declaration that there is adequate funding to manage and maintain the HMO. This will be found in the application form
The person or persons named in the licence are competent to be in control of or manage a house in multiple occupation as the case may be.	A declaration providing details of training, affiliation to any relevant professional bodies, and relevant experience

Management arrangements	Evidence
Any person involved in the management of the house (other than the manager) is a fit and proper person.	The council may require a specified person or persons to provide information as described in appendix 9

In considering whether the proposed management arrangements for the house are satisfactory regard will be had to the contents of *The Management of Houses in Multiple Occupation (England) Regulations 2006*, as amended or any of its successors.

Appendix 11

The Prescribed Standards

The City Council cannot issue a licence if the 'prescribed standards' are not met.

The City Council can issue a licence for less than the number of households or persons requested on the licence application if that does allow the prescribed standards to be met.

The prescribed standards are summarised below, however they may be subject to change and for full details the Regulations should be consulted.

The City Council will provide further details on matters of interpretation in its method statements and supporting documents, and in so doing expand on such terms as "adequate", "suitable" and "sufficient"

References:

(1) Section 64(3) (a) Housing Act 2004.

(2) Section 65 Housing Act 2004.

(3) Regulation 8 and Schedule 3, The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006,

(4) Regulation 12(4) and 12(8), The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

Space Heating

Each unit of living accommodation must be equipped with adequate means of space heating.

Washing facilities

There must be an adequate number of bathrooms, toilets and wash hand basins for the number of persons sharing those facilities, and where reasonably practicable there must be a wash hand basin in each unit which does not contain a sink.

All baths, showers and wash hand basins must be provided with a supply of hot and cold water.

All bathrooms must be suitably and adequately heated and ventilated.

All baths, toilets and wash hand basins must be of adequate size and layout

All baths, toilets and wash hand basins must be fit for purpose.

All bathrooms and toilets must be suitably located.

Kitchens

Shared kitchens must be suitably located, and of such layout and size, and so equipped as to enable the persons sharing to store, prepare and cook food

The following equipment must be provided, and in sufficient quantities;

- (i) sinks with draining boards,
- (ii) cold and hot water supplied to the sinks,
- (iii) installations or equipment for the cooking of food,
- (iv) electrical sockets,
- (v) worktops,
- (vi) cupboards for food and utensils,
- (vii) refrigerators with an adequate freezer compartment,
- (viii) refuse disposal facilities,
- (ix) appropriate extractor fans,
- (x) fire blankets,
- (xi) fire doors.

Kitchen facilities provided for the exclusive use of an individual household

The following standards apply unless the landlord is not contractually bound to provide such appliances or equipment; the occupier is entitled to remove such appliances or equipment, or the appliances or equipment are otherwise outside the control of the landlord.

- (a) Adequate appliances and equipment for cooking food,
- (b) a sink with a supply of hot and cold water,
- (c) a work top,
- (d) sufficient electrical sockets,
- (e) cupboards for utensils and crockery,
- (f) a refrigerator.

Washing facilities provided for a unit of living accommodation

An enclosed and adequately laid out and ventilated room with a toilet and bath or fixed shower, with a supply of constant hot and cold water.

The toilet and bath (or shower) must be within the living accommodation or within reasonable proximity of the living accommodation.

Fire precautionary facilities.

Appropriate fire precaution facilities and equipment must be provided of such type, number and location as is considered necessary.

Appendix 12

Discretionary standards

Conditions where the City Council may decide that a HMO is not reasonably suitable for occupation by a particular maximum number of households even if it does meet the prescribed standard.

The City Council is not minded to specify standards in addition to the **prescribed standards** as a general pre-condition for all applications.

It may, however in any particular case decide that a house is not reasonably suitable for occupation by a particular maximum number of households or persons, even if the house does meet the prescribed standards for occupation by that number of households or persons.

[Section 65(2) Housing Act 2004 refers]

Appendix 13

Summary and Interpretation of Mandatory Conditions

References:

(1) *Schedule 4 Housing Act 2004*

(2) *Section 67(3) Housing Act 2004*

A licence must include the following conditions.

Gas Safety Certificate If gas is supplied to the house then an annual gas safety certificate must be provided.

Electrical appliances The electrical appliances made available by the licence holder must be kept in a safe condition.

The licence holder must supply to the authority on demand a declaration that the electrical appliances are safe.

Furniture The furniture made available by the licence holder must be kept in a safe condition.

The licence holder must supply to the Authority on demand a declaration that the furniture is safe.

Smoke Alarms Smoke alarms shall be installed in the house and kept in proper working order.

The licence holder must supply to the Authority, on demand, a declaration as to the condition and positioning of the smoke alarms.

Tenancy terms The licence holder shall supply to the occupants a written statement of the terms on which they occupy the HMO.

In applying the mandatory conditions the City Council will be satisfied that they have been applied in the following circumstances.

Gas Safety Certificate Where a gas safety certificate has been produced for the purposes of the Gas Safety (Installation and Use) Regulations 1998 (or any regulations which subsequently replace these), and satisfies the requirements of those regulations, then it shall also satisfy the requirements of this condition. The Council will expect the certificate to include a statement to the effect that the gas appliances and installations are safe to use.

