



Housing Standards Licensing Policy

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Notes: Appendix 2 – Minor amendments to clauses 2.3 and 2.8; Addition of clause 1.6; Relocation of former clauses 4.1, 4.2, 4.3, 4.4 to 1.7, 1.8, 1.9, 1.10; Former clauses 5, 6, 7 and 8 are now numbered 4, 5, 6 and 7; Rewording of former clause 4.5 (current clause 1.11); Rewording of current clauses 4.6 and 4.10 to reflect current British Standards.
Appendix 3 – Minor amendments to clause 3.

Version: 2.1

Date: November 2021

Notes: Addition of clauses 4.5 and 4.6 to enable bulk selective licensing of blocks of flats in prescribed situations.

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1.0 Introduction

- 1.1 Parts 2 and 3 of The Housing Act 2004 gives provision to local housing authorities to operate licensing schemes to help regulate the standards and management of private rented accommodation.
- 1.2 All local housing authorities must operate mandatory house in multiple occupation (HMO) licensing.
- 1.3 There are three types of licences available; mandatory HMO licensing, additional HMO licensing not subject to Mandatory licensing and Selective licensing for private rented properties under certain conditions.
- 1.4 The policy principally deals with mandatory licensing for HMO's and selective licensing. The council has not applied to extend its HMO licensing powers beyond the current mandatory requirements.

2.0 Aims and objectives

- 2.1 This policy provides the framework for the delivery of the mandatory HMO and selective licensing schemes in a fair and transparent manner and aims to ensure that the council effectively:
 - a) implements the licensing scheme, ensuring all functions are carried out in accordance with provisions of the Housing Act 2004;
 - b) grants licences, where possible, in accordance with relevant legislation;
 - c) monitors and enforces all licences throughout the duration of the licensing scheme;
 - d) considers enforcement where there has been a failure to licence or breach of licence conditions;
 - e) ensures that compliant landlords are not disadvantaged compared with those who do not co-operate, and/or operate unsafe or poorly managed licensable properties and,
 - f) reviews licensing designations to ensure that they are fair and consistent and in line with any changes to licensing provisions.

3.0 Scope of mandatory house in multiple occupation (HMO)

3.1 The council operates the statutory scheme, imposed by the government, which requires the mandatory licensing of HMOs¹, in accordance with the Housing Act 2004, Part 2.

3.2 Mandatory HMO licensing covers HMOs which are²:

a) occupied by five or more persons;

b) persons who live in two or more separate households; and meets:

3.2.b.i) the standard test under section 254(2) of the act; any building in which two or more families/individuals share basis amenities;

3.2.b.ii) the converted buildings test under section 254(4) of the act. Any converted building which comprises one or more units of accommodation that are not self-contained, or

3.2.b.iii) the self-contained flat test under section 254(3) of the act but is not a purpose built flat situated in a block comprising 3 or more self-contained flats.

3.3 Mandatory HMO licensing aims to:

- Ensure the accommodation is adequate for the number of occupiers.
- Ensure adequate management is in place.
- Ensure landlords and letting agents are 'fit and proper persons'.
- Ensure tenants' health, safety and welfare is safeguarded.
- Ensure high risk HMOs and their landlords are identified, so that health and safety measures can be dealt with by the council .
- Enable the council to take over management where a landlord fails to licence the HMO, or where the manager is not considered to be a 'fit and proper person'.

3.4 There are a number of circumstances under which a property is exempt from HMO mandatory licensing, including but not limited to³:

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¹ Housing Act 2004 Part 7, s 2

²The Licensing of Houses in Multiple Occupation (Prescribed Circumstances) (England) Order 2018, no. 221

³ Housing Act 2004, Schedule 14

- a) A property that is occupied by a landlord and their family.
- b) Any building which is occupied only by two persons who form two households.
- c) Buildings which are occupied only by freeholders or leaseholders for a term of more than 21 years.
- d) Buildings which are controlled or managed by public sector bodies such as a local housing authority, a registered social landlord, a non-profit provider of social housing, police, fire and rescue authority and a health service body.
- e) Buildings occupied principally for the purpose of a religious community.
- f) Buildings which are regulated elsewhere (and where the description of the building is specified in regulations), such as care homes, bail hostels etc.
- g) Buildings which are controlled or managed by an educational establishment or are solely occupied by persons who occupy it for the purpose of undertaking a full-time course of further or higher education.

3.5 The legislation enables local authorities to licence HMOs for a period of up to 5 years⁴. However, if special circumstances are identified where it is appropriate for a licence to be issued for a shorter period of time the council may issue licences for a shorter amount of time.

