

ENVIRONMENT AND PUBLIC PROTECTION

# Policy for the Mandatory Licensing of Houses in Multiple Occupation

2018 – 2023



**North Kesteven**  
DISTRICT COUNCIL

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## 1 Aim

The Housing Act 2004 (‘the Act’), outlines the manner in which the Council regulates standards within the private rented housing sector. Part 2 of the Act, places a duty on local authorities to implement a scheme for licensing houses in multiple occupation (HMOs), which fall within a prescribed description under that Part.

This policy outlines the way that North Kesteven District Council (‘the Council’), implements the requirements of the Act, with specific regard to mandatory licensing of HMOs. It also details how the Council intends to use the discretionary powers in the Act.

The underlying aim of this policy is to ensure that the Council takes a fair, considered, consistent and transparent approach, to ensure fair and equitable enforcement in relation to the licensing of HMOs.

This links to the Council’s ambitions of:-

- Maintaining and improving housing in NK.
- Providing high quality housing services across NK
- Open and accountable NK

## 2 Scope

This policy deals with mandatory licensing of HMOs. The Council has not applied for additional discretionary powers to extend the licensing regime beyond the mandatory licensing requirements provided under the Act. Therefore this policy does not refer to additional licensing under Part 2, or selective licensing under Part 3 of the Act. Any changes in the law after the adoption of this policy will take precedence over this scheme.

Any building or part of a building which is deemed to be an HMO, and which is of a ‘prescribed description’, shall be licenced unless a temporary exemption notice, interim management order or final management order is in force.

The person having control of an HMO must satisfy both planning and housing standards and requirements which are independent of each other. The issuing of an HMO licence does not confer planning permission and the refusal of planning permission is not a defence against not having a licence.

## 3 Definitions

See:

- Appendix 1: For the definition of an HMO, and a building or part of a building which is not a house in multiple occupation.
- Appendix 2: For the description of an HMO which shall be licenced (including exemptions to licensing).
- Appendix 3: For the circumstances when a temporary exemption notice may be granted.
- Appendix 4: For an explanation of interim and final management orders.
- Appendix 5: For the definition of the ‘person having control’ of and the ‘person managing’ the HMO.

## 4 Principles

### 4.1 Licence application

The responsibility for submitting an HMO licence application rests with the person having control of, or the person managing, the property<sup>1</sup>. This is the owner, or the person who lets the property and collects the rent.

The application shall be either an application made in writing, submitted on a form provided by the Council, or an application made on-line through the Council’s website.

For an application to be deemed valid it must be completed in full, and accompanied by specified documents. Details of the documents which must be provided with the completed application form are detailed in Appendix 6.

The Council will provide advice to support applicants in the submission of a valid application. However, if the submitted application is incomplete or is not accompanied by the relevant documents, then the application and all documents submitted will be returned in full, and the application will be deemed not to have been duly made.

The target for processing the application from the submission of a valid, duly made application, to final approval or refusal is 4 months. This will be monitored and reported by the Council as a key performance indicator (KPI).

The Council will encourage landlords to apply for licences using a variety of methods, including, but not limited to:

- Publicising the need to license HMOs, such as via the Council’s webpage and other suitable sources;
- Corresponding with all known HMO landlords and letting agents;
- Provide options of submitting a paper or electronic application forms;
- Where resources permit, offer assistance to applicants with completion of application forms;
- Send letters warning of the potential for legal action where there is a failure to apply for a licence.

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<sup>1</sup> Housing Act 2004 s.263: Meaning of “person having control” and “person managing” etc.

## 4.2 Licence application fee

The licence application shall incur a fee<sup>2</sup>, and an invoice for the fee will be raised upon submission of the licence application. A further fee will be charged upon determination of the application which is directly related to the number of habitable bedrooms within the property.

Details of the determination of the fee level is detailed in Appendix 7. The fee will be reviewed annually through the Council fee setting process.

