

LICENSING OF HOUSES IN MULTIPLE OCCUPATION) 2014

Homes and Communities



1.0 Introduction

- 1.1 This report reviews the application of the mandatory scheme for the licensing of houses in multiple occupation (HMOs) in Plymouth. It sets out a new policy to replace the previous Licensing of Houses in Multiple Occupation policy 20 July 2011. This new policy sets out the standards, procedures and fees for mandatory licensing.
- 1.2 HMO licensing was introduced in 2006. There are about 700 HMOs currently licenced. As each licence has a maximum duration of five years, most licences have now been renewed.
- 1.3 The 2011 HMO policy recommended a review on change of circumstances. Recent legal judgements have altered the detail of HMO licensing; the revisions to this policy clarify the effect of these changes. The main changes relate to the definitions of a “licensable HMO” and the extent to which the HMO licence fee may be used to recover costs associated with licensing. Details of these judgements, their impact, and the response to them are described in the policy.
- 1.4 These changes have provided an opportunity for minor amendments and clarifications.

2.0 Background

- 2.1 HMOs provide valuable accommodation for a range of people. These include students, young professional people and those on benefits. However, HMOs can present a number of problems to both the health and safety of the occupiers and the general neighbourhood. A balance needs to be struck to address these issues whilst encouraging the provision of sufficient accommodation. Owners need to be made aware of their obligations and encouraged in their compliance.
- 2.2 HMO licensing was introduced in April 2006 under the provisions of the Housing Act 2004. Its aim was to target those HMOs which were perceived to be of the highest risk and ensure that these attained the appropriate standards. The Act enables local housing authorities to declare areas of additional, or selective, licensing of other residential property. These powers have not been adopted in Plymouth, and this report only refers to HMOs within the mandatory licensing scheme.
- 2.3 Mandatory licensing only applies to a small part of the total HMO stock in Plymouth. Less than 15 percent of the HMOs in Plymouth require a licence.
- 2.4 The number of HMOs that still require licensing is unknown. The licensing scheme is complex; in some cases landlords may not realise that their property is in fact licensable. However, there may well be some landlords, and their managing agents, who are knowingly evading their responsibilities.

- 2.5 Accommodation can readily change between use as a single family dwelling and that of an HMO. Changes to Housing Benefit and the Local Housing Allowance will reduce many tenants' entitlements to that of the "Shared Room Rate"; this may result in the creation of more HMOs, some of which may be licensable.
- 2.6 Licensing cannot be used to support planning enforcement issues. Nor can it be used to control situations where a property is being occupied contrary to the conditions of mortgage, lease or restrictive covenant.
- 2.7 Conditions of licence may be imposed; these can require improvement to the standards of the HMO and its management.
- 2.8 Licensing decisions are subject to appeal through the Residential Property Tribunal. Offences against licensing requirements may be subject to prosecution. The licensing policy must be sufficiently robust to withstand legal challenge; it must have the authority of the Council.
- 2.9 The licensing policy will help ensure that decisions are considered, fair, reasonable, consistent and transparent.
- 2.10 Legislation enables the reasonable costs of licensing to be recovered through a licence fee. The income generated must be ring-fenced to HMO licensing activity.
- 3.0 Strategic considerations**
- 3.1 The current financial situation means that the Council must recover the costs of licensing where it is legal, and practical, to do so.
- 3.2 Many local housing authorities have raised their licensing fees since 2006. In some cases this is due to an initial under estimation of the complexity involved in administering the scheme. In other cases authorities may have decided that their previous policy of subsidising licensing is no longer sustainable.
- 3.3 It is recognised that the licence fee will be passed on to the tenants. Their position may be precarious, especially those housing benefit claimants who are most vulnerable. However, the typical weekly cost of licensing (for each tenant) is minimal (36p) over the typical five year licence.
- 3.4 The legal requirements for re-licensing are basically the same as those for initial licensing. However, our previous involvement should mean that there is less work required in re-licensing; the fee can be correspondingly less.
- 3.5 Pressures placed on landlords, be they financial or bureaucratic, may result in some landlords withdrawing from the market or changing their market niche. This could have different effects on the various segments of the housing market. Those landlords wishing to maintain good standards in the more problematical markets may be the most affected.
- 3.6 Licensing policies should reward good practice and deter poor management and inadequate standards.

- 3.7 It is recognised that areas with a higher incidence of HMOs have problems with noise, antisocial behaviour, acquisitive crime and refuse. What is less clear is the extent to which the presence of HMOs exacerbate the underlying problems which may already have been present in such areas. Regardless of the causes of these problems, licensing cannot be used to limit the presence of HMOs or significantly reduce the impact of many of the issues perceived to be associated with them.
- 3.8 This report reviews the licensing fee, processes, procedures, standards and conditions; it reconsiders the policies and their effectiveness in addressing the requirements of current licensing legislation.
- 3.9 This report complies with (and has regard to) the Private Sector Housing Enforcement Policy.
- 4.0 Consultation**
- 4.1 The contents of this report, and the revised policy, were subject to consultation with landlords and other stakeholders. The consultation processes, and results, are set out in Appendix 1 of this report.
- 5.0 Recommendations**
- 5.1 That the licensing policy, together with the, form of licence, fees and standards (as set out in Appendix 2 to this report) are adopted with effect from 1 June 2014.

5.2 Appendix I

Consultation

Copies of the report were sent to the members of the Private Rented Forum (PRF) on 4 March 2014; the closing date was 21 March 2014. The PRF comprises a group of landlords, letting agents and other agencies involved in the private rented sector in Plymouth.

Before this consultation, matters relating to the fees had been discussed at the PRF in their meeting in December 2013.

Consultation Comments

No comments were received following this consultation.

Appendix 2

Housing Act 2004 - Mandatory Scheme for the Licensing of Houses in Multiple Occupation

HMO Licensing Policy

1.0 Outline of Licensing Legislative Requirements and Powers

- 1.1 The Act required local housing authorities to licence houses in multiple occupation (HMOs) of a specific description, i.e. those:
- of an occupancy of 5 persons or more and
 - with accommodation on three or more storeys and
 - that are not buildings that have been fully converted into self contained flats.
- 1.2 The licensing requirements are that:
- those persons involved in the property are fit and proper (this includes matters relating to offences connected with drugs, violence, breaches of housing law etc),
 - there is sufficient funding and expertise to manage the property and
 - the property will be reasonably suitable for occupation. Minimum standards are set out in prescribed regulations.
- 1.3 The application form is not prescribed by legislation, although some of the contents are. The application must ask for specified information, and statute requires the insertion of specified text within it. On a practical level, the application form is a part of the process which provides the information to make licensing decisions. The legislation allows local housing authorities to prescribe both a form and a fee; this latter may be demanded at the time of application.
- 1.4 The HMO licensing fee is not capped. However, the Act and The Provision of Services Regulations 2009, restrict the activities for which a fee may be charged, when fees may be levied, and how income from licence fees may be used.
- 1.5 The licence holder must be the most appropriate person to fill this role. This will normally be a person who has control of the property. The conditions of the licence are only binding upon the licence holder (unless some other person has agreed to be bound by them).
- 1.6 The licence must include certain mandatory conditions relating to the safety of furniture, electrical appliances, gas installations and fire precautions, and the need to provide written terms of occupation.
- 1.7 The licence may include conditions to make the house suitable for occupation by the number of persons stated. There is an alternative of reducing the occupancy of the house to a level whereby the housing conditions are suitable for that number.
- 1.8 The licence may also include other conditions which relate to the occupancy, management, use, condition and contents etc.

- 1.9 The application of discretionary conditions (paragraphs 1.7 and 1.8 above) is limited by the need to consider each property specifically, and the prohibition on applying any condition which may alter a condition of tenancy.
- 1.10 The licence must specify the number of people who can occupy the HMO.
- 1.11 HMOs must be reasonably safe for occupation within the terms of the Housing Health and Safety Rating System (Part I of the Housing Act 2004). Local housing authorities must take steps to verify this; in practice this will require an inspection of the HMO.
- 1.12 The maximum period of the licence is 5 years, but the duration can be less.
- 1.13 The licence may need to be changed during its term. The licence holder may wish to alter the occupancy, or there may be matters identified at inspection which require the imposition of licensing conditions. A formal licence variation may be needed to address these issues. Any variation must be based upon standards no higher than those adopted at the time the original licence was approved (unless there has been a change to the legally prescribed minimum standards).
- 1.14 Where a landlord wishes to remove a property from the licensing requirements (for instance by carrying out works of self-containment) he may apply for a Temporary Exemption Notice (TEN). This exempts the property from licensing requirements for three months; a further TEN can be applied for in exceptional circumstances.
- 1.15 A licence application can be refused where the criteria for granting a licence are not met. A licence can also be revoked where it is subsequently found that the circumstances require this action.
- 1.16 There is a range of sanctions available to penalise licence holders, landlords and managers who fail to comply with licensing requirements. These include prosecution, Rent Repayment Orders, property management orders and restrictions on the use of Section 21 notices for lawful eviction.
- 1.17 There is a requirement to maintain a register of licensed HMOs. This is a public document.

2.0 Policy – Licensable HMO

- 2.1 The following policies will be used to determine whether an HMO requires a licence. The legal background for these interpretations is explained further in Annex D.
- 2.2 In respect of HMOs occupied by their owners, we will consider that the owner (and their household) only comprise one nominal person. In practice this will mean that such an HMO will not be licensable unless it is occupied by four (or more) other persons.
- 2.3 In counting the number of storeys in a flat in multiple occupation we will consider the number of storeys in the flat rather than the number in the building containing that flat.