3.6 Schedule 4 of the Housing Act 2004 imposes mandatory conditions which the council has no discretion to vary. Section 67 of the Housing Act 2004 also gives a local housing authority the power to impose further conditions that it considers appropriate for regulating the management, use and occupation of the house concerned, and its condition and contents.

3.7 A list of conditions imposed on mandatory HMO licences issued by the council are set out in **Appendix 2**.

3.8 It is the licence holder's responsibility to ensure that the licensed property complies with all the conditions. Failure to do so could result in enforcement action being taken which may include prosecution, imposing a civil penalty notice and/or revocation of the licence.

3.9 Any HMO licensed under the mandatory HMO licensing scheme may be inspected within 3 years of the date of the decision to grant the licence, in order to

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⁴ Housing Act 2004, Part 2, s 68(4)

check that the information supplied is correct, licensing conditions are being complied with and that the property is free from serious hazards.

- 3.10 An officer must carry out an inspection in accordance with Part 1 of the act. Therefore, each unit of accommodation will be individually assessed along with any common areas.
- 3.11 The purpose is to ensure that the property is free from category 1 hazards (as determined by the Housing Health and Safety Rating System (HHSRS)⁵); however officers will follow the council's enforcement policy relating to category 2 hazards (as determined by the HHSRS).
- 3.12 Licensing does not preclude the council from taking any of the enforcement actions described in Part 1 of the Housing Act 2004 in relation to any hazards found.
- 3.13 Where applications are made in respect of the mandatory licencing of HMOs each property must satisfy a test of suitability to be used as an HMO. If the property fails to meet this criteria, this will be grounds to refuse an application.
- 3.14 The council expects all licence holders and managers to comply with the minimum standards of amenities set out in regulations⁶.
- 3.15 Where an HMO does not meet the requirements of these regulations, the council may require additional works to be carried out to bring the property up to standard by imposing licence conditions to achieve compliance within a reasonable period of time. This will reduce the need to refuse applications.

4.0 Scope of selective licensing

- 4.1 Under section 80 of the Housing Act 2004 the council has the power to designate areas of the borough subject to selective licensing of certain types of rented houses.
- 4.2 Woking Borough council has exercised this power and designated the 'Canalside Ward' area of the borough as subject to selective licensing. A map of the area subject to the selective licensing scheme can be found in Appendix 1.

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⁵ Statutory Instruments: The Housing Health and Safety Rating System (England) Regulations 2005, No. 3208

⁶ The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006, no.373, Schedule 3

4.3 The scheme came into effect on 1 April 2018 and will end on 31 March 2023 and no licences will extend beyond this date.

4.4 Under Part 3 of the Housing Act 2004, a house is required to be licensed if it is occupied either:

- Under a single non-exempt tenancy or licence; or
- Under two or more non-exempt tenancies or licences in respect of different dwellings within the building.

4.5 There are cases where a number of separate dwellings in a single block or house require selective licences. The council will usually prefer that each separate dwelling in a building has its own individual licence. However, Part 3 of the Housing Act 2004 permits the council from accepting a single application and granting a single licence for an entire block containing more than one flat. The council will consider such applications where the flats included in the application:

- are all within the same building, and
- are all under the same ownership and management control, and
- are all let on tenancies or licences which are not exempt as defined within the Housing Act 2004.

4.6 Where all conditions in paragraph 4.5 are met and an applicant makes a representation requesting such an approach, the council may exercise its discretion and grant a multi-dwelling licence, provided there are no other reasons why such a licence should not be granted. Landlords should be aware that if a multi-property licence is granted and conditions change within any of the flats, the entire licence may no longer reflect the situation in the block at the time of the original application. This may result in the licence having to be varied, or even revoked and a new application being required, accompanied by a fee.

4.7 Selective licensing aims to:

- improve housing conditions
- ensure adequate management is in place
- encourage professional rental standards
- tackle landlords who operate unlawfully
- reduce tenant exploitation

- ensure tenants' health, safety and welfare is safeguarded
- support landlords in combatting antisocial behaviour.