## 4.3 The licence holder and the manager

The Council may grant a licence to the applicant, or some other person who is deemed to be the most appropriate person to be the licence holder<sup>3</sup>. Determination of the most appropriate person shall be made having regard to matters detailed in Appendix 8.

The licence application may identify the proposed manager of the HMO, who is not the proposed licence holder. The factors to be taken in consideration of the proposed manager are described in Appendix 9.

## 4.4 Fit and proper person

The Council is required to assess whether the proposed licence holder and proposed manager of the HMO are fit and proper persons to be a licence holder or manager of the property<sup>4</sup>. The fit and proper person determination will be made having reference to matters in Appendix 10.

## 4.5 Management arrangements

In assessment of the HMO application the Council must be satisfied that the management arrangements for the HMO are satisfactory<sup>5</sup>. Regard shall be had to the matters specified in Appendix 11, and also the Management of Houses in Multiple Occupation (England) Regulations 2006.

## 4.6 Suitability for occupation

In assessment of the HMO application, the Council must be satisfied that the house is reasonably suitable for occupation, having regard to the 'prescribed standards' as summarised in Appendix 12. In determination of this, the Council must also have regard to the following:-

- The HMO is reasonably suitable for occupation by the number of persons permitted under the licence.
- The licence holder is a fit and proper person.
- The proposed licence holder is the most appropriate person to hold the licence.
- The proposed manager is a fit and proper person.
- 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 satisfactory.

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<sup>2</sup> Housing Act 2004 s.63(3)

<sup>3</sup> Housing Act 2004 s.64(2), (3)(b)(ii), s.66(6)(b)

<sup>4</sup> Housing Act 2004 s.64(3)(b)(i), s.66

<sup>5</sup> Housing Act 2004 s.64(3)(e), s.66(5)

#### 4.7 Licence conditions – mandatory

All HMO licenses must contain the conditions required by Schedule 4 of the Act and are summarised in Appendix 13.

#### 4.8 Licence conditions – discretionary

The Council has discretion to include such conditions as considered appropriate for regulating the management, use and occupation of the house and its condition and contents<sup>6</sup>. These discretionary conditions are listed in Appendix 14.

#### 4.9 Property standards

The Council have not specified standards in addition to the prescribed standards<sup>7</sup> as a precondition for all applications. However, in any particular case the Council may 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. Should this be applied, the applicant will be provided with the reasoning for this decision.

In respect of category 1 and 2 hazards<sup>8</sup> which may exist at the property, the Council would look to identify, remove or reduce these by exercise of powers contained in Part 1 of the Act (Part 1 functions), and not by means of licence conditions. However, the Council may impose conditions relating to the installation or maintenance of facilities or equipment, even if the same result could be achieved by the exercise of Part 1 functions.

#### 4.10 Inspections

An officer will visit a property where a valid HMO application has been submitted prior to the licence being approved or refused for the purpose of:

- Determining whether the house is reasonably suitable for occupation by a particular number of households or persons; and
- Verifying that the management arrangements are satisfactory; and
- Identifying whether there are any category 1 or 2 hazards present which would require the council to use its Part 1 functions.

HMOs that are currently licensed will also be revisited to ensure compliance with conditions, if they are subject to complaint or if there is concern about management standards at the property. If additional license conditions are required after an inspection of an HMO, the license may be varied to include such conditions.

#### 4.11 Fire safety

In general, fire safety measures are dealt with through Part 1 functions, however there are some specific references to fire safety within this licensing scheme. When using Part 1 functions in relation to fire safety, officers will apply the guidance contained in *‘Guidance on fire safety provisions for certain types of existing housing’*<sup>9</sup>, or any successive guidance.

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<sup>6</sup> Housing Act 2004 s.67

<sup>7</sup> The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006, Schedule 3

<sup>8</sup> For the meaning of “category 1 hazard” and “category 2 hazard”, see Housing Act 2004, Part 1, s.2

<sup>9</sup> Guidance produced by the Local Authorities Coordinators of Regulatory Services (LACORS) and available at [http://www.cieh.org/library/Knowledge/Housing/National\\_fire\\_safety\\_guidance\\_08.pdf](http://www.cieh.org/library/Knowledge/Housing/National_fire_safety_guidance_08.pdf)

Fire and Rescue Authorities have a legal duty to enforce the Fire Safety Order in the common areas of all residential accommodation not forming a single private dwelling.