- 2.4 The word “storey” will normally exclude those floors of a flat in multiple occupation which solely comprise a staircase. An example of this would be a three storey building comprising two flats where the upper flat contains two floors of living accommodation at first and second floor level and this accommodation is served by a dedicated staircase at ground floor level. However, paragraphs 2.5 and 2.6 will also be considered.
- 2.5 Buildings which are used for mixed residential and commercial purposes require specific consideration. In these cases the number of (above ground level) commercial storeys will be counted when the number of storeys in the HMO is being assessed.
- 2.6 In some cases attics and basements will be counted as storeys. This means that the following attic and basement storeys will be included:
- Those which have rooms or services available for the use of the occupiers (or which should be available for their use) or
 - Areas that have been constructed or adapted for residential use and have not been permanently secured. Permanent securing would involve, for example, the partitioning off of the area (although permitting an access panel for maintenance which must be screwed shut).
 - Basement storeys that provide sole access to the HMO
- 2.7 In Plymouth, a large number of HMO properties are built with the front part of the building being arranged slightly higher, or lower, than the rear. This height difference will not be considered in assessing the storey height. An HMO with two storeys at the front and two at the rear will be considered a two storey property regardless of any mismatch in heights to the front and the rear parts of the property.
- 2.8 A self-contained flat is a “separate set of premises” which contains its own toilet, personal washing and cooking facilities. “Separate set” means premises which have all rooms accessible through a single front flat entrance door, that is the occupier does not have to cross the common parts to gain access to any other part of his accommodation.

3.0 Policy – Fit and Proper Persons

- 3.1 The Council is required to assess whether persons associated with the management of the property are fit and proper for this function. The application form must include a list of questions relating to specified offences and acts. The list of offences and failures is not exhaustive; other matters may be considered if they are relevant to the management of the HMO.
- 3.2 It is not necessary to have proved to a court or tribunal that an offence or failure has been committed. Where there is evidence of an alleged relevant breach or failure this should be considered.

- 3.3 The circumstances of the offence or failure will be examined in the light of how this may affect the future conduct of the HMO. An offence or failure may not prevent the granting of the licence. Any decision to accept a person as being fit and proper will be based upon:
- The severity of the breach
 - The number of breaches
 - The time which has elapsed since the last breach, and subsequent conduct since
 - The relevance of the breach to the proper operation of the HMO
 - The evidence that the applicant has accepted the need to conduct his business in accordance with the appropriate standards (including whether there has been satisfactory arrangements for the repayment of any debts associated with the failure to meet statutory responsibilities)
 - The training received since the breach occurred
- 3.4 Fit and proper status will normally be determined by self certification, together with consideration of any other relevant information in the Council. Where there are other properties outside Plymouth, enquiries may be made of the relevant local housing authority. In some cases it may be appropriate to ask for a criminal records check.
- 3.5 In the context of fit and proper status, “person” includes a corporate body (for example, a limited company). See Annex D.
- 4.0 Policy – Management Arrangements**
- 4.1 Appropriate management arrangements, including financial arrangements, must be present.
- 4.2 Management of the HMO must comply with the standards of management set out in the Management of Houses in Multiple Occupation (England) Regulations 2006.
- 4.3 The manager is defined as a person who receives rent or other income from the occupiers. This will be the licence holder but can also include a managing agent. Where there is a separate manager they must be employed by, or appointed as an agent¹, by the person having control of the HMO.
- 4.4 In all cases a manager (whether this is the same person as the licence holder or otherwise) must be available to act proactively (inspect the property to identify problems) and reactively (to respond to problems as they arise). They would normally be expected to reside/work sufficiently close to the HMO to carry out these functions. There must be proper property management and decisions about this will be informed by the inspection of the property and its management history.
- 4.5 The manager must have appropriate arrangements to deal with an emergency at any time.
- 4.6 There must be access to a pool of competent tradesmen capable of dealing with all aspects of HMO maintenance in a timely fashion.
- 4.7 There must be sufficient finance available to deal with any emergency situation. Finance should also be available to support any works necessary to protect the health and safety of the occupiers, visitors and neighbours and/or otherwise meet any statutory requirements.

¹ This is a specific requirement of Section 64(3) the Housing Act 2004

4.8 Occupiers should be provided with the information necessary for them to:

- take appropriate steps in the event of a fire
- take appropriate steps in the event of the fire alarm activating
- use the heating and hot water system
- use all appliances provided
- notify the licence holder of any problems that may arise and
- properly store and arrange for the collection of refuse

4.9 There should be systems in place to identify and address anti-social behaviour, on the part of the occupiers or their visitors, arising from the property.

4.10 Annex A sets out the standards of management that apply.

5.0 Policy – Licence Holder

5.1 The licence holder must be the most appropriate person to fill this role. This will normally be the person having control of the HMO (usually the owner). In the case of corporate bodies, the licence holder will normally be that body rather than a named person. See Annex D.

5.2 The licence holder will have the powers and financial resources to:

- manage tenancies
- authorise repairs and improvements as necessary to comply with statutory obligations and Part I of the Housing Act 2004² and
- comply with the conditions of any licence which is proposed to be granted either directly or through an agent (for which the licence holder is responsible)

5.3 The fact that a person lives abroad may not bar them from being a licence holder. Consideration will be given to management arrangements of the property, and the level of confidence that such standards will be maintained with, or without, the imposition of licence conditions on the proposed licence holder or some other person.

6.0 Policy – Property Standards

6.1 The HMO must be suitable for the accommodation of the number of persons who will occupy it. Where an HMO is unsuitable, it is usually possible to improve it by the imposition of licensing conditions specifying appropriate works. Where it is not possible to improve the HMO, the occupancy should be restricted to a level that would be satisfactory with the existing amenities and room sizes etc.

6.2 Minimum property standards are set in the regulations. However, the local housing authority may adopt standards higher than the prescribed standards. Annex A sets out the standards which apply. These standards incorporate minimum room sizes and expand on the requirements of the prescribed regulations.

7.0 Policy – Licence Conditions

7.1 All HMO licences must include specific conditions (see paragraph 1.6). In addition, the licence may also include other conditions which relate to the occupancy, management, use, condition and contents etc. See Annex B for the form of licence and typical conditions.

² The Housing Health and Safety Rating System (HHSRS)

- 7.2 There is an overlap between the standards which can be demanded through the imposition of licence conditions and those addressing the broader health and safety issues (which are imposed under HHSRS). Decisions will be made on a case by case basis, but in general, matters relating to HHSRS will be dealt with under Part I of the Act rather than as licence conditions, and simple point defects will tend to be dealt with through licensing conditions.
- 7.3 Licence conditions are imposed upon the licence holder. However, it may be appropriate to impose some conditions upon another person with their consent (paragraphs 5.2/5.3).
- 7.4 Discretionary licence conditions may not be applied automatically; each condition must be considered in accordance with the specific circumstances of the property to be licensed. However, the licence conditions described in paragraph 7.5 will apply to most licensable HMOs. Paragraph 7.5 also explains their purpose and relevance. Their appropriateness will be considered as part of the approval process.
- 7.5 The following discretionary conditions relate to matters which will apply to most HMOs:
- Requirements to notify the Council of any change of manager, and, in respect of the new manager, to provide details to verify their fit and proper status and competence to manage. This is to aid communication with the manager and ensure that the management arrangements continue to fulfil the requirements for licensing. Previous experience indicates that the manager will often change within the licence period.
 - Requirements for the licence holder to notify the Council of a change of their address, telephone number and email address. This is to ensure that the Council can properly communicate with the licence holder and apply the conditions of licence. Previous experience indicates that many owners change their address or other contact details within the licence period.
 - Requirements to take reasonable steps to minimise anti-social behaviour. Over the period the licence occupancy will change; there is the risk that one or more future occupiers may give rise to a problem with antisocial behaviour.

8.0 Policy – Duration of licence

- 8.1 The duration of all licence will normally be 5 years (subject to paragraphs 8.2 to 8.5 below).
- 8.2 In some cases there may be less certainty about the adequacy of the management arrangements, fit and proper status of the licence holder or other licensing requirements. In these situations the licence may be approved for a lesser period. The appropriate licence fee remains payable as a part of the licence. Subject to satisfactory performance, a further licence will be issued; the combined duration of the first and second licences will not exceed five years, and no further fee will be required for the second licence.
- 8.3 For re-licensing, the licence period for the new licence will end five years from the date of expiry of the previous licence. This will ensure that there is no incentive to delay in applying for renewal. The licence holder will have been previously notified of the requirements to re-licence; accordingly a “period of grace” is inappropriate.

- 8.4 Re-licensing refers to applications where all the following apply:
- The property has been previously licenced as an HMO and
 - The licence is due to expire, or has recently expired and
 - The proposed licence holder is the same person, or body, named as licence holder on the licence to be replaced.
- 8.5 In respect of initial licensing, the period of the licence will be reduced in those cases where the HMO has been operating without a licence application having been made. In these cases the licence will expire 5 years from the date that the HMO first required a licence.
- 8.6 In exceptional circumstances the Private Sector Housing Manager or Senior Private Sector Housing Officer (Policy and Procedures) may approve a licence of 5 years where the circumstances would normally fall within paragraphs 8.2 to 8.5 above.
- 9.0 Policy –Fees**
- 9.1 The licence fees and discounts are set out in Annex C1 to C3. The fees remain the same as those applied in the 2011 policy.
- 9.2 We have reviewed the 2011 policy licence fees following a recent court judgements (see Annex D). Revised average costs have been obtained for licensing activities associated with both initial and renewal licences. These costs have been compared with the licence fee income for approvals made after the policy came into effect.
- 9.3 The results indicated that the average licence fee was £503, and the average licence cost (as determined by the revised toolkit) was £508. There was a small shortfall in licensing income over the 632 licences approved. On the basis of the above calculations, there has been no overpayment of licence moneys.
- 9.4 The shortfall is less than 1% of the predictive costs (although it is possible that this will increase slightly as more applicants take advantage of the discounts offered). The nature of the calculations, and the limited shortfall, indicate that it would be disproportionate to increase the fees.
- 9.5 A standard fee is charged to those who delay in complying with their licensing obligations, and a discounted fee applies to those who apply promptly. Prompt applicants are likely to manage their HMOs to a higher standard, resulting in a lesser demand on the Council's licensing resources. The reverse is likely to apply to when the application is delayed.
- 9.6 The fee charged for re-licensing is lower, representing the anticipated lower resource implications required for a second application. (See paragraph 8.4 which defines re-licensing applications).