4.8 There are also a number of circumstances under which properties are exempt from selective licensing, including but not limited to⁷:

- properties subject to a prohibition order made under section 20 of the Housing Act 2004, which has not been suspended;
- properties being used for business premises;
- the property requires another type of licence e.g. a HMO licence to which Part 2 applies⁸;
- It has a tenancy for agricultural land/holdings;
- properties controlled by a local housing authority, police authority, fire and rescue authority or a health service body;
- properties occupied solely by students undertaking a full-time course of further or higher education, and where the person managing or in control of it is the educational establishment;
- tenancies granted for more than 21 years and the agreement does not allow the landlord to end the tenancy earlier than the term of the lease;
- properties where a tenant is a member of the landlord's family;
- tenancies or licences granted for the occupancy of a holiday home;
- tenancies or licence where the occupier shares any accommodation with the landlord or licensor or a member of the landlord or licensor's family.

4.9 Section 90 of the Housing Act 2004 imposes mandatory conditions which the council has no discretion to vary. Section 90 of the Housing Act 2004 also gives a local housing authority the power to impose further conditions that it considers appropriate for regulating the management, use and occupation of the house concerned.

4.10 A list of conditions on selective licences issued by the council are set out in **Appendix 3**.

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⁷ The selective licensing of Houses (Specified Exemptions) (England) Order 2006, no. 370

⁸ Housing Act 2004, Part 3, s85

- 4.11 It is the licence holder's responsibility to ensure that the licensed property complies with all the conditions. Failure to do so could result in enforcement action being taken which may include prosecution, imposing a civil penalty notice and/or revocation of the licence.
- 4.12 Any property licensed under the selective licensing scheme may be inspected within the duration of the scheme, in order to check that the information supplied is correct and licensing conditions are being complied with.
- 4.13 In line with the Housing Act 2004 local housing authorities must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken.
- 4.14 When conducting a licence inspection, a local authority officer may identify any risk of harm to an actual or potential occupier of a dwelling, which results from any deficiency that gives rise to a hazard. If the officer concludes that the property presents a significant health and safety risk, the property may be internally referred for an inspection utilising the Housing Health and Safety Rating System (HHSRS).

5.0 Temporary exemption notices

- 5.1 An application can be made for the temporary exemption of the licensing of a property for both HMO mandatory licensing (Part 2) and selective licensing (Parts 3) of the Housing Act 2004 respectively, if it falls outside licensing requirements^{9,10}.
- 5.2 A temporary exemption notice can be applied for by a person having control of or managing a property that currently requires a licence but you want to take steps so the property no longer needs to be licenced. This may include one of the following examples:
- a) Tenure of the property is returning to owner occupied;
 - b) There has been a confirmed sale of the property to someone who intends the property to be owner occupied;
 - c) Property is being converted to commercial use.

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⁹ Housing Act 2004 Part 2, s 62

¹⁰ Housing Act 2004 Part 3, s 86

- 5.3 An application for a temporary exemption from licensing can be made to by submitting a notification of temporary exemption form. A detailed explanation and evidence will be required to support the request. The council will then consider the submission and aims to issue a decision in writing within 28 days of the application.
- 5.4 If the council chooses to refuse the application, the applicant will be issued with a refusal to grant a temporary exemption notice. The notice will include the decision, reasons for it and the date on which it was made, the right of appeal against the decision and the period within which an appeal may be made^{11,12}.
- 5.5 A temporary exemption notice remains in force for a period of three months beginning with the date on which it is served. Following expiry of the temporary exemption notice, if the property is now exempt from licensing, no further action is required.
- 5.6 However, if following expiry of the temporary exemption notice the property is still licensable, a valid application for a property licence must be submitted without delay because enforcement action may be taken for failure to licence.
- 5.7 In exceptional circumstances a temporary exemption notice can be renewed for an additional three months on further application to the council. This must be made before expiry of the existing temporary exemption and further evidence must be provided to the council to consider a renewal.
- 5.8 The council cannot issue more than two consecutive temporary exemption notices for a property.

6.0 Length of the licence term

- 6.1 The council may issue licences for a maximum period of:
- a) three years for mandatory HMO licences, and;
 - b) five years for selective licences.
- 6.2 To ensure fairness and transparency when administering the licensing scheme, in particular to ensure that co-operative and compliant landlords are not disadvantaged compared to landlords who do not co-operate the council may allow

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¹¹ Housing Act 2004 Part 2, s 62(7)

¹² Housing Act 2004 Part 3, s 86(7)

a longer licence period for well managed properties and requiring licences to be renewed more regularly for those that are poorly managed or have failed to be licenced.

