

TITLE OF REPORT: **Mandatory Licensing of Houses in Multiple Occupation Policy**

REPORT OF: **Anneliese Hutchinson, Service Director, Development, Transport and Public Protection**

Purpose of the Report

1. To describe the legislative changes that come into effect in October 2018 relating to the regulation of Houses in Multiple Occupation (HMO) and to seek approval from the Cabinet and full Council to a revised Policy setting out how the law relating to HMOs will be implemented in Gateshead.

Background

2. The private rented sector is an important part of our housing market, housing 4.3 million households in England. In Gateshead, the number of private rented homes have increased from 8 – 15% of total homes in the Borough between 2006 and 2016.
3. HMOs form a vital part of this sector, often providing cheaper accommodation for people whose housing options are limited. HMOs are known to be commonly occupied by students but there are also a growing number of young professionals and migrant workers sharing houses and flats.
4. Some HMOs are occupied by the most vulnerable people in our society. These people live in properties that were not built for multiple occupation, and the risk of overcrowding and fire can be greater than with other types of accommodation.
5. Mandatory licensing of HMOs came into force in 2006 and originally applied to properties of three storeys or more with five or more people making up two or more separate households living in them. Licensing has been successful in helping to drive up standards and made these larger HMOs safer places to live in.
6. As demand for HMOs increased in the decade since mandatory licensing was first introduced there has been a significant increase in properties with fewer than three storeys being used as HMO accommodation, notably two storey houses originally designed for families and flats. Some have been used by opportunist rogue landlords who exploit their vulnerable tenants, and rent sub-standard, overcrowded and potentially dangerous accommodation. A Government Consultation exercise, carried out in 2016 also revealed that the growth of HMOs has had an impact on the local community, including where inadequate rubbish storage leads to pest infestation and health and safety problems.

7. Following this consultation, Government has created new regulations that extend the scope of mandatory HMO licensing so that properties used as HMOs in England which house 5 people or more in two or more separate households will in many cases require a licence. It is intended that this will help ensure they are not overcrowded and do not pose risks to the health or safety of occupiers or blight the local communities in which they are located. To this end, new mandatory conditions for licences have been created, to set out the minimum size to be applied to rooms used for sleeping and to add requirements relating to the provision of refuse disposal in licensed properties.

Proposal

8. The revised Gateshead Council Mandatory Licensing of Houses in Multiple Occupation Policy is attached as Appendix 2 to this report. The policy proposes how the provisions of The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, and the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018, are implemented in Gateshead.
9. It is proposed that the fee payable for an HMO Licence is reviewed to reflect recent case law that requires that the Council accept the fee in two payments. The proposed fee structure is set out in Appendix 1, paragraph 18.

Recommendations

10. Cabinet is asked to recommend the Council to:
 - (i) Approve the revised HMO Policy in Appendix 2, that sets out how the Mandatory Licensing of Houses in Multiple Occupation will be implemented in Gateshead.
 - (ii) Approve an amendment to the Council's Constitution to include a delegation to the Service Director, Development, Transport and Public Protection to have responsibility for implementing the provisions of The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, and the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 in Gateshead.
 - (iii) Agree the reviewed HMO Licence Fee structure as set out in Appendix 1, paragraph 18 of the report.

For the following reasons:

- (i) The Council has a duty to effectively implement the Mandatory Licensing of HMOs in the Borough.
- (ii) Implementation of Mandatory HMO Licensing protects vulnerable tenants against unscrupulous landlords and communities against the impact of badly managed HMOs.

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Policy Context

1. The proposal to embed new regulations within the HMO licencing legislation 2018, to extend the scope of mandatory HMO licencing in Gateshead, is consistent with the Council's strategic approach of making Gateshead a place where everyone thrives. It specifically supports the Council's pledges to put people and families at the heart of everything we do and to tackle inequality so people have a fair chance.

Background

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3. As demand for HMOs increased in the decade since mandatory licensing was first introduced there has been a significant increase in properties with fewer than three storeys being used as HMO accommodation, notably two storey houses originally designed for families and flats. Some have been used by opportunist rogue landlords who exploit their vulnerable tenants, and rent sub-standard, overcrowded and potentially dangerous accommodation. A Government Consultation exercise, carried out in 2016 also revealed that the growth of HMOs has had an impact on the local community, including where inadequate rubbish storage leads to pest infestation and health and safety problems.
4. Following this consultation, Government has created new regulations that extend the scope of mandatory HMO licensing so that properties used as HMOs in England which house 5 people or more in two or more separate households will in many cases require a licence. It is intended that this will help ensure they are not overcrowded and do not pose risks to the health or safety of occupiers or blight the local communities in which they are located. To this end, new mandatory conditions for licences have been created, to set out the minimum size to be applied to rooms used for sleeping and to add requirements relating to the provision of refuse disposal in licensed properties.