- 9.7 A discount will usually be offered where the licence holder demonstrates higher levels of management expertise through:
- Having past the Landlord Proficiency Test (an on-line test operated by the West of England Private Housing Partnership) or
 - Being accredited through National Landlords Association or
 - Being accredited within the National Landlord Accreditation Scheme or
 - Being accredited with Landlord Accreditation South West
 - Being accredited with the London Landlord Accreditation Scheme
 - Having their name appearing on the register of any other scheme which incorporates a test of proficiency, a code of conduct and a disciplinary code of practice (as may be approved by the Private Sector Housing Manager for this purpose).

It is expected that this expertise will be manifested in the better management of the HMO, resulting in lesser demands being placed upon the Council's licensing resources. Accordingly this discount will only apply where a prompt application is submitted.

- 9.8 The licence fee will be demanded at the time of the licence application and the application will not be considered complete until the appropriate licence fee is paid. The licence fee will be assessed as of the time that the application becomes complete. This means that a delay in providing a certificate or other information may result in the full fee being charged, even though the applicant may have previously made a fee payment.
- 9.9 A charge will be made where a copy of the register of licensed HMOs is requested (See Annex C3). Other than this (and the licence fee) no other charge will be made in respect of licensing functions.
- 9.10 It is not considered appropriate to refund any part of the fee when a licence is revoked (for example, following sale of the property). The return of the fee would increase the overall cost of licensing. In addition, the majority of the licensing costs are incurred prior to the granting of the licence, thus making any return of minimal value.
- 9.11 It is not appropriate to refund any part of the fee where a licence is to be refused. The costs associated with refusing a licence are likely to be significantly greater than the fee paid.
- 9.12 The Private Sector Housing Manager or Senior Private Sector Housing Officer (Policies and Procedures) may reduce or waive the fee payable in exceptional circumstances.

10.0 Policy – Applications

- 10.1 Application for an HMO licence must be made on the Plymouth City Council application form (appropriate at the date of application) or the online form available at <http://www.businesslink.gov.uk>. This latter form has been devised by the Government in compliance with EU services directive which requires online access to licensing.

10.2 The application will not be considered complete unless:

- The correct application form has been properly and fully completed
- All appropriate certificates and attachments have been submitted (as specified within the form and guidance)
- The correct fee has been paid (as calculated at the date the completed application is received)

11.0 Policy – Licence variations and changes to licence holder

11.1 The need to vary the licence may arise following an inspection of the property or a request from the licence holder.

11.2 Variations will be considered in accordance with standards no higher than those used to assess the HMO at the time that the licence was issued. This is subject to any changes in the standards set by regulation.

11.3 As the licence is unique to both the property address and the licence holder, it is not possible to vary a licence to permit the change of licence holder (typically on sale of the HMO). In such cases a new licence must be applied for and the current licence revoked. Such a revocation would generally be considered to be voluntary and not an enforcement issue within paragraph 13.4.

12.0 Policy –Temporary Exemption Notices and death of licence holder

12.1 Landlords can apply for Temporary Exemption Notices (TENs) when they propose to take steps to remove an HMO from the remit of licensing. The TEN allows the HMO to operate legally for three months whilst the appropriate changes are taking place.

12.2 In deciding whether to issue a Temporary Exemption Notice, we will have regard to whether:

- the proposals will remove the HMO from the remit of licensing,
- the proposals are practical and likely to be completed within the three month period of the TEN and
- any evidence which suggests that an Interim Management Order may be appropriate

12.3 A second TEN will only be issued in exceptional circumstances.

12.4 In the event of the death of the licence holder the Council is required to treat the HMO as if a TEN had been granted at the time of that death. This gives the personal representative (of the deceased) three months in which to take control of the HMO. The representative may ask for this period to be extended by a further three months, and any such application will be considered on its merits.

13.0 Policy –Enforcement Issues

13.1 The failures to apply for a licence or comply with the conditions of licence are offences. The Private Sector Housing Enforcement Policy will be used to determine how breaches of licensing requirements are to be addressed.

- 13.2 Other enforcement options are available where there has been a failure to apply for a licence. The Council can apply for a Rent Repayment Order (RRO) to recover housing benefit payments. Generally RROs will be applied for as it is not appropriate for anyone to benefit from a criminal offence.
- 13.3 In some situations, tenants may also apply for an RRO in respect of non housing benefit payments. We will advise tenants of this right in appropriate cases.
- 13.4 A licence application may be refused, or a previously issued licence revoked. Generally this will be a last resort following the failure to secure the required changes/improvements by agreement. Such enforcement decisions are made in consultation with the Assistant Director (Homes and Communities). (See also paragraph 11.3).
- 13.5 Statutory provisions apply where the Council is unable to grant an HMO licence, either because no application has been made, or the circumstances of application require its refusal. Legislation requires that the Council take over the management of the HMO through an Interim Management Order. This is an action of last resort; all reasonable steps will be taken to enable a licence to be granted prior to any decision to make an IMO.
- 13.6 There are restrictions on the use of Section 21 notice of eviction where licensing requirements have not been met. Section 21 notices may only be used for licensable HMOs where:
- A full licence application has been made but not decided or
 - An application for a TEN has been made but not decided or
 - An HMO licence has been approved and is current or
 - A TEN has been approved and is current.

The Private Rented Team and Housing Options Team will work together to ensure that occupiers are properly advised and information on unlicensed HMOs is acted upon.

14.0 Policy – Process

- 14.1 The report Delegated Authorities for Officers with Statutory Duties specifies the officers authorised to take decisions in connection with this policy.
- 14.2 Although the need for HMOs to be licensed is widely known, information will continue to be made available on the Council's webpages, through landlord's associations and other sources.
- 14.3 Licence holders will be individually informed that their licences is about to expire; the letter will also advise of the steps which need to be taken to renew the licence.
- 14.4 The licence fees reward good practice, in particular landlord accreditation. Details of these schemes will be published on the Council's webpages.
- 14.5 The public register of licensed HMOs will be available to view at the Councils' main office by appointment. A full copy will be available on payment of the fee (See Annex C3). Enquiries about a single property entry will not be charged for.

- 14.6 The register will not be made available on the Council's webpages. This is because of the difficulty of continually updating the webpage as the register content changes. This document can only be relied upon if it is fully up to date; we cannot ensure this by web publication. Few requests are received for a copy of this document; these are best dealt with as they arise in order to give information accurate at the time of the request.

Annexes

- Annex A Property and Management Standards
- Annex B Form of Licence
- Annex C1 Licensing Fees; Initial Licence Application
- Annex C2 Licensing Fees; Application to Re-licence
- Annex C3 Fees for Accessing HMO Register
- Annex D Background to Specific Policy Decisions

PART ONE - AMENITY STANDARDS

Indicative standards for room sizes, provision of bathrooms, WCs and kitchens and other requirements for HMOs.

PART TWO - HOUSING HEALTH AND SAFETY RATING SYSTEM (HHSRS)

Guidance on the HHSRS introduced by the Housing Act 2004 which may in some circumstances override the indicative standards given. This system applies to all dwellings not just licenced properties or HMOs and is a method of assessing the risk to health and safety to occupiers and visitors.

PART THREE - MANAGEMENT OF THE PROPERTY.

Summary of the requirements of the Management Regulations and expectations of the Manager of a licensed HMO, including dealing with Anti-Social Behaviour. These requirements apply to ALL HMOs regardless of whether or not they are licensable.

PART FOUR – FIRE SAFETY ORDER

Which properties this applies to and the duties it imposes. The order applies to certain HMOs regardless of whether or not they are licensable.

Please note that your property does not necessarily have to meet all these standards to allow a licence to be issued. The property will be inspected prior to issue of the licence and you will be advised of any necessary works and the timescales in which they must be completed.

Please contact us if you have any queries about property standards or managing an HMO. In addition, more detailed information on your responsibilities as a landlord can be found in our Landlord Manual. Contact us for a copy or download it from the web link below:

http://www.plymouth.gov.uk/landlords_manual.pdf

Contact Details:

Telephone: 01752 307075

Email: private.rent@plymouth.gov.uk

Website: <http://www.plymouth.gov.uk>

PART ONE - AMENITY STANDARDS

Indicative standards for room sizes, provision of bathrooms, WCs and kitchens and other requirements for HMOs.

Room Sizes

Bedrooms

Bedrooms			
Number of people	Shared Lounge	Shared Kitchen	Room Size (m ²)
1	Yes	Yes	6.5
1	No	Yes	10
1	No	No	13
2	Yes	Yes	10
2	No	Yes	14
2	No	No	20.5

A single room should not be occupied by more than one household.

It is not normally acceptable for a bedroom to be occupied by more than two people in one household. Please consult the Private Rented Team for advice in this situation. An assessment using the Housing Health and Safety Rating System (HHSRS) will be carried out to determine the risk from 'Crowding and Space'. Where this is unacceptable improvement will be required.

Shared Lounges

Shared lounges must be of sufficient size and have sufficient soft furnishings, to allow at least two thirds of occupiers to sit together and socialise. Occupiers should be able to use this room to relax without interference from other activities. This may arise if the lounge or 'communal area' is adjacent to the kitchen. Dining, sitting areas adjacent to kitchens are acceptable as provision of 'shared lounge' providing both areas are large enough to comfortably allow the use of both areas at the same time.

Dining Rooms/Dining Areas

See "Facilities for Storage, Preparation and Cooking of Food and for the Disposal of Waste Water". Dining areas may be required where shared kitchen facilities are poorly sited in relation to some of the letting rooms they serve. Dining rooms will also be required in premises where meals are provided as a part of the business.