Electrical appliances A declaration provided to satisfy the condition shall make reference to a list which itemises all the electrical appliances supplied by the licence holder, and each description shall include a reference to the

type of appliance, the make or brand, and any other identifying name or reference, and its location within the HMO.

Furniture A declaration provided to satisfy this condition shall make reference to a list, which itemises the furniture supplied by the licence holder and will where appropriate state whether the furniture meets the requirements of the Furniture and Furnishings (Fire Safety) Regulations 1998 (or any regulations which subsequently replaces them).

Smoke Alarms The type and condition of any fire detection and alarm system will be determined by reference to the Housing Health and Safety Rating System, to the service level agreement between the City Council and Lincolnshire Fire and Rescue and in particular to the LACORS⁷ *Housing – Fire Safety Guidance on fire safety provisions for certain types of existing housing (August, 2008)*, and any successor guidance.

The declaration concerning smoke alarms will be dependent upon the fire detection and alarm system installed.

Tenancy Terms The City Council will be satisfied that this condition has been met if it is furnished with a copy of the tenancy agreement or a written statement of the existing tenancy terms, and a statement to the effect that that the agreement or statement has been provided to existing tenants, and will be provided to future tenants.

⁷ LG Regulation is the new business name of LACORS

Appendix 14

Discretionary licence conditions to be applied on all licences

The City Council has decided against introducing conditions that would duplicate the requirements of *The Management of HMO (England) Regulations 2006*, nevertheless the following conditions will be specified for each licence.

Landlord and tenant matters

“The licence holder shall ensure that notification in writing is given to all occupants at the beginning of their occupancy of the arrangements in place to deal with emergency and other repairs.”

“The licence holder shall ensure that all reasonable and practical steps are taken to prevent or reduce anti-social behaviour by persons occupying or visiting the house.”

The building

“The licence holder shall maintain the exterior of the property in reasonable decorative order.”

Notification of change of circumstances

“The licence holder shall notify the City Council in writing as soon as reasonably practicable of any change in the details of the person having control of the HMO, or managing the HMO. The relevant changes include:

1. Change of the person or business having control of, or managing the HMO.
2. Change of the address, telephone number or e-mail address of the person having control of, or managing the HMO.
3. Change of any of the following where the person having control or managing the HMO is a company, registered charity, or partnership:
 - a. Company name
 - b. Company number
 - c. Registered address
 - d. Directors
 - e. Company secretary
 - f. Charity correspondent
 - g. Trustees
 - h. Partners
4. If the property subject to the licence is made available for sale, or sold.
5. If there are any changes made to the property layout, either in the way in which individual rooms and circulations spaces are used, or if there are any structural alterations to the property.

6. A conviction of a criminal offence by any person or organisation named in the licence.”

Amenities and equipment

“The licence holder shall ensure that the amenities, facilities and equipment required to make the building suitable for occupation are maintained and in good repair.”

Display of notices

“The licence holder shall cause to be clearly displayed in a common area in the building copies of:

1. the licence, including the conditions
2. if applicable, a current copy of the gas test certificate

Appendix 15

Factors to be taken into account when inspecting a building subject to a licence application

References:

- (1) *Section 55(5) (c) Housing Act 2004.*
- (2) *Section 67(4) Housing Act 2004.*
- (3) *The Housing Health and Safety Rating System (England) Regulations 2005.*
- (4) *Housing Conditions: Enforcement Guidance.*

Introduction

Part 1 of the Housing Act 2004 introduced the Health and Safety Rating System. Under this system hazards are classified, and may be described as Category 1 and Category 2. Where there is a Category 1 hazard the Council has a duty to take action. Where there is a Category 2 hazard the Council may take action. The Act states that in general councils should use their powers in Part 1 of the Act to deal with hazards and not use the licensing system. Nevertheless, as part of the licensing system councils must make an assessment of the need to use their Part 1 powers.

Inspection of the Building

The application details:

When inspecting a building subject to an application for a HMO licence, an officer acting on behalf of the Council will have regard to all the matters in the application form.

Assessment of the need to exercise Part 1 functions

On inspecting a property for the purposes of an HMO licence application the officer acting on behalf of the Council will undertake a risk assessment. The risk assessment will determine whether or not a further survey is required for the purposes of the Housing Health and Safety Rating system, and the timing of such a survey. This local authority duty does not replace the duty of the responsible person to undertake a fire risk assessment for the purposes of the *Regulatory Reform (Fire Safety) Order 2005* (Article 9 of the Order refers)

Appendix 16

Duration of Licences

A licence will come into force at the time specified in the licence, and normally this will be the date on which the licence application has been approved.

A licence cannot be in force for a period greater than 5 years. Normally licences issued by the Council will be granted for a period of 5 years.

The City Council will grant a licence for a period of less than 5 years if it is appropriate to do so. In particular the Council will have regard to whether or not there is compelling evidence that the application should have been made at an earlier time and as a consequence the applicant avoided having to pay a licence fee. A decision to reduce the duration of the licence will be taken independent of any decision(s) taken for the purposes of the enforcement policy.

Appendix 17

Service Standards

The service standards relating to correspondence will be the adopted corporate standards.

The service standards relating to enforcement will be those contained in the adopted enforcement policies.

The City Council undertake to complete the tasks described in column 1 of the table within the time scale described in column 2

The determination of an application for an HMO licence from receipt of the completed application	3 calendar months.
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