
**Decision Session - Executive Member for Housing
and Safer Neighbourhoods**

19 July 2018

Report of the Assistant Director, Housing and
Community Safety

Extension of Mandatory Houses in Multiple Occupation (HMO) Licensing

Summary

1. This report outlines the new statutory duties regarding HMOs, proposing amendments to the existing HMO Implementation policy and changes to the fee structure to reflect the impact of those new duties on the service.

Recommendations

2. The Executive Member is asked to:
 - a) Note the new duties imposed on the council relating:
 - To the extension of the mandatory HMO licensing to smaller HMOs.
 - The introduction of two new conditions, the first one imposes minimum room sizes for sleeping accommodation and the second introducing a new condition regarding waste storage at a HMO property.
 - b) Approve Option 1 – The new duties imposed on us will result in an increased workload for our department. In response to this, we are proposing an altered implementation policy (annex 1) to include;
 - risk assessing application forms to determine the time of our visit within the 5 year period, prioritising non-compliant properties first
 - a refresh of our existing fees, taking into consideration the new duties placed on our teams

Reason: The Council has a statutory duty to implement the new legislation, by adopting the new HMO policy it will continue to raise standards in the poorest performing sector.

Background

Current position

3. City Of York Council operates the national mandatory licensing scheme for Houses in Multiple Occupation (HMO). All HMOs which are 3 storeys with 5 or more occupants who form more than 1 household are required to be licensed. We currently license 480 HMOs. Most are within the central wards of the city.
4. HMO licensing seeks to improve the condition and the management of the properties. Critically it doesn't seek to control the number and distribution of HMOs this is through Planning and specifically the Article 4 direction.

Proposed New Duties

5. The Government, following over two years of consultation, has now:
 - Extended mandatory licensing to all HMOs¹ (other than section 257 HMOs and flats in larger purpose built blocks) that are occupied by 5 or more persons in two or more separate households.
 - Introduce mandatory condition in all licensed HMOs concerning minimum sleeping room sizes and maximum number of occupants²;
 - Introduce a mandatory condition in all licensed HMOs concerning the provision of refuse storage facilities.³
6. The above duty and provisions become effective from the 1st October 2018 however there are transition arrangements to give landlords time to comply with the new requirement and to rectify overcrowding. Councils must allow up to 18 months before they consider prosecuting the landlord for breach of the new licence conditions relating to room sizes. HMOs that are already licensed will have to comply with the condition only when their current licence expires and at the first renewal after 1 October this year.

¹ 23rd February 2018 laid an order advising that the law will be implemented on the 1st October 2018
<http://www.legislation.gov.uk/uksi/2018/221/made>

² Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) England Regulations 2018 will be implemented on the 1st October 2018

³ Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) England Regulations 2018 will be implemented on the 1st October 2018

7. The second new mandatory condition created by the regulations relating to household waste disposal facilities. A new mandatory condition will need to be included in HMO licensing to require landlords to comply with their local authority's refuse storage and disposal schemes. The purpose of the condition is because occupants living in separate households in HMOs tend to generate more rubbish than is seen in a single household property. While tenants should be responsible for properly disposing of their rubbish, they need adequate and accessible receptacles to do so. This mandatory condition of licensing will mean that councils will have to proactively require landlords to provide waste disposal facilities where there is a scheme.
8. We have also taken the opportunity to refresh other conditions having regard to changes in other pieces of legislation and judgements from the First Tier Property Tribunal. The Implementation Policy outlines the amendments to those conditions and the reason for those changes.
9. The other significant change is that due to the increase in volume of work that we are proposing to risk assess application forms to determine when we shall visit within the 5 year period. We are proposing to use the amended application process to ensure that we are prioritising visits having regard to safety and the new condition relating to room sizes. Where the application is deemed to have met the requirements will issue the licence with conditions.
10. The fees structure has been developed having regard to the additional resources it will take to licence properties, in particular the impact of the new conditions and recent Local Government Association(LGA) guidance⁴. The condition relating to setting minimum room requirements will mean that additional officer time will be required, this is not an exhaustive list but it will include assessing the application forms, inspecting properties taking physical measurements of each room and ensuring compliance including further monitoring visits. The LGA guidance advises that we need to ensure we apply a two stage fee
 - a) Stage 1 to charge a fee upon application – to cover the authorisation procedures
 - b) Stage 2 a subsequent fee to successful applicants to cover the cost of administering and enforcement of conditions

⁴ <https://www.local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>

See Appendix A for the full fee structure.

11. Where we find non-compliance with the provisions the matter will be investigated having regard to the proposed HMO policy and the enforcement policy, including the civil penalty policy adopted last year, where a fine can be considered up to a maximum of £30k.

Consultation

- 12 There is no formal consultation process for extending the national mandatory HMO licensing scheme as we have a statutory duty to do so. However we have been working with a range of internal partners⁵ and external partners⁶ and the sector⁷ to ensure that they are aware of the changes that have been proposed and to help shape the implementation policy.