The dining area is to be on the same floor, and adjacent to, the shared kitchen facilities.

Dining areas should be of sufficient size to accommodate a dining table and seating to serve all the occupiers using the shared kitchen facilities. Where the dining area is a part of a room, the room should be arranged so that all its functions can be carried out with reasonable safety and comfort.

Measurement of Rooms

Room sizes are calculated by taking wall to wall measurements directly above the height of the skirting board. In general, where the layout of the room prevents some parts of it being properly used, these areas will be excluded from the assessment of size. This includes areas which can only be used for access (e.g. some "L" shaped rooms with a narrow area in front of a doorway) are excluded. Also excluded are all parts of rooms located below sloping ceilings etc where the maximum ceiling height is less than 1.5m. (NB this is not a minimum ceiling height and the ceiling throughout the dwelling should be reasonable for normal usage). The minimum standards apply to each room and the equivalent amount of space cannot be made up by using two smaller rooms.

Provision of Bathrooms, Toilets and Wash Hand Basins

Preferably each separate occupancy should be provided with its own bath (or shower), WC and wash hand basin. Where this is not practicable, for all sharing occupants there must be readily accessible bathrooms or shower rooms and WCs in the following ratios.

Number of people^{1,4}	Minimum Bathroom and toilet requirements³
1-4	1 bathroom, 1 WC can be combined ^{2,5}
5	1 bathroom and 1 separate WC ^{2,5}
6-8	2 bathrooms and 2 WC's (separate WC not required) ^{2,5}
9-10	2 bathrooms and 2 WC's (1 WC must be separate) ^{2,5}
11-12	3 bathrooms and 3 WC's (separate WC not required) ^{2,5}
13-15	3 bathrooms and 3 WC's (1WC must be separate) ^{2,5}

¹This refers to the number of people using shared facilities.

²All compartments/rooms containing a WC must contain a wash hand basin.

³External water closets cannot be included for this purpose. Baths or showers cannot be provided in kitchens

⁴Numbers over 16 will be considered in accordance with the above principles.

⁵ Specific provisions apply in premises where meals are provided as a part of the business. In these cases a bath must be provided available for the use of all occupiers. This bathroom must be of a sufficient size for parents to assist in the bathing of their children.

Every sharing occupant must have access to such a shared bathroom and toilet within one floor's distance of his or her letting.

In some circumstances wash hand basins may be required within sleeping rooms. This may be to compensate for a lack of a wash hand basin in a WC compartment or bathroom (due to restricted space) or because there is an excessive distance of travel to the nearest wash hand basin for example.

Specific requirements for all baths, showers, toilets and wash hand basins:

- All baths, showers and WCs must be located in a proper room of adequate size and layout and the room and fittings must be fit for their purpose.
- The room must also be fitted with a privacy lock. Where glazing is provided, suitable steps must be taken to protect the privacy of the occupiers.
- In bath/shower rooms there must be sufficient room for washing/bathing, drying, dressing and the placing of dry clothing.
- The hot water supply must be of sufficient capacity, temperature and flow for any wash hand basin, bath or shower and be available at all times. In the case of showers the water temperature must be thermostatically controlled. In the case of wash hand basins the cold

water supply must be potable (drinking water quality). All fittings must be permanently plumbed into the hot/cold water system and properly connected to mains drainage.

- An effective means of natural/artificial ventilation must be provided. Any water closet sited so as to open directly and immediately on to a space intended for the storage or preparation of food shall be provided with mechanical ventilation.
- Flooring must be water resistant, readily cleansable and suitably sealed to adjoining surfaces. When choosing floor coverings consideration must also be given to the possibility of slips and falls. On inspection an assessment using HHSRS will be carried out to determine the risk of slips and falls, where this is unacceptable improvement will be required.
- Electricity, hot and cold water supplies: please see section “Electricity, Gas and Water Supplies” which applies to metering of energy supplies.
- Heating: see later section on “Space Heating” and “Excess Cold” in Part Two. Note that all bath/shower rooms shall be provided with adequate heating.
- Baths: a 300 mm splashback shall be provided to each wall adjacent to the bath.
- Showers: a suitable waterproof covering is to be fitted to the walls to ceiling height or at least 2.1 metres above the base of the shower, whichever is the lesser. A suitable shower curtain or screen must be provided.
- Wash hand basins: a 300 mm splashback must be provided immediately above each wash hand basin.

See also ‘Personal Hygiene, Sanitation and Drainage’ in Part Two.

Facilities for the Storage, Preparation and Cooking of Food and for the Disposal of Waste Water

Generally

Satisfactory and safe kitchen facilities must be provided for the preparation of food and hot drinks. These facilities must be available for all occupiers at all times (even when the business provides meals).

Preferably each household shall have for its own exclusive use a proper kitchen. Where this is not possible a shared kitchen may be provided.

Kitchens must be provided as close to living accommodation as possible, to a maximum of one floor distance, unless there is a dining area within the kitchen or on the same floor as the kitchen, and there is sufficient dry and refrigerated storage space within the kitchen.

The layout of the kitchen facilities provided must permit the safe preparation of food and hot drinks. The size, layout and location of these facilities must be satisfactory and safe for the numbers of occupiers using them. Although no minimum size has been set you should aim to provide around 3m² for each person using any shared kitchen. The amount of space needed will depend on the layout of the facilities, shape of the room etc and whether or not there are associated dining facilities.

On inspection kitchens will be assessed using HHSRS to determine if there are risks of burns and scalds, collision, falls, fire or poor ergonomics with regard to size, layout and potential number of users. Where risks are considered to be unacceptably high improvements will be required.

Electricity, hot and cold water supplies: please see section “Electricity, Gas and Water Supplies” which applies to metering of energy supplies.

Flooring

Flooring must be water resistant, readily cleansable and suitably sealed to adjoining surfaces. When choosing floor coverings consideration must also be given to the possibility of slips and falls.

Ventilation

Adequate ventilation must be provided including artificial ventilation where necessary.

Lighting

There must be adequate artificial lighting to safely use, and cleanse, the kitchen and its fittings. Light switches need to be suitably located.

Kitchen Facilities

A table showing the minimum requirements is set out overleaf.

Fittings	Single household use kitchen	Shared kitchen (for every 5 persons using unless otherwise stated) ¹
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Electrical sockets	2 number 13 amp sockets ²	2 number 13 amp sockets ²
Refrigeration	A refrigerator with freezer compartment ⁹	A refrigerator with freezer compartment
Dry food store	0.1m ³ storage (i.e. a 500 wall unit) for each person using the kitchen ³	0.1m ³ storage (i.e. a 500 wall unit) for each person using the kitchen ^{3,4}
Storage for cooking utensils, etc.	0.15m ³ cupboard (i.e. a 500 base unit) storage for cooking utensils, crockery and cutlery	0.15m ³ cupboard (i.e. a 500 base unit) storage for cooking utensils, crockery and cutlery
Fixed cleansable worktop(s)	A minimum total of two metres run with a minimum depth of 500mm ^{5,6}	A minimum total of two metres run with a minimum depth of 500mm ^{5,6}
Cooking appliance	For a single person, an appliance with two rings/hotplates together with either an oven or a grill ⁹ Otherwise an appliance with three or four rings/hotplates together with a grill and oven ⁹	An appliance with three or four rings/hotplates together with a grill and oven ⁷
Sink and disposal of waste water	A sink (with drainer) with its own permanently connected supplies of hot and cold (drinking) water and suitably connected to mains drainage and with a splashback of at least 300 mm ⁸	A sink (with drainer) with its own permanently connected supplies of hot and cold (drinking) water and suitably connected to mains drainage and with a splashback of at least 300 mm ^{7,8}
Waste bin		A lidded refuse storage container sufficient for the numbers of people using the facilities.

¹In some cases this may be reduced to one set to ten persons where meals are provided by the business.

²For use with work top appliances. Excludes any electrical sockets used for microwave cookers, refrigerators and other large kitchen appliances.

³The space below a sink unit is not suitable for food storage

⁴Kitchen cupboards should be lockable or may be provided in the individual accommodation, where on the same floor as the kitchen. Locks on cupboard doors may be required if problems arise (i.e. theft of food).

⁵An area of work surface (minimum 500 wide by 500 deep)) must also be provided adjoining each cooking appliance.

⁶Any area of a worktop on which items such as microwaves are permanently sited is to be excluded from the measurement of “free” worktop area.

⁷Provision of microwave ovens and dish washing machines in addition to the standard set of facilities may allow variation to the specified standard if a second set of facilities is required within a kitchen.

⁸Hot water is to be provided from an instantaneous gas water heater, hot water cylinder (hot water from a gas boiler or immersion heater), or 5 litre point of use electric storage water heater. Hot water must be available at all times.

⁹In some cases the landlord may not be contractually bound to provide some kitchen facilities. In such cases there is no licensing requirement to provide cooking and refrigeration appliances.

However, provision of these facilities is included within the HHSRS assessment. In this type of property it would be considered normal for the landlord to provide the facilities. As a minimum, there should be an adequate and suitably located space for such a fitting together with an adequate, properly located, energy supply; in most cases these fittings will be required.

Space Heating

Adequate space heating must be provided to all units of accommodation, including common areas (i.e. shared kitchens, lounges, bathrooms, halls and stairs). See 'Excess Cold' in Part Two for details of the standard that will be required.

Fire Safety

Appropriate fire precautions must be provided in the property. See 'Fire' in Part Two for details of the standards that will be required.

Electricity, Gas and Water Supplies

The supplies of electricity, gas (where provided) and water to each letting (and the common parts) shall be sufficient to carry out normal domestic activities.

Sufficient electrical sockets must be provided to units of accommodation and kitchens to avoid the excessive use of extension leads and multi point adaptors. This includes provision in common areas to allow the use of vacuum cleaners etc.