As such the person having control of, or the person managing the HMO may have a duty to undertake a fire risk assessment of the property for the purposes of the Regulatory Reform (Fire Safety) Order 2005<sup>10</sup>. If the Council undertake a risk assessment of the premises, this will not discharge the responsible person's duty to undertake a fire risk assessment.

Lincolnshire district councils and Lincolnshire Fire and Rescue have adopted a protocol which describes joint working arrangements to deliver the objective of improved fire safety within HMOs, which may include joint inspections and sharing of information.

#### 4.12 Duration of a licence

An HMO licence will usually be granted for a period of 5 years from the date of approval. No licence can have a duration of greater than 5 years<sup>11</sup>, but some licenses may have a duration of less than 5 years. In determining the duration of a licence, regard shall be had to matters specified in Appendix 15.

#### 4.13 Register of licenced HMOs

The Council will maintain a Public Register of Licences and Management Orders<sup>12</sup>. The register will be recorded electronically, and the contents of the register will be available at the council offices for inspection by members of the public at all reasonable times. A copy of the register or an extract from it can be supplied on receipt of a reasonable fee to cover costs.

#### 4.14 Variation licence

The Council may vary a licence with the agreement of the licence holder or if there has been a change in circumstances since the time when the licence was granted<sup>13</sup>. Where a licence is varied by the Council, this will not incur a fee.

#### 4.15 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 provisions within the Act<sup>14</sup>.

#### 4.16 Enforcement

The Council has a legal duty to take all reasonable steps to secure that applications are submitted for all licensable HMOs in its area and as such will make persons having control of, or managing HMOs aware of the licensing requirements by undertaking a range of activities.

Operating an HMO without a licence is a serious offence. The Council will take enforcement action in respect of unlicensed HMOs, where the premises should be licensed, for breaches of

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<sup>10</sup> Article 9 of the Order

<sup>11</sup> Housing Act 2004 s.68(4)

<sup>12</sup> Housing Act 2004 s.232: Register of licences and management orders

<sup>13</sup> Housing Act 2004 s.69: Variation of licences

<sup>14</sup> Housing Act 2004 s.70: Revocation of licences



licence conditions and any other offence in respect of licensable HMOs. Any decision to take enforcement action will be considered in accordance with the Council's Private Sector Housing Enforcement Policy, Corporate Enforcement Policy and Enforcement Service Standards.

#### 4.17 Rent repayment orders (RRO)

The Housing and Planning Act 2016, confers power on the First-Tier Tribunal to make an RRO where a landlord has been convicted of the offence of operating an HMO which should have been licensed, or has received a financial penalty in respect of the offence<sup>15</sup>. The Council will make an application to the First-tier Tribunal (Property Chamber) for an RRO, where Housing Benefit or Universal Credit has been paid within a 12 month period during which the landlord was committing the offence. A maximum of 12 months' payments can be ordered to be repaid.

#### 4.18 Appeals

The Act allows for the applicant or any relevant person to appeal against licensing decisions made by the council<sup>16</sup>.

#### 4.19 Delegated authority and competency of officers

All officers involved with the enforcement of legislation covered by this policy will be competent to perform their duties in accordance with the legislation and agreed internal procedures, and will carry out continuous professional development to do so.

The Council's Constitution has delegated the authority to serve notices under various Acts, including the Housing Act 2004, to the Head of Environment and Public Protection who has in turn delegated the service of some of these directly to enforcement officers. All notices will be served having regard to this delegation scheme.

## 5 Supporting Procedures

- Private Sector Housing Enforcement Policy
- Corporate Enforcement Policy
- Enforcement Service Standards.