Options

- 13 **Option 1:** To extend mandatory HMO licensing, introduce the new conditions and adopt the new policy which provides a risk based approach to the subsequent inspection programme.
- 14 **Option 2:** To extend mandatory HMO licensing, introduce the new conditions but continue the process so that all properties are visited prior to issuing the licence.

Analysis of Options

- 15 There are limited options available as the council has a duty to licence HMOs who fall within the new definition and to introduce the new conditions.
- 16 However under the new policy we are proposing that we don't visit every property before we issue the licence. Instead we collect a range of information to ensure that:
 - the property meets the minimum safety standards including the new room size provision
 - the licence holder meets the fit and proper test
 - Satisfactory arrangements are in place to manage the property.

⁵ Internal partners include Planning, Council Tax, Neighbourhood Management Officers, Parking, Waste Strategy Building Control

⁶ External Partners include – North Yorkshire Fire and Rescue Service, Regional Private Sector Housing Groups

⁷ Others in the Sector include the York Residential Landlord Association, National Landlord Association and the Higher York Partnership

- 17 The intention is to issue HMO licences, where the application satisfies the above tests to enable the licence to be issued with any relevant conditions attached. A visit will then be programmed in to ensure that the conditions are met. During that visit a full assessment will be carried out having regard to the Housing Health and Safety Risk Assessment ⁸ as well as looking at matters relating to HMO licensing.
- 18 However at the application stage should we determine that standards are not being met we will visit before a licence issued. Again not an exhaustive list such visits will be triggered where:
 - a) the rooms sizes don't meet the legal minimum sizes or
 - b) that there are significant safety matters at the property (lack of fire detection at the property)
 - c) Where there is history of non- compliance by the licence holder or by the person managing the property
19. The second option of visiting each property before the licence is issued does not provide a risk based approach and will mean that the council will not be targeting those properties and licence holders who are not meeting the appropriate standards.
20. We are expecting to licence a minimum of 700 new properties under the new regime. To help applicants we are also introducing an online application tool.

Council Plan

- 21 Licensing of HMOs is aligned to the three key priorities for the council
 - **a prosperous city for all** - where local businesses can thrive and residents have good quality jobs, housing and opportunities. Good quality HMOs can provide a good source of housing for residents on low incomes
 - **a focus on frontline services** - to ensure all residents, particularly the least advantaged, can access reliable services and community facilities . Provision of poor quality housing including HMOs can have significant impact on the health and wellbeing of residents. Changes to the benefits system means

⁸ Housing Health and Safety Risk Assessment – a legal tool to determine with there are any health and safety issues at the domestic dwelling

https://www.york.gov.uk/info/20097/private_landlords_and_tenants/1067/housing_health_and_safety_rating_system_hhsrs

that this HMOs are the only option available to residents who are often the most economically vulnerable

- **a council that listens to residents** - to ensure it delivers the services they want and works in partnership with local communities. Licensing of HMOs means that we are tackling the sector which has been found to have the poorest standards. By raising standards in these properties it not only improves the properties for the tenants but also has a positive impact on the neighbouring properties.

Implications

22. The report is for information only and there are no other implications at this stage for the following:

- **Financial.** The amendments to the fee structure income outlined in the proposed policy will cover the cost of the HMO licensing. Any income generated from the licensing scheme must **only** be used to cover costs incurred by the council to carry out the licensing function.
- **Human Resources (HR).** We have considered the additional resources required to licence the increase in the number of HMOs. These would be fully funded from the fee income
- **Equalities.** Attached is the One Planet York Assessment (Appendix B)
- **Legal.** We have a statutory duty to implement the extension of any Mandatory HMO licensing scheme.
- **Crime and Disorder.** The government is clear that this is part of their strategy to tackle poor landlord practises which has led to overcrowding, poor management of tenant behaviour, failure to meet the required health and safety standards, housing of illegal immigrants and intimidation of tenants when legitimate complaints are made. Although only a minority of landlords the impacts of their practises are disproportionate putting safety and welfare of tenants and risk and adversely affecting local communities
- **Information Technology (IT)** – We are working with ICT to procure a simple online solution which will provide 24/7 access to prospective licence holders
- **Property** – Additional desk space will be required in West Offices to accommodate additional staffing

- **Other – None**

Risk Management

23. We have a statutory duty to implement the new laws. By revising our policy and providing adequate resources we will be able to ensure that we are managing the associated risks.

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report:**

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Report **Date** 20/06/2018
Approved

Wards Affected: *List wards or tick box to indicate all* **All**

For further information please contact the author of the report

Background Papers:

[Executive Report 15th March 2018 Review of the Evidence Base supporting the case for the extension of licensing of Houses in Multiple Occupation \(HMO\) across the city.](#)

Annexes

Annex 1 Implementation Policy
Annex 2 One Planet York Assessment