All gas and electrical installations must be safe for use.

Where meals are provided by the business, all electricity and gas must be payable through an inclusive charge for the use of the accommodation.

Where landlord's sub meters are provided, the charge for the power used shall be within the limits set for the maximum retail price of electricity and gas.

It is recommended that, where they are provided, prepayment sub meters are operated by a key or card which is rechargeable by the tenant at his/her convenience. Tokens or cards provided by the landlord may lead to disconnection if the tenant cannot contact the landlord to obtain further credit.

Where lighting, heating, ventilation, kitchen, hot water, electrical sockets or alarm systems are provided for the shared use of all, or several, households, then:

- These services must be available at all times, and sufficient for the needs of the users in the function being carried out and
- The electricity and gas (where provided) must be provided from quarterly meters. Normally these will be landlords' meters. However, in the case of some smaller shared housing, metering may be the collective responsibility of all the occupiers.

Also see 'Carbon Monoxide etc', 'Uncombusted Fuel Gas', 'Water Supply', 'Electrical Hazards' in Part Two.

Refuse Storage and Disposal

Refuse storage facilities must be provided sufficient for the needs of the number of people occupying the house and of a type acceptable to the Local Authority (and in accordance with its recycling requirements).

All containers should be located on hard standing with suitable access for cleansing of the area and removal of containers.

Also see 'Domestic Hygiene, Pests and Refuse' in Part Two.

Part Two – Housing Health and Safety Rating System (HHSRS)

Guidance on the HHSRS introduced by the Housing Act 2004 which may in some circumstances override the indicative standards given. This system applies to all dwellings not just licenced properties or HMOs and is a method of assessing the risk to health and safety to occupiers and visitors.

There are no 'set' standards in this section. The following are all 'hazards' that need to be assessed in each property. Improvement will be required where the hazards are found to give rise to unacceptable risks. Some hazards occur frequently and others very rarely. Those that occur most regularly are indicated with an asterisk.

Damp and Mould*

The property needs to be reasonably free from damp and mould that would be prejudicial to health. This includes the presence of black spot mould resulting from condensation. Typically this requires that there is adequate heating, ventilation and insulation and that these provisions and the property as a whole are maintained in good order.

Excess Cold*

Each unit of accommodation, including associated bathrooms and other common areas must be provided with an adequate fixed heating system. This needs to be sufficient to maintain the temperature at 19°C when the external temperature is -1 °C.

The outputs of the system need to reflect the thermal characteristics of the accommodation which include the heat losses through walls (including walls to the stairwell) etc, draughts and the volume of the room.

On inspection an HHSRS assessment will be carried out to determine the risk from excess cold and where this is unacceptable, improvement will be required. The assessment will include consideration of heating provision, its control, and the thermal characteristics of the property.

A properly designed gas central heating system, throughout the property, which is controllable by the individual occupiers, combined with adequate insulation, would meet this requirement. Systems of equivalent efficiency (when combined with insulation measures and including consideration of costs to run) will be acceptable.

Also note metering requirements in Part One "Electricity, Gas and Water Supplies".

Excess Heat

Provision must be made to allow heat to disperse from the property and prevent excessive heat gain for example in loft conversions.

Asbestos

Any asbestos in the property must be adequately protected against damage and dispersal of fibres into the air. Particular care must be taken when contractors are on site and their work may disturb asbestos. Note also the requirements of the **Control of Asbestos Regulations 2006** which apply to the common areas of HMOs.

Biocides

This covers threats to health from those chemicals used to treat timber and mould growth in dwellings.

Carbon Monoxide and fuel combustion products

This category includes hazards resulting from the presence of excess levels in the atmosphere of carbon monoxide, nitrogen dioxide, sulphur dioxide and smoke. These are products associated with the combustion or incomplete combustion of gas, oil and solid fuel for heating and cooking. Problems can arise with poor installation and inadequate servicing/maintenance.

Lead

This covers threats to health from the ingestion of lead – mainly relates to small children unless there is still lead piping in the water supply.

Radiation

This covers the threats to health from radon gas and its daughters, primarily airborne, but also radon dissolved in water. Plymouth is a Radon Affected Area and there may be problems in some lower ground floor/ground floor rooms.

Uncombusted Fuel Gas

This category covers the threat of asphyxiation resulting from the escape of fuel gas into the atmosphere within a dwelling.

Volatile Organic Compounds

These are a diverse group of organic chemicals, which includes formaldehyde, that are gaseous at room temperature, and are found in a wide variety of materials in the home. This is more likely to be a problem when materials have been used without due regard to safety or where there is inadequate ventilation.

Crowding and Space

There must be adequate space for normal household activities to be undertaken safely. This relates to room sizes and numbers of people occupying the property.

Entry by Intruders*

The property must have a reasonable level of security. A higher level may be required in some areas than others depending on the crime statistics for that area. Areas with high numbers of HMOs typically have a higher incidence of crime.

Lighting

Adequate artificial lighting shall be provided in all areas sufficient for (a) the safe use of the accommodation (including external and common areas) (b) the maintenance of its cleanliness and (c) the carrying out of normal domestic activities. Adequate natural lighting and outlook should also be available. This can be a problem in lower ground floor rooms.

Also note metering requirements in Part One “Electricity, Gas and Water Supplies”.

Noise

This covers threats to physical and mental health resulting from exposure to noise inside the dwelling or within its curtilage.

Domestic Hygiene, Pests and Refuse*

This covers hazards which can result from:

- Poor design, layout and construction such that the dwelling cannot be readily kept clean and hygienic
- Access into, and harbourage within, the dwelling for pests; and
- Inadequate and unhygienic provision for storing and disposal of household waste.

Food Safety

This covers threats of infection resulting from inadequacies in provision and facilities for the storage, preparation and cooking of food.

Personal Hygiene, Sanitation and Drainage*

This covers threats of infection and threats to mental health associated with personal hygiene, including personal washing and clothes washing facilities, sanitation and drainage. This can arise where poorly designed, installed or maintained facilities dissuade occupiers from their use. Defects become more serious where facilities are shared, in particular where these concern hand washing in shared WCs.

Also note metering requirements in Part One “Electricity, Gas and Water Supplies”.

Water Supply

This category covers the quality and adequacy of the supply of water within the dwelling for drinking and for domestic purposes such as cooking, washing, cleaning and sanitation. It includes threats to health from contamination by bacteria, protozoa, parasites, viruses and chemical pollutants.

Falls*

This covers hazards which can result from falls:

- Associated with baths, showers or similar
- On level surfaces – where any change in level is less than 300 mm
- On stairs/steps/ramps etc – where any change in level is more than 300 mm
- Between levels – where the change is more than 300 mm – this refers to falls from windows, balconies, landings, roofs etc.

Typical problems include lack of handrails, uneven steps, steps different in height, unguarded landings/roofs, low window sills, windows without restrictors, slippery surfaces and lack of external lighting.

Also note metering requirements in Part One “Electricity, Gas and Water Supplies”.

Electrical Hazards*

This category covers hazards from shock and burns resulting from exposure to electricity, including from lightning strikes (protection would be required in buildings with significant risk of lightning strike only).

Fire*

Appropriate fire precautions must be provided in the property. The minimum requirements for the granting of an HMO licence are:

- A 10 year sealed battery operated smoke alarm fixed to the ceiling of each hall and landing.
- A fire blanket in a proper container in any shared kitchens. The container shall be securely fixed to the wall in a prominent and readily accessible position, sited so as to prevent a user from being trapped in the event of the fire becoming out of control.
- A fire door separating each shared kitchen from the common hallway/stairwell. The fire door is to be fitted in accordance with LACORS Fire Safety Guidance.

On inspection an HHSRS assessment will be carried out to determine the risk from fire and where this is unacceptable improvement will be required. It is unlikely that the minimum requirements quoted above will be sufficient. The assessment will take account of what fire precautions are provided, the layout and size of the property and whether there are any factors which increase the likelihood of fire.

The Council has adopted the standard of fire safety described in the document “Housing – Fire Safety” published by LACORS (July 2008). A copy of this can be downloaded from the from the private housing fire safety pages of the Council website www.plymouth.gov.uk.

Also note metering requirements in Part One “Electricity, Gas and Water Supplies”.

Flames and hot surfaces*

This category covers threats of:

- Burns – injuries caused by contact with a hot flame or fire, and contact with hot objects or hot non water based liquids and
- Scalds – injuries caused by contact with hot liquids and vapours.

It includes burns caused by clothing catching fire from a controlled fire or flame e.g. by reaching across a gas flame.

Typically these are problems associated with poorly designed kitchen layouts; see Part One “Facilities for the Storage, Preparation and Cooking of Food and for the Disposal of Waste Water”.

Collision and entrapment

This category includes risks of physical injury from:

- Trapping body parts in architectural features, such as trapping limbs or fingers in doors or windows; and
- Striking (colliding with) objects such as architectural glazing, windows, doors, low ceilings and walls.

Explosions

This category covers the threat from the blast of an explosion, from debris generated by the blast, and from the partial or total collapse of a building as the result of an explosion.

Position and operability of amenities etc

This category covers threats of physical strain associated with functional space and other features at dwellings. An example would be, having to stand on a chair to open a window or operate a switch.

Structural collapse and falling elements.

This category covers the threat of whole dwelling collapse, or of an element or a part of the fabric being displaced or falling because of inadequate fixing, disrepair or as a result of adverse weather conditions. Structural failure may occur internally or externally within the curtilage threatening occupants, or externally outside the curtilage putting at risk members of the public.

PART THREE - MANAGEMENT OF THE PROPERTY

Summary of the requirements of the Management Regulations and expectations of the Manager of a licensed HMO, including dealing with Anti-Social Behaviour.