Proposal

5. The revised policy for Mandatory Licensing of Houses in Multiple Occupation in Gateshead is attached as Appendix 2. This policy replaces the previous one agreed by Cabinet on 25 April 2006. The detail of how Gateshead will comply with the new duties is outlined below.

Extended Scope of Mandatory HMO Licensing

6. Part 2 of the Housing Act 2004 provides for local housing authorities (LHA) to license HMOs in their areas if they meet the definition of an HMO prescribed under section 55 of the Act. The existing definition for Large HMOs requires properties with at least three storeys to be subject to mandatory licensing. This definition was introduced in

2004 to help address fire safety issues at a time when structurally large HMO's with a high number of occupants were seen as particularly at risk of fire hazards, partially due to the difficulty of escaping a fire in three storey buildings. Since then the pressures on the housing market have made this definition insufficient. There exists a growing number of HMO's which are occupied by 5 or more persons but do not fit the current definition of a Large HMO and are not subject to mandatory licensing because they comprise of less than three storeys.

7. The Prescribed Description Order 2018 has been created to extend the types of buildings that will be subject to mandatory licensing. From 1 October 2018, mandatory licensing will no longer be limited to certain HMOs that are three or more storeys high but will also include buildings with one or two storeys. This will bring within the scope of HMO licensing traditional single storey buildings such as bungalows and non-traditional residential buildings such as converted offices/works spaces, converted garages and outbuildings. In addition, flats above and below business premises, and those which are purpose built with two flats in the block will also be included. Rogue landlords who house tenants in these types of properties have been linked nationally with the exploitation of tenants that can occur at the bottom end of the housing market.
8. HMO licences include conditions that the licence holder must comply with. These range from conditions that seek to ensure appropriate management, use and occupation of the property to the taking of reasonable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house. The Housing Act 2004 created mandatory conditions relating to the provision of smoke and carbon monoxide alarms; gas safety and the safety of electrical appliances and furniture. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 have introduced new conditions that must be included within new HMO licenses.

Mandatory national minimum sleeping room sizes

9. From 1 October 2018 LHAs must impose conditions as to the minimum room size which may be occupied as sleeping accommodation in the HMO. A room smaller than the specified size must not be used as sleeping accommodation, and communal space in other parts of the HMO cannot be used to compensate for rooms smaller than the prescribed minimum. The purpose of this condition is to reduce overcrowding in smaller HMOs.
10. Statutory overcrowding may result if a person causes or permits an adult to sleep in a room with a floor area of less than 6.51m² (70ft²). Anything smaller than this space standard is deemed to be unsuitable for an adult to occupy as sleeping space. This standard is of general application. A recent Upper Tribunal ruling has caused uncertainty as to whether the standard applies to HMOs, opening the possibility of rooms which fail the overcrowding standards set out in section 326 of the Housing Act 1985 (and that are still in effect) being licensed as suitable for sleeping in. That uncertainty has now been removed by the clarification that compliance with this statutory space standard is a mandatory condition when an HMO licence is granted.
11. In addition, the new Regulations require the Council to impose conditions specifying the maximum number of persons over 10 years of age and/or persons under 10 years

of age who may occupy specified rooms provided in HMOs for sleeping accommodation.

12. An HMO licence holder commits an offence if, without reasonable excuse, the licence holder breaches the licence by; knowingly permitting the HMO to be occupied by more persons or households than is authorised by the licence; or failing to comply with a condition of the licence such as a prohibition against occupation as sleeping accommodation.
13. If convicted for such an offence the licence holder is liable to an unlimited fine or alternatively, the Council may impose a financial penalty of up to £30,000.

Waste disposal requirements

14. From 1 October 2018, LHAs will be required to impose a mandatory condition concerning the provision of suitable refuse storage facilities for HMOs. HMOs, occupied by separate and multiple households, generate more waste and rubbish than single family homes, and frequently allow waste to accumulate, which can cause a nuisance, a blight on local communities and pose a health risk. All licensed HMOs will need to comply with the scheme issued by the Council for the storage and disposal of domestic refuse pending collection. A licence holder's failure to comply with the scheme is a breach of the licence and a criminal offence. It is intended that this mandatory condition will enable local authorities to take quicker enforcement action without necessary recourse to the courts.