## 6 Monitoring

This policy will be reviewed from time to time and refreshed should any changes in legislation or relevant codes of practice or guidance require it to be updated. The Council will publish this and supporting service standards on the Council's website and welcomes, and will respond to any comments on the content of the policy at any time. This policy and any updates or changes to it will be ratified in accordance with the Council's constitution.

Details of the Council's general service standards and what you can expect from officers can be found on the Council's website and you can contact the Council by the following means:

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<sup>15</sup> Housing and Planning Act 2016, Part 2, Chapter 4: Rent Repayment Orders.

<sup>16</sup> Housing Act 2004 s.71: Procedural requirements and appeals against licence decisions

**Address:** North Kesteven District Council Offices, Kesteven Street, Sleaford, Lincolnshire, NG34 7EF

**Email:** [safeashouses@n-kesteven.gov.uk](mailto:safeashouses@n-kesteven.gov.uk)

**Telephone:** 01529 414155

**Website:** [www.n-kesteven.gov.uk/safeashouses](http://www.n-kesteven.gov.uk/safeashouses)

## 7 Consultation

To ensure that the Council engages with stakeholders, interested groups, and individuals, the Council will consult with interested parties. Accordingly, this draft policy will have been part of a consultation process with all interested parties, where views and opinions on its content will have been sought for a 28 day period.

## 8 Communication

Once approved, this policy will be communicated via a number of methods, including but not limited to, emails to interested parties; publicising on the corporate website; and inclusion in the Lincolnshire Landlords Newsletter available to local private sector housing stakeholders.

## 9 Approval and Implementation

Implementation of this policy will commence once it has been formally approved by the Council.

## Appendix 1: Definition of an HMO

The definition of an HMO is complex. What constitutes an HMO for the purposes of general enforcement powers is not the same as for licensing.

The descriptions below summarise the main provisions of the Act<sup>17</sup>. 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 an HMO:

### 1. The standard test

A building or a part of a building meets the standard test if:

- a. it has one or more units of living accommodation not consisting of self-contained flats.
- b. the living accommodation is occupied by persons who do not form a single household<sup>18</sup>.
- c. the living accommodation is occupied by persons as their only or main residence<sup>19</sup>.
- 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.

### 2. The self-contained flat test

A part of a building meets the self-contained flat test<sup>20</sup> if it consists of a self-contained flat and which meets all of (b) to (f) above (reading references to the living accommodation concerned as references to the flat).

### 3. The converted building test

A building or a part of a building meets the converted building test<sup>21</sup> if: a. it is a converted building.

- b. it contains 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.

### 4. 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 or part to be an HMO to remove any doubt.

### 5. 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<sup>22</sup>.

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<sup>17</sup> Housing Act 2004 s.254: Meaning of 'house in multiple occupation'

<sup>18</sup> Housing Act 2004 s.258: HMOs: persons not forming a single household

<sup>19</sup> Housing Act 2004 s.259: HMOs: persons treated as occupying premises as only or main residence

<sup>20</sup> Housing Act 2004 s.254(3)

<sup>21</sup> Housing Act 2004 s.254(4)

<sup>22</sup> Housing Act 2004 s.254(1)(e) and s.257

## **A building or part of a building which is not an HMO**

For any purposes of the Act<sup>23</sup> (other than those of Part 1) a building or part of a building is not an HMO:

1. Where the person managing or having control of it is:
  - 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.

2. Any building whose occupation is 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

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<sup>24</sup>.

*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 2016* and its amendments and any successors.

4. Any building which is occupied for the purposes of a religious community<sup>25</sup>. This exemption does not apply to a converted block of flats to which section 257 applies.

5. Buildings occupied by the owner(s) and a member of his (their) household, and up to two others<sup>26</sup>. This exemption does not apply to a converted block of flats to which section 257 applies.