A Manager of a house in multiple occupation (HMO) has a duty to properly manage that house. This section explains:

- Some of the requirements and
- Who is responsible for complying with them

If you are employing a property management company to manage your HMO you need to consider how well they will meet these obligations. It is recommended that you review a number of companies to see which one will meet your needs. In addition you should check to see whether they are 'accredited' by a professional organisation and what protection there is for your money should the company fail. More detail on the relationship between landlords and their agents and the different types of contracts available can be found in the Landlord Manual. The manual can be downloaded from the link below:

http://www.plymouth.gov.uk/landlords_manual.pdf

The Management of Houses in Multiple Occupation (England) Regulations 2006 apply to all licenced HMOs.

The purpose of the regulations is to ensure that "the manager" exercises proper standards of management. These duties include ensuring the house is in and maintained in a good state of repair, all facilities are kept in proper working order and all steps are taken to protect tenants from risk of injury

The main requirements are as follows:

- The manager is to provide his name, address and telephone number to all the occupiers, and display this in a prominent position
- All means of escape from fire to be kept free from obstruction
- Fire alarms and fire fighting equipment to be kept in good order
- Take all reasonable steps to ensure the safety of the occupiers. This includes protecting occupiers from falls (e.g. from low windows, off flat roofs and into light-wells as well as other hazards), but will also cover electrical, gas and other safety
- The water supply is maintained, tanks covered and fittings protected from frost. The water supply is not to be unreasonably interrupted
- The drainage system (including rainwater drainage) is maintained
- The manager must supply a copy of the latest gas certificate within seven days of the Council requiring it
- Ensure that the electrical wiring is tested at no less than five yearly intervals, and supply a copy of the test certificate within seven days of the Council requiring it
- Ensure that the supply of gas and electricity to each tenant is not unreasonably interrupted
- Maintain the common parts and fittings of the HMO in good order, clean decorative repair and free from obstruction. This includes handrails, stair-carpets, windows, light fittings and appliances
- Common parts lighting is to be adequate and lighting available at all times
- The common outbuildings, yards etc are kept in good order

- The boundary walls, fences etc are kept safe and in good order
- The doors to each letting are kept in good order
- Each unit of accommodation, and any furniture provided with it, should be clean at the beginning of the occupation
- Each unit of accommodation, its windows and ventilators are to be kept in good repair, and working order. The fittings and appliances are to be kept clean and in good working order. There are exceptions where problems arise from poor tenant behaviour
- Proper facilities and arrangements are provided for the storage and disposal of refuse. This may require greater provision than the Council may ordinarily make.

Full copies the regulations can be obtained from <http://www.legislation.gov.uk>

Who is the Manager?

The manager can be:

- The owner of the property
- A person receiving rent or other monies (for example meter money)

It is important that if you delegate some management duties to someone else, you are each clear about your respective responsibilities. If you are an agent collecting rent or other monies you may be held responsible for complying with the regulations. This applies even if the function falls outside your management role as defined in your contract with the owner.

What happens if things go wrong?

When there is a failure to comply with a requirement of these regulations, we would normally seek your agreement to deal with the problem. Where this is not possible:

- The Council may prosecute and
- (In the case of a licensed HMO) there may be grounds to revoke the licence.

Isn't the Tenant responsible?

Tenants may be responsible under the terms of the tenancy agreement, but under the regulations the manager is responsible for ensuring that things are put right when problems do occur. This is because the failure of one tenant can result in all the others being put at risk.

Under the regulations tenants do have some legal responsibilities; these are to:

- Take care not to hinder the manager in the performance of their duties under these regulations
- Allow access to the manager at reasonable times so that he can carry out his duties
- Provide information which the manager may require to comply with his duties
- Take care and avoid damaging the property
- Comply with the manager's arrangements for the storage and disposal of rubbish and
- Comply with the manager's reasonable instructions in respect of means of escape from fire, prevention of fire and the use of fire equipment.

Although the Council can prosecute the tenant for failing to comply with these requirements, it will usually be more appropriate, and effective, for the manager to use his powers under the tenancy agreement.

General advice on management practice

These are some of the factors that will help you to determine how frequently you need to visit the house and what to look for.

You will know the physical nature of your property. You will be aware that the fire alarm system needs to be checked at regular intervals, when light bulbs need to be replaced, that the parapet gutters are liable to obstruction, etc. etc. You will also be aware of the nature of your tenants, and whether any are likely to cause problems in the management of the property. Disposal of refuse can be a problem, so that visiting after the refuse collection can be helpful.

You will need to balance your duties as a manager with a tenant's right to "quiet enjoyment" of their home. Inspection of their accommodation must be with their knowledge and consent. Except in emergencies you must always give at least 24 hours' notice that you would like access to the accommodation. This notice, does not give you an automatic right of entry into the accommodation if it is not convenient for your tenant. (If reasonable access is refused you should obtain advice from your solicitor or a professional organisation before taking any action.)

Management records

You should keep records of your visits and any repairs or action taken, as this will help demonstrate an effective management system. You also need to keep certificates and other records to demonstrate that the necessary maintenance checks (e.g. gas safety checks and servicing of fire alarm systems) have been carried out. You may be asked to produce these documents on inspection and as required by the Council.

You should encourage your tenants to report problems and respond promptly when they do.

It is a requirement to display your (and your manager's), name, address and telephone contact number, so that in the event of an emergency, contact can be made and the appropriate action taken. Although not a requirement of the regulations, it is good practice to have a notice board displaying information on tenancy rules, how to reset the alarm system, copies of certificates and how to report any problems to the landlord. This board can also be used to display documents as required by any HMO licence.

Common parts lighting

The manager is responsible for ensuring that the light fittings are in working order. This includes light bulbs, so it is worth considering a lighting system where the fittings have a long life, and bulbs are protected from theft. The switches are to be properly sited, and all the lighting must be supplied from a single quarterly meter, which will usually be in the control of the manager.

Services

The water, gas or electricity supplies must not be cut off unannounced. For repair work, residents must be notified in advance and the supply restored as soon as possible. Where necessary, alternative facilities should be provided until the supply is restored.

Heating

Lack of an adequate fixed heating system is a major contributory factor to both fire and illness. It increases the use of portable gas heaters, electric fires and extension leads. These also contribute to dampness, electrocution and falls. The Council will require improvement to the heating and insulation of the property, usually to a minimum standard of full central heating and 250mm of loft insulation (or equivalent standard).

Gas safety

Each year about 30 people are known to die from carbon monoxide poisoning caused by poorly installed or badly maintained gas appliances and flues. It is believed that the number of deaths and non-fatal illness is considerably higher.

The Gas Safety (Installation and Use) Regulations 1998 place wide-ranging duties on landlords of all rented property to ensure that the gas appliances, flues and supply are:

- installed and maintained in a safe condition, works only being carried out by a competent contractor whose name appears on the "Gas Safety Register" (the "GSR" replaced CORGI),
- annual safety checks must be carried out; the contractor has to be a competent GSR fitter
- certificates are issued to tenants and
- records are kept for 2 years.

Electrical safety

A landlord of any rented property has a duty to ensure that the electrical installation is safe and in good order; a current electrical installation test certificate will demonstrate this. In HMOs the possession of such a certificate is a requirement (see above). To avoid trailing cables and overloading, it is recommended that at least two twin 13A power points are available in each room and are conveniently located. It is recommended that two additional twin 13A sockets are conveniently located above a kitchen worktop.

Landlords' electrical appliances should be safe, and a yearly test certificate will help demonstrate this. This is a requirement in licenced HMOs.

Maintenance of fire precautions

- Fire alarm systems, escape lighting and fire fighting equipment must be maintained in accordance with the relevant British standards. Guidance is available from the Private Rented Team; it is recommended that you enter into a maintenance contract with a specialist contractor
- Fire doors must be kept in good condition, including the integrity and effectiveness of the smoke seals, and should be checked on a regular basis
- The protected (or escape) route must be kept free of all obstruction and flammable items or sources of ignition. Tenants must be advised of this requirement and the area checked on a regular basis.

Expectations of you as a Manager or Licence Holder

- You will comply with the Management Regulations above and any licence conditions that are imposed.
- You will issue your tenants with comprehensive tenancy agreements that set out the rights and obligations of both parties and include requirements prohibiting anti-social behaviour. You will also make sure that they are aware of the contents of the agreement they are signing.
- You will have a clear process for tenants to report faults and procedures for responding to these reports and undertaking repairs. Responses should be appropriate to the urgency of the repair.
- You will have a programme of planned maintenance work in order to prevent break downs, failures and elements falling into disrepair.
- You will have a list of contractors who are available to deal with problems as they arise and to carry out planned maintenance work.
- You will provide information on when household waste and recyclable waste will be collected and how it should be put out for collection. You will also ensure there is sufficient storage for waste awaiting collection.
- You will provide information on the operation of facilities within the property e.g. heating system, alarm system and landlords appliances,
- You will comply with the Anti-Social Behaviour Code and work with statutory bodies to resolve issues in your properties and
- You will have adequate procedures for commencing and ending tenancies/licenses and addressing any tenancy/licensee problems as they may arise.

Failure to maintain a good standard of management would be an indication that you are not a 'Fit and Proper' person to hold a licence or be a manager of a licenced property.

Advice on complying with Condition 8 of your licence – dealing with anti-social behaviour.

Condition 8 states: The licence holder shall investigate complaints of anti-social behaviour arising from this HMO and being caused by occupiers or occupiers' visitors. Where appropriate, the licence holder will caution, seek legal advice or lawfully evict to address the problem. Anti-social behaviour is defined in Section 57(5) of the Housing Act 2004.

Anti-social behaviour is defined as:

Conduct on the part of occupiers of, or visitors to, residential premises—

- (a) which causes or is likely to cause a nuisance or annoyance to persons residing, visiting or otherwise engaged in lawful activities in the vicinity of such premises, or
- (b) which involves or is likely to involve the use of such premises for illegal purposes.