- 6.3 The licence period will commence from the date the decision to grant the licence is made.
- 6.4 The length of the licence term may be determined depending on whether the landlord has proactively sought to licence the property or whether the council has become aware of an unlicensed property.
- 6.5 Where the council identifies an unlicensed property, the licence period may be reduced, which may result in the need for renewal more regularly. This may also include instances where a valid application for renewal of a licence is not received prior to the expiration of the previous licence.
- 6.6 All licences granted will remain valid until they expire or are revoked.
- 6.7 A Selective licence will expire on the last date of the operating scheme regardless of when the licence was issued.

7.0 Assessment of ‘fit and proper person’

- 7.1 The council is required to assess whether the applicant and any proposed manager are fit and proper people to manage the property. A council officer will make this assessment. Where an applicant or proposed manager are found not to be a fit and proper person this will be grounds for the council to refuse the application for a licence.
- 7.2 The Housing Act 2004 sets out what the council must have regard to when assessing whether a person is regarded as ‘fit and proper’^{13,14}.
- 7.3 The council must have regard to any evidence, which indicates that a person has:
- a) Committed an offence involving fraud, dishonesty, violence, drugs, or sexual offences;

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13 Housing Act 2004, Part 2, s 66

14 Housing Act 2004, Part 3, s 89

- b) Practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or disability in connection with any business;
- c) Contravened any law relating to housing or landlord and tenant law; or
- d) Acted otherwise than in accordance with any codes of practice that are relevant under Section 233 of the Housing Act 2004.

7.4 The council may also take into account other factors in so far as they are relevant to fitness and propriety of the relevant person including and not limited to receiving civil penalties for housing related offences, the applicant is entered onto the rogue landlord database, or any other offences.

7.5 Checks will also be made internally with other council departments such as licensing, planning, building control, council tax and housing benefit.

7.6 Where the council determines that the proposed manager or licence holder is not a 'fit and proper' person, the council may provide an opportunity for an alternative manager or licence holder to be proposed. If this is not possible, the licence application will ordinarily be refused.

8.0 Licence application

8.1 The information that is necessary to complete an application for both mandatory HMO and selective licensing is set out in regulations¹⁵. Each application will be checked before being validated. Once an application is valid the applicant should receive a confirmation email.

8.2 From the 1 October 2018, where a property is licensable under mandatory HMO licensing the application must be made under that scheme, even when the property is located within the selective licensing scheme area¹⁶.

8.3 All contact with the licence holder and relevant persons will be made using the contact information provided by the applicant on the application form.

8.4 It is the licence holder's responsibility to ensure that all contact details are up to date.

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¹⁵ The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006

¹⁶ Housing Act 2004 Part 3, s 85(1a)

8.5 The council has a duty under the Housing Act 2004 to maintain a public register of all houses in multiple occupation (HMO) and selective licences. A register of property licenses is available online.

9.0 Considering applications

9.1 In considering a licence application for the council will assume that the person in control of the property (normally the owner or landlord) is the most appropriate person to hold the licence.

9.2 It is the responsibility of the person who has control of the property to ensure that an application for a licence is made.

9.3 If a company applies to be the licence holder, the registered business name and address of the said company will appear on the licence

9.4 The proposed licence holder must have control of the property, and have the power to do the following but not limited to:

- a) collect rental income;
- b) set up and terminate tenancies;
- c) access all parts of the dwelling (where the tenants have agreed and/or been given reasonable notice);
- d) authorise repairs and maintenance to the property.

9.5 If the proposed licence holder is not available to manage the property, or does not wish to do so, they are advised to appoint a local manager who is authorised to deal with emergency repairs and any issues concerning anti-social behaviour on their behalf. The name of the managing agent or manager (if they do not work for a management company) should be included on the licence.

9.6 The council will aim to work with an applicant in order to approve an application for a licence, wherever possible.

9.7 Property licences are non-transferrable^{17,18}. If the ownership of the licenced property changes, resulting in the licence holder no longer associating with that

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¹⁷ Housing Act 2004, Part 2, s 68(6)

¹⁸ Housing Act 2004, Part 3, 91(6)

property, the new owner is responsible for applying for a new licence within 28 days of purchase or prior to tenanting the property.

9.8 A complete application for mandatory HMO licensing should contain the following but not limited to¹⁹:

- a) Completed application form signed and dated, details of the property and any interested parties.
- b) Floor plan of the property, including dimensions of the rooms in metres, centimetres and millimetres, the location of bathrooms, toilets, kitchens as well as any smoke detectors and fire alarms labelled clearly.
- c) Copy of a valid current gas safety certificate, or a declaration of the lack of gas supply in the property.
- d) Copy of a detailed fire risk assessment.
- e) Copy of a valid electrical installation