6. Any building which is occupied only by two persons who form two households<sup>27</sup>.

## **Appendix 2: Description of a house in multiple occupation that requires a licence**

On 1<sup>st</sup> October 2018 secondary legislation<sup>28</sup> came into force which reformed the mandatory HMO licensing scheme and extended the scope of s.55(2)(a) of the Housing Act 2004 so that mandatory HMO licensing applies to properties which are less than three storeys high. An HMO must have a licence if:

- a. It is occupied by **5** or more persons; and
- b. It is occupied by persons living in **2** or more households; and
- c. Meets –
  - i. The standard test under s.254(2) of the Act;
  - ii. The self-contained flat test under s.254(3) of the Act but is not a purpose-built flat situated in a block comprising of three or more self-contained flats; or
  - iii. The converted building test under s.254(4) of the Act.

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<sup>23</sup> Housing Act 2004, Schedule 14

<sup>24</sup> Housing Act 2004 Schedule 14, para.4: Buildings occupied by students

<sup>25</sup> Housing Act 2004 Schedule 14, para.5

<sup>26</sup> Housing Act 2004 Schedule 14, para.6 and *The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations*, regulation 6(2)

<sup>27</sup> Housing Act 2004 Schedule 14, para.7

<sup>28</sup> *The Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018* regulation 4(c)

### Appendix 3: Circumstances for granting a temporary exemption notice (TEN)

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, and notifies the Council of their 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.

### Appendix 4: Interim and final management orders

If a property should be licensed, but there is no reasonable prospect of granting a licence, the Council may apply a Management Order. The Council will make an order where the health and safety condition as described in the Act<sup>29</sup> is met.

Management orders may also be made on properties where anti-social behaviour is occurring. Management orders will result in the Council (or an appointed agent) operating as if it were the landlord, including collecting rents, forming tenancies, carrying out improvements and repairs and other related management matters depending on the order granted. All relevant costs are recoverable. The following orders are available:

- An interim management order
- A final management order
- A special interim management order
- An interim or final empty dwelling management order

All orders can be varied or revoked in accordance with the provisions of the Act where determined necessary by the Council.

### Appendix 5: Definition of ‘a person having control’ and ‘a person managing’ an HMO

The person having control of a premises<sup>30</sup> is the person who receives the rack rent<sup>30</sup> or who would receive it if the premises were let at the charged rack rent, whether on their own account or as an agent or trustee for another person.

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<sup>29</sup> Housing Act 2004, Part 4, Chapter 1: Interim management orders: making and operation of orders, S.104

<sup>30</sup> Housing Act 2004 s.263(1) and s.66(7)

<sup>30</sup> Housing Act 2004 s.263(2) “rack rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

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. The person managing an HMO<sup>31</sup> can be any of the following:

- The owner or lessee of the premises who receives rents or other payments directly from the tenants or licensees of parts of the premises;
- 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;
- 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;
- 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 licence would come into force.

### Appendix 6: Documents which are required to accompany a licence application

An application for an HMO licence shall be in writing on a form supplied by the Council, or submitted electronically, using an on-line form specified by the Council. The licence application will be accompanied by the following documents:

- A floorplan of the property detailing the position and layout, use and size of each room;
- A Gas Safe annual gas safety certificate for all appliances and installations where gas is supplied to the property. This gas certificate must state that all gas appliances and installations are safe to use;
- BS 5839 test reports relating to the fire detection system (if applicable);
- BS 5266 test reports relating to the emergency lighting (if applicable);
- A periodic electrical installation condition report (EICR) dated within 5 years;
- A portable appliance test (PAT) report dated within 1 year relating to all electrical appliances supplied by the licence holder;
- A basic disclosure certificate from the Disclosure Barring Service (or equivalent) relating to the proposed licence holder and the proposed manager of the HMO.

### Appendix 7: Determination of fees

A licence fee is charged for all HMO licences issued. The licence fee has been structured having regard to the amount of time required to process a typical application and to government guidance. The fee charged in respect of any one licence application will be that which is current at the time a complete application is received. The fee will be reviewed annually in accordance with the Council’s ‘Fees and Charges Policy’.

The Council may in certain circumstances decide to reduce or waive the fee where the person having control or managing the HMO is a registered charitable organisation. An application for a reduced fee must be made in writing and will be considered on an individual basis.