HMO Licence Fee Review

15. S63(3) of The Housing Act 2004 permits a LHA to require that any application for a licence, be accompanied by a fee. There is no cap provided by Central Government on the fee, however the calculated fee should cover all costs incurred by the LHA in carrying out their mandatory HMO Licensing function. The LHA is not permitted to seek a financial profit from licensing fees and recent case law has determined that the cost of a licence must be staged.
16. A fee structure is required to be fair and transparent, reflecting the actual costs of licensing and must be reviewed periodically.
17. For a number of years, the HMO licence fee has remained static and in 2018 a review has been undertaken to ensure that the fee remains accurate. This review has included benchmarking against other north east local authorities and has been calculated with the help of a Government Cost calculator and guidance that assists LHAs in determining fees and charges.
18. The proposed reviewed HMO licence fee structure is as follows:

	Payment due at time of Application	Payment due immediately following Grant of Licence	Total Fee
HMO Licence (up to 14 bedrooms)	£514	£341	£855
HMO Licence (15+ bedrooms)	£591	£341	£932
HMO Licence Renewal (up to 14 bedrooms)	£411	£341	£752
HMO Licence Renewal (15+ bedrooms)	£488	£341	£829
Variation of HMO Licence (at Licence Holders request)	£164	N/A	£164

Implementation

19. Communities and Environment's Private Sector Housing Team licence and enforce standards in HMO properties, respond to requests for service from tenants concerning property condition and management arrangements, and undertake inspections as part of the mandatory licensing of HMOs. An inspection takes place on receipt of an HMO licence application and once again during the period of the licence.
20. Five-year licences are granted to landlords who demonstrate that they offer good quality accommodation. In cases where the Council has concerns that management arrangements or property conditions are not wholly satisfactory, licences may be granted for a lesser period or in some cases refused.
21. Determining the actual number of properties that will require a licence is challenging due to a limited availability of data. Data from a range of sources is being explored.
22. Work is already underway to provide an online application and payment system for HMO applications. This will allow landlords to apply and pay for applications online, to help to reduce back office requirements.
23. Other preparation that has been undertaken includes; review of the mandatory HMO licence conditions and policy, revision of the HMO licence application form to ensure only information that is being used is being collected, and creation of a Service Standards so applicants know what to expect.
24. The HMO Licensing Policy that sets out how legislative changes introduced in 2018 will be implemented is included at Appendix 2. The purpose of the changes to the scope of licensing is to increase the number of properties that are subject to mandatory licensing in the private rented sector, and so to enable local authorities to detect more illegal activity so that it can better enforced. This enabling of better enforcement does not make illegal any existing legal activity.
25. The extended scope of mandatory licensing could identify an increased number of properties that are substandard and poor management practices that result in landlords breaching the conditions imposed. This could result in a greater number of

criminal prosecutions by the Council or the imposing of financial penalties in conjunction with the powers provided by the Housing and Planning Act 2016 (financial penalties as an alternative to prosecution). A greater volume of such enforcement action could result in a greater requirement for the Council to defend its action upon appeal.

26. The clarification of minimum room sizes and requirement for maximum numbers of individuals per room to be clarified at the time a Licence is granted, and incorporation of these into the HMO licence and conditions should help a licence holder to avoid overcrowding and will simplify any enforcement action should this be necessary.
27. The waste disposal requirements on the Licence Holder should help to encourage HMO Licence Holders to take responsibility for waste issues and for communicating the requirements of how waste should be stored and disposed of to the tenants at their properties. Should any enforcement be necessary, incorporation of waste into the mandatory licence conditions allows the Council to impose a financial penalty for failure to comply with requirements, as an alternative to prosecution.

Delegated Powers

28. Within the Council, the power to issue mandatory HMO licences in accordance with the Housing Act 2004 rests with Service Director, Development Transport and Public Protection, within Communities and Environment. This position is best placed to take decisions on the continued issue of Mandatory HMO licences in the future, in accordance with the Policy set out at Appendix 2.

Consultation

29. The Cabinet Members for Housing have been consulted on this proposed Policy. Benchmarking has also been carried out with other North East Councils to ensure a consistent approach to licensing, enforcement and HMO licence fee setting.
30. Central Government has proposed that it is important that local authorities make landlords fully aware of the requirements of the extended mandatory HMO licensing requirement, and that local authorities are expected to carry out active promotion of the legislative change.
31. If approved, the Policy and extended scope of HMO licencing will be promoted within Council News, with links on Gateshead Council's website and by alerts on social media. Information will be provided to national landlord's associations, which may have members operating in the Gateshead area, and to members of Gateshead Private Landlords Association. HMO Licence Holders will be contacted directly about their portfolios.