The City Council wishes to support landlords who have to deal with anti-social behaviour in their properties. Most commonly this arises as noise from the property and poor management of household waste e.g. accumulations of waste in the garden or in the lanes, leaving bins out in the street. This could be in the form of advice or practical support in taking specific actions. Contact details are below.

General Advice – Private Rented Team – 01752 307075

Noise Problems – Public Protection – 01752 304147

Anti-Social Behaviour – Anti Social Behaviour Unit – 01752 307049

The following sets out what is expected of landlords in order to meet this responsibility.

The Written Statement of the Terms of the Tenancy.

Any new tenancy agreement should include an express prohibition on anti-social behaviour. This should include the following points.

1. Anti-social behaviour is anything which causes:
 - a nuisance or annoyance to other occupiers and nearby neighbours,
 - harassment to anyone in the local area (because of their race, colour, nationality, ethnic origin, sexuality, sex, religion, politics, age, medical condition, or disability) or
 - violence (including domestic abuse) against any person (including the landlord or persons acting on their behalf).
2. Anti-social behaviour also includes:
 - interfering with security or safety equipment,
 - using the property (including all communal areas bin stores, yards and gardens etc) for any criminal, immoral or illegal purpose, including buying, selling or using any illegal drugs, or storing or handling stolen goods, or
 - damaging any part of the premises.
3. It is also anti-social behaviour to encourage anyone else to carry out or threaten to carry out any of the above. The occupier, under the terms of the tenancy, is responsible for the behaviour of themselves, their family and their visitors.
4. The terms of the tenancy should also state that the landlord will not tolerate anti-social behaviour and include a warning that legal action against the occupiers breaching the terms of tenancy may be taken. This could lead to them losing their accommodation.

Dealing with Anti-Social Behaviour

1. The licence holder or his/her manager shall fix, in a prominent position, within the communal area, a sign containing a statement that anti-social behaviour will not be tolerated and encouraging the reporting of those responsible (should it arise). The appropriate contact details for reporting incidents to be included.
2. It is recommended that contact details for the licence holder or his/her manager are given to neighbours who may be affected and can give you early notice of problems at the house.
3. The licence holder or his/her manager should keep a record of all complaints received from occupiers, neighbours etc about noise and anti-social behaviour.

The record will contain the following information:

- Date of complaint
 - Name and address of complainant
 - Details of the complaint
 - Name and address of the alleged 'perpetrator'
 - Action taken by the landlord to resolve the problem
- (Note action could include making contact with the 'alleged perpetrator' face to face or by letter or both)
4. The licence holder or his/her manager should encourage the complainant to complete diary sheets as a record of the frequency and seriousness of the incidents.
 5. The licence holder and/or his/her manager should liaise cooperatively with officers from Plymouth City Council when they are investigating complaints of anti-social behaviour, (including noise) from members of the public.
 6. The licence holder or his/her manager shall inform the police or City Council's Anti-Social Behaviour Unit where he has reason to believe that a criminal offence has been, or is being, committed on the premises.
 7. The licence holder or his/her manager will take action to evict tenants who do not cooperate with requests to modify behaviour.

Signs

The Licence Holder shall affix in a prominent position, within the communal area, a sign containing a statement that the licence holder will not tolerate anti-social behaviour and to encourage the reporting of those responsible, including a telephone number or an address to which complaints should be made. This sign shall be replaced if it is torn, defaced or removed.

**NOISE AND ANTI SOCIAL BEHAVIOUR
NOTICE TO TENANTS AND THEIR VISITORS**

Whilst you occupy this property you and your guests must respect the rights of other people and not do anything (either in or near the property or on the street where the property is) which would cause a nuisance or annoyance, including harassment of other people.

In particular (but not limited to the examples given) please:

- Be respectful of your neighbours into whose community you have moved.
- Be conscious of the level of noise coming from the house and garden at all times but especially after 10pm at night. This includes playing music, raised voices, door banging, running up and down stairs etc. Please keep noise levels down at all times and especially if a neighbour lets you know that you are disturbing them.
- Be conscious of the level of noise you may be making as a group on the street when you are going out or coming home after an evening out. Try not to disturb people in the houses you pass, especially late at night when they will be sleeping.
- Ensure that you store refuse appropriately in the bins provided and put it out for collection on the correct day. You should also bring the bins in after collection. Do not allow refuse to accumulate inside or outside the property.

Your tenancy agreement prohibits behaviour which causes nuisance or annoyance to others and such behaviour will not be tolerated.

If complaints are received you will be reminded of your obligations under your tenancy agreement. If conditions continue to be broken, or in the case of serious incidents, legal action may be taken to evict you from the property.

If you are suffering from the noisy or anti-social behaviour of others within the property you can report them to:

Name:

Tel No:

Email:

PART FOUR – FIRE SAFETY ORDER

Regulatory Reform (Fire Safety) Order 2005

Fire risk assessments are required in housing covered by the above (the FSO) which is administered by the Devon and Somerset Fire and Rescue Service (DSFRS). It applies to buildings occupied as bedsits, self-contained flats, non-self-contained flats, hostels and bed and breakfast premises.

The aims of a fire risk assessment are to:

- identify the fire hazards,
- reduce the risks of those hazards to as low as reasonably practicable and
- decide what physical fire precautions and management arrangements are necessary to ensure the safety of people in the premises if a fire does start.

The duties under the FSO (where it applies) are for the “responsible person” (the landlord or a managing agent acting on his behalf) to:

- complete a fire risk assessment,
- carry out/instigate remedial and management improvements as identified and
- record the risk assessment where:
 - the HMO is licensable or
 - 5 or more people are employed in the course of the business, either at the property or elsewhere

The Order does not apply to HMOs let as shared houses. These are properties occupied by persons who collectively have a single tenancy and also comprise a clearly identifiable group. Typically these might be students, work colleagues or friends.

Although it may not be a requirement that a fire risk assessment is carried out in all cases, it is a recommendation.

Further information is available from DSFRS, the Council’s web pages and reading the document “LACORS Housing - Fire Safety; guidance on fire safety provisions for certain types of existing housing”. The following links may be helpful:

<http://www.plymouth.gov.uk/>

<http://www.dsfire.gov.uk>



Property Licence

Under **Housing Act 2004 Section 64** Plymouth City Council has given a licence to the House in Multiple Occupation (HMO) known as:

I Any Road Plymouth PLI 2AA

This licence permits the occupation of this House in Multiple Occupation by a maximum of **6** persons in **5** households in the following lettings:

Room	No of Persons	No of Households
Room 1 - Ground floor front bedroom	1	1
Room 2 – First floor front bedroom	2	1
Room 3 – Second floor rear right bedroom	1	1
Room 4 – Second floor rear left bedroom	1	1
Room 5 – Second floor front bedroom	1	1

(Left and right are taken from viewing the property from the front)

The licence will expire on **1 April 2019**

The licence holder for this HMO is: **Mr A Name**

The following parts of the property are prohibited from being occupied:

PLEASE NOTE THIS LICENCE IS NOT TRANSFERABLE TO A NEW OWNER. THE LICENCE HOLDER NAMED ABOVE REMAINS RESPONSIBLE UNDER THE TERMS OF THIS LICENCE UNTIL SUCH TIME AS THE LICENCE EXPIRES OR IS REVOKED BY THE LOCAL AUTHORITY.

The above persons are considered to be fit and proper persons to perform their duties under Part II of the Housing Act 2004.

The Conditions of the licence, numbered 1 to 8 are attached.

Signed _____ Dated 2 April 2014

A N Officer

Private Sector Housing Officer

Should any person wish to make enquiries concerning this licence they should contact A Officer, telephone no 308989, or write to Private Rented Team, Homes and Communities, Civic Centre, Plymouth, PLI 2AA, or Email a.officer@plymouth.gov.uk.

Note: This is a house in multiple occupation that is required to be licensed under the provisions of Part II of the Housing act 2004. The granting of this licence does not imply that the use and condition of the property are lawful under other legislation. It is a requirement that the house is managed in accordance with the attached conditions; failure to do so is an offence, which may result in prosecution and/or the withdrawal of the licence.

The conditions of the licence for **1 Any Road, Plymouth PL1 2AA** are as follows:

1. The licence holder shall produce to the Council's Private Rented Team annually for their inspection a gas safety certificate obtained in respect of the house within the last 12 months (if gas is supplied at the house).
2. The licence holder shall (1) keep all electrical appliances made available by him within the house in a safe condition and (2) supply to the Council's Private Rented Team, on demand, a declaration as to the safety of such appliances.
3. The licence holder shall (1) keep all furniture made available by him within the house in a safe condition and (2) supply to the Council's Private Rented Team, on demand, a declaration as to the safety of such furniture.
4. The licence holder shall (1) ensure that smoke alarms are installed in the house and keep them in proper working order and (2) supply to the Council's Private Rented Team, on demand, a declaration by him of the condition and positioning of such alarms.
5. The licence holder shall ensure that a written statement of terms of occupancy is supplied to each occupier.
6. The licence holder shall notify the Council's Private Rented Team of any change of manager of the property and, in respect of the new manager, provide contact details and information to verify their fit and proper status and competence to manage the HMO.
7. The licence holder shall notify the Council's Private Rented Team of any changes of their address, telephone number and email address.
8. The licence holder shall investigate complaints of antisocial behaviour arising from this HMO and being caused by occupiers or occupiers' visitors. Where appropriate, the licence holder will caution, seek legal advice or lawfully evict to address the problem. Antisocial behaviour is defined in Housing Act 2004 Section 57(5).
9. The licence holder will carry out the following works, within the times set out below, to the satisfaction of the Council and in accordance with the following specification:

Annex C1 HMO Licensing Fees: Initial Licence Application

Initial licence applications refers to applications where:

- The property has not been previously licensed as an HMO or
- The property was previously licensed, but not to the licence holder in respect of which the current application is being made.