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<sup>31</sup> Housing Act 2004 s.263(3)

Where a licence application is made in respect of a premises or person accredited under the DASH Services Accreditation Scheme<sup>32</sup> the Council may reduce the fee by 20%.

The fee charged for the renewal of an HMO licence will be the same as that of a new licence application, unless an application is received prior to renewal and the details remain the same. In this circumstance a reduction of 20% is also offered.

## Appendix 8: Matters relating to the determination of 'the most appropriate person' to hold the licence

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<sup>33</sup>.

Factors that will be taken into account when determining the identity of the licence holder:

- 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 served<sup>34</sup>

An agent can only be considered as being the person having control of the HMO if they have demonstrable authority to ensure compliance with the licence conditions, including the retention of sufficient funds.

The Council is inclined 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.

## Appendix 9: Matters considered in respect of 'the proposed manager' of the HMO

The Council has to be satisfied that the proposed manager<sup>36</sup> of the house is either:

- the person having control of the house, or
- is an agent or employee of the person having 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

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<sup>32</sup> The Council is a DASH Landlord Accreditation partner. See <https://www.dashservices.org.uk/Accreditation>

<sup>33</sup> Housing Act 2004 s.66(4) and s.263

<sup>34</sup> This is to be consistent with section 48 Landlord and Tenant Act 1987 and to facilitate enforcement action if necessary

<sup>36</sup> Housing Act 2004 s.64(3)(c)

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 their name to be put forward.

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<sup>35</sup>.

### Appendix 10: Matters considered in determining the 'fit and proper' status of the proposed licence holder and proposed manager of the HMO

Under the provisions of The Management of Houses in Multiple Occupation (England) Regulations 2006, any person managing an HMO of any size has a duty of care in respect of providing information to occupiers; taking safety measures; maintaining water supply and drainage; maintaining gas and electricity supplies; maintaining common parts and living accommodation and providing waste disposal facilities. In addition to these requirements, any person applying for an HMO licence must be able to prove to the Council that they are a fit and proper person.

When deciding upon an application for an HMO licence the Council must consider whether the proposed licence holder and the proposed manager are 'fit and proper persons'<sup>36</sup>. The test is designed to ensure that those responsible for holding the licence and managing the property are of sufficient integrity and good character to be involved in the management of an HMO, and that they do not pose a risk to the welfare or safety of persons occupying the property.

A licence may be revoked where the Council no longer considers the licence holder to be a fit and proper person and/or that the management of the house is no longer being carried out by persons who are in each case fit and proper to be involved in its management.

Each licence application must be accompanied by a basic disclosure certificate from the Disclosure Barring Service (or equivalent) for each licence holder, and all persons involved in the management of the licensable property.

In consideration of this assessment, the Council will have regard to:-

- any previous convictions relating to offences involving violence, sexual offences, drugs or fraud / dishonesty;
- whether the proposed license 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 they have been in control of a property subject to an HMO control order, an interim management order (IMO), or a final management order (FMO) or works in default carried out by a Local Authority within the previous five years;
- whether they have been subject to any legal proceedings by a Local Authority for breaches of planning; compulsory purchase; environmental protection, or other relevant legislation.

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<sup>35</sup> Housing Act 2004 s.67(5)

<sup>36</sup> Housing Act 2004 s.66



An unspent conviction or other failure, will not necessarily constitute automatic grounds for refusal of a licence, and other relevant circumstances will be taken into consideration by the Council when determining the licence.

Where there is evidence of a breach of one or more of the above mentioned items, the applicant will be invited to submit an explanation of their actions in writing. The applicant will also be required to account for the failure, and to also satisfy the Council that this will not recur. The Council also reserves the right to require the applicant to complete a Standard Disclosure and Barring check by the Disclosure and Barring Service and provide details of the result as part of their HMO application. A person is not a fit and proper person if a banning order<sup>37</sup> is in force against the person.