Alternative Options

32. The operation of mandatory HMO licensing is a duty of the Council, and the Council does not have discretion to omit the legislative changes of 2018 from the licensing arrangements that are in place. The changes have prompted a review of the HMO Licensing Policy that is in place and this is set out at Appendix 2.

Implications of Recommended Option

33. Resources

a) **Financial Implications** – The Strategic Director, Corporate Resources confirms the following:

Funding the licensing activity

The Council already has the skills, mechanisms and authority in place through the Private Sector Housing Team within Communities and Environment to carry out mandatory HMO licensing. The Housing Act 2004 allowed the Council to charge a fee for an HMO licence, and the renewal of a licence and this ability remains. The Government's intention at that time was that HMO licensing should be self-financing, with a fair and transparent fee structure that reflected the actual costs of licensing. Review of the Policy has been accompanied by a review of licence fees to ensure these are reflective of the work undertaken.

A recent court ruling has however set out that the HMO licence fee cannot be demanded in full at the time that the licence application is received. In order to comply with this ruling, the licence fee will be payable in two stages, with the cost associated with receiving and considering the licence application and the granting of the licence payable at the time of the application, and the residual cost of administering the licence for the remainder of the period that the licence remains in force, payable immediately after the licence is granted. This may have debt recovery implications.

Other financial implications

The HMO licence fee has a financial impact on landlords. Central Government has carried out a detailed Impact Assessment of the extended scope of HMO licencing, including the costs to landlords. The legislative change has been progressed with the view that extending HMO licensing to smaller HMOs will help to create a level playing field for legitimate landlords whose businesses are being undercut by rogue landlords who do not maintain their properties to the required standards, and the prospect that the wider regulation will strengthen the sector's reputation that rogue landlords and poorly maintained large HMOs will not be tolerated.

b) **Human Resource Implications**

Existing staffing resources within the Private Sector Housing Team will be used to implement the new HMO legislation, in accordance with the Policy. Initial estimations of the likely number of additional properties that will be brought within the extended scope of mandatory licensing suggests that the workload will be manageable by the Team. Should the number be greater than estimated then consideration will be given to increasing staffing resource, on a cost recovery basis through the HMO licence fee.

c) Property Implications - None

34. **Risk Management Implications** - The Council has a statutory duty to implement mandatory HMO licensing. Failure to consider and respond to new legislation would cause any subsequent enforcement activity to be outdated and flawed and compromise the Council's ability to tackle poor housing standards in Gateshead. Failure to document a local Policy and to review fees and charges could leave the Council open to legal challenge.
35. **Equality and Diversity Implications** - The proposal will not discriminate against any groups or individuals within Gateshead in relation to their protected characteristics.
36. **Crime and Disorder Implications** - The extension of mandatory HMO licensing to cover more properties will provide greater opportunities to identify poorly managed properties, anti-social behaviour, and noise and waste problems, issues that are important to communities. In addition, the private rented sector is vulnerable to those that are connected with organised crime, and that use rented homes as part of their criminal activity. This might include the operation of brothels, cannabis farming or human trafficking. The ability to identify these activities, punish these offenders and disrupt their activity within the private rented sector will contribute to tackling associated crime and disorder.
37. **Health Implications** - Housing condition and health are closely connected. The Government in its Impact Assessment of the legislative changes predicted the following benefits; improved housing conditions and greater certainty over the quality of accommodation rented and good character of the landlord; greater assurance that when things do go wrong tenants can report such issues with greater confidence that they will be dealt with in a decisive manner. The Assessment also identified benefits to tenants who do not have a good relationship with their landlord and fear any repercussions if they do report issues, noting that housing enforcement officers will inspect will report an increased number of homes and discover the issues for themselves. This may protect tenants from the retaliatory evictions that result from tenants reporting housing condition problems.
38. **Sustainability Implications** - None.
39. **Human Rights Implications** - None
40. **Area and Ward Implications** - HMOs are present in all areas and wards of Gateshead. It is likely that the greatest number of additional HMOs that will now fall within the extended scope of HMO Licensing will be where demand for such accommodation, and the proportion of private rented stock is highest, in central Gateshead and parts of the west of the Borough.

Background Information

41. Further background information is contained in the report to Cabinet on 25 April 2006 on HMO policy.