Table of fees

The fees set out in the table below reward good practice. The fee for Landlords who promptly comply with legislation is £260 to £320 less than the fee for those who have delayed in making application. However, to benefit from this discount a full application, complete with correct fee and all supporting information and documents, has to be submitted promptly.

The Private Sector Housing Manager or Senior Private Sector Housing Officer (Policy and Procedures) may reduce or waive the fee payable in exceptional circumstances.

Table of Fees – Initial Licence Application

Category of Application	Basic Fees	Fees including additional discounts
Standard Fee (See discounted rates available below)	£800	
Fee where full application is received within six weeks of becoming licensable and: <ul style="list-style-type: none"> ▪ None of the further discounts apply or ▪ The licence holder has passed the Landlord Proficiency Test (an on-line test operated by the West of England Private Housing Partnership) or ▪ The licence holder is accredited through: <ul style="list-style-type: none"> ▪ The National Landlords Association or ▪ The National Landlord Accreditation Scheme or ▪ Landlord Accreditation South West or ▪ The London Landlord Accreditation Scheme or ▪ Any other scheme approved by Plymouth City Council 	£540	£510 £480
Fees where HMO operating outside licensing requirements for longer than six weeks	£800	N/A

Annex C2 HMO Licensing Fees: Application to Re-licence

This refers to applications where:

- The property has been previously licensed as an HMO and
- The licence is due to expire, or has recently expired and
- The proposed licence holder is the same person, or body, named as licence holder on the licence to be replaced.

Please note that all three bullet points must apply.

Table of fees

The fees set out in the table below reward good practice. The fee for Landlords who promptly comply with legislation is £330 to £390 less than the fee for those who have delayed in making application. However, to benefit from this discount a full application, complete with correct fee and all supporting information and documents, has to be submitted promptly.

The Private Sector Housing Manager or Senior Private Sector Housing Officer (Policy and Procedures) may reduce or waive the fee payable in exceptional circumstances.

Table of Fees – Application to Re-licence

Category of Application	Basic Fees	Fees including additional discounts
Standard Fee (See discounted rates available below)	£800	
Fees where full application received on or before the date of expiry of the current licence and: <ul style="list-style-type: none"> ▪ None of the further discounts apply or ▪ The licence holder has passed the Landlord Proficiency Test (an on-line test operated by the West of England Private Housing Partnership) or ▪ The licence holder is accredited through: <ul style="list-style-type: none"> ▪ The National Landlords Association or ▪ The National Landlord Accreditation Scheme or ▪ Landlord Accreditation South West or ▪ The London Landlord Accreditation Scheme or ▪ Any other scheme approved by Plymouth City Council 	£470	£440 £410
Full application received after the date of expiry of the current licence	£800	N/A

Public Register

The register of HMO Licences is a public document. There is no charge for viewing the register

A copy of the register can be provided, on demand, for an administrative fee of £40.

Enquiries about a single property will not be charged for.

The Private Sector Housing Manager or Senior Private Sector Housing Officer (Policy and Procedures) may reduce or waive the fee payable in exceptional circumstances.

Annex D Background to Specific Policy Decisions

In making the policy decisions set out in this report we have considered the contents of legislation, guidance given by Government organisations/publications and judicial decisions. This section of the report explains how we have used this information to inform our decisions. The introductory numbers refer to the paragraphs in Appendix 2.

Section 2: Policy – Licensable HMO

2.2

In respect of HMOs occupied by their owners, we will consider that the owner (and their household) only comprise one nominal person. In practice this will mean that such an HMO will not be licensable unless it is occupied by four (or more) other persons. The Government have provided specific guidance on this point which is set out in the document “Licensing of Houses in Multiple Occupation in England; A guide for landlords and managers (DCLG 2007).

2.3

In counting the number of storeys in a flat in multiple occupation we will consider the number of storeys in the flat rather than the number in the building containing that flat. This accords with the judgement London Borough of Islington v The Unite Group PLC.

2.4

The word “storey” will not normally include those floors of a flat in multiple occupation which solely comprise a staircase. An example of this would be a three storey building comprising two flats where the upper flat contains two floors of living accommodation at first and second floor level and this accommodation is served by a dedicated staircase at ground floor level. However, paragraphs 2.5 and 2.6 will also be considered.

This follows the decision of Bristol City Council v Digs (Bristol) Ltd (which may be subject to appeal). The implications of this decision are that, where a licence fee has been paid on such a property it must be returned. This applies even if the fee was paid in 2006. In practice, we are unaware of any case where this has arisen, but will check on renewal (or where a licence holder requests) and will reimburse applicants where this is appropriate.

2.5

Buildings which are used for mixed residential and commercial purposes require specific consideration. In these cases the number of (above ground level) commercial storeys will be counted when the number of storeys in the HMO is being assessed. The requirement to include commercial storeys is set out in the Licensing of Houses in Multiple Occupation (Prescribed Descriptions)(England) Order 2006 (SI 2006/371). Government guidance is that this applies to the ground floor level, and above, commercial storeys only (Explanatory Memorandum to The Licensing of Houses in Multiple Occupation (Prescribed Descriptions)(England) Order 2006 para. 7.8).

2.6

In some cases attics and basements will be counted as storeys. This means that the following attic and basement storeys will be included:

- Those which have rooms or services available for the use of the occupiers (or which should be available for their use) or
- Areas that have been constructed or adapted for residential use and have not been permanently secured. Permanent securing would involve, for example, the partitioning off of the area (although permitting an access panel for maintenance which must be screwed shut).
- Basement storeys that provide sole access to the HMO

These requirements are set out in SI 2006/371. The third bullet point (as it describes parts of the HMO which have been permanently secured) is a pragmatic approach to the issue of landlords wishing to remove their HMOs from the remit of licensing (often in conjunction with a TEN application).

2.7

In Plymouth, a large number of HMO properties are built with the front part of the building being arranged slightly higher, or lower, than the rear. This height difference will not be considered in assessing the storey height. An HMO with two storeys at the front and two at the rear will be considered a two storey property regardless of any mismatch in heights to the front and the rear parts of the property. This is a pragmatic decision; the vast majority of HMOs are older buildings of this style. This form of construction does not add to the risks to the occupiers of the properties. Although SI 2006/371 specifically includes “mezzanine” storeys, it does not define them. Locally, such storeys are commonly known as mezzanines; however a more technical building definition would exclude them from this term.

2.8

A self-contained flat is a “separate set of premises” which contains its own toilet, personal washing and cooking facilities. “Separate set” means premises which have all rooms accessible through a single front flat entrance door, that is the occupier does not have to cross the common parts to gain access to any other part of his accommodation. This accords with Section 257 Housing Act 2004, together with Residential Property Tribunal decision Camden, 30 Mornington Crescent/93 Judd Street December 2006. This interpretation is supported in para. 16 “A guide to the licensing and management provisions in Parts 2, 3 and 4 of the Housing Act 2004” (Draft Guidance, DCLG, January 2010).

Section 3: Policy - Fit and Proper Person

3.5

In the context of fit and proper status, “person” includes a corporate body (for example, a limited company). As the licence holder can be a corporate body, and (in all cases) must be a fit and proper “person”, it is difficult to interpret this in any other way. This complies with advice given by LACORS. This interpretation is also supported in para. 98 “A guide to the licensing and management provisions in Parts 2, 3 and 4 of the Housing Act 2004” (Draft Guidance, DCLG, January 2010).

Section 5: Policy – Licence Holder

5.1

The licence holder must be the most appropriate person to fill this role. This will normally be the person having control of the HMO (usually the owner). In the case of corporate bodies, the licence holder will normally be that body rather than a named person. Normally, where a corporate body is involved, no individual will have the responsibility and resources to comply with the licence holders' duties. This complies with advice given by LACORS. This interpretation is also supported in para. 98 "A guide to the licensing and management provisions in Parts 2, 3 and 4 of the Housing Act 2004" (Draft Guidance, DCLG, January 2010).

Section 9: Policy – Fees

9.2 to 9.4

The licensing fee reflects the chargeable costs associated with licensing. Chargeable activities include processing applications, variations, revocations, annual certification, inspection and enforcement actions. The licence fee may not be used to fund other Council activities.

A recent judgement (Hemming v Westminster) has determined that only enforcement activities in connection with licensed HMOs are chargeable. The identification of non-licensed HMOs, and subsequent enforcement activity in respect of them, is not chargeable. Hemming relates to the interpretation of an EU directive (and the UK legislation that enabled this). This legislation became operative on 28 December 2009. At that time it became unlawful to collect licence fees which would be used for non-allowable purposes. The applicant can demand the return of any overpayment.

Officers administering HMO licensing also carry out other private housing functions; it is not possible to assess HMO licensing costs in terms of actual staff deployed in these activities. Accordingly fees were (and are) calculated from the toolkit released through the Government organisation LACORS. The Housing Act, toolkit and 2011 policy all predate Hemming.

We have reviewed the 2011 policy licence fees following this judgement. Revised average costs have been obtained for licensing activities associated with both initial and renewal licences. These costs have been compared with the licence fee income for approvals made after the policy came into effect.

The results indicated that the average licence fee was £503, and the average licence cost (as determined by the revised toolkit) was £508. There was a small shortfall in licensing income over the 632 licences approved. On the basis of the above calculations, there has been no overpayment of licence moneys.

The shortfall is less than 1% of the predictive costs (although it is possible that this will increase slightly as more applicants take advantage of the discounts offered). The nature of the calculations, and the limited shortfall, indicate that it would be disproportionate to increase the fees at this time.

9.10

A charge will be made where a copy of the register of licensed HMOs is requested (See Annex C3). Other than this (and the licence fee) no other charge will be made in respect of licensing functions.

Section 63 Enables a Council to charge an HMO licence application fee. The decision Crompton V Oxford clarified that subsequent charges could not be made for other licensing activities (in particular, the issuing of variations to licences) under Section 63. However, Section 232 enables a charge to be made for providing a copy of the HMO Register.