### Appendix 11: Matters considered in determining whether or not the management arrangements are satisfactory

When determining an application for a licence, the Council must decide whether the proposed management arrangements are satisfactory. The following factors, whilst not exhaustive, will be considered in determination of this:

- a system for tenants to report defects and emergencies and arrangements to respond to those reports;
- a process for dealing with anti-social behaviour occurring within the HMO by tenants or their visitors;
- arrangements for periodic inspections to identify where repair or maintenance is needed and arrangements to carry out essential repairs and maintenance;
- if the manager of the HMO is not the owner, the owner must sign a declaration stating that adequate funding is available to the manager for repairs;
- any other relevant factor that the council considers appropriate.

### Appendix 12: The 'Prescribed Standards' applied in determining the suitability of occupation

The Council will be unable to issue an HMO licence if the 'prescribed standards' are not met. A licence could be issued for less than the number of households or persons requested on the application if that then provides for the 'prescribed standards to be met'<sup>38</sup>.

The prescribed standards are summarised below however the full Regulations<sup>39</sup> must be consulted.

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

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<sup>37</sup> Housing and Planning Act 2016 s.16

<sup>38</sup> Housing Act 2004 s.65

<sup>39</sup> The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006

- 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 13: Mandatory licence conditions

The Act provides that the Council may impose conditions relating to the management use and occupation of a licenced HMO<sup>40</sup> and it is mandatory for the Council to include certain conditions in the HMO licence<sup>41</sup>. A licence must include the following conditions:

### Minimum sleeping room sizes

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 minimum sleeping room sizes are:

- 6.51m<sup>2</sup> for one person over 10 years of age
- 10.22m<sup>2</sup> for two persons over 10 years of age
- 4.64m<sup>2</sup> for one child under the age of 10 years

Any area of a room in which the ceiling height is less than 1.5m cannot be counted towards the minimum room size.

Any room of less than 4.64m<sup>2</sup> may not be used as sleeping accommodation and the landlord must notify the Council of any room in the HMO with a floor area of less than 4.64m<sup>2</sup>.

The Council will specify 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 the HMO for sleeping accommodation.

### Waste disposal

The licence holder must comply with any scheme provided by the Council which relates to the storage and disposal of household waste at the HMO pending collection.

### Gas Safety Certificate

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

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

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. The declaration 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

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

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<sup>40</sup> Housing Act 2004 s.67(1)

<sup>41</sup> Housing Act 2004 s.67(3) and Housing Act 2004 schedule 4 as amended by The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences)(England) Regulations 2018

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

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.

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 Council and Lincolnshire Fire and Rescue and in particular to the LACORS: *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.

### **Carbon Monoxide Alarms**

A carbon monoxide alarm shall be installed in any room in the house which is used wholly or partly as living accommodation, and contains a solid fuel burning combustion appliance.

The licence holder must supply to the Authority, on demand, a declaration as to the make or brand of the carbon monoxide alarms, their condition and positioning.

### **Tenancy terms**

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

The Council will be satisfied that this condition has been met if it is provided 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 also be provided to future tenants.

## **Appendix 14: Discretionary licence conditions**

In addition to the requirements of the Management of Houses in Multiple Occupation (England) Regulations 2006, the following conditions will be specified for each licence:

1. 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. A copy of this information will be supplied to the Council with the application.
2. 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.
3. The licence holder shall maintain the exterior of the property in reasonable decorative order.
4. The licence holder shall notify the 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. Changes which may be relevant include:

- Change of the person or business having control of, or managing the HMO.
- Change of the address, telephone number or e-mail address of the person having control or managing the HMO.
- Change of any of the following where the person having control or managing the HMO is a company, registered charity or partnership:
  - Company name
  - Company number
  - Registered address
  - Directors
  - Company secretary
  - Charity correspondent
  - Trustees
  - Partners

5. 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.

### Appendix 15: Matters considered when determining the duration of the licence

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 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.



**North Kesteven**  
DISTRICT COUNCIL

District Council Offices, Kesteven Street, Sleaford, Lincolnshire NG34 7EF  
Telephone Number: (01529) 414155  
180912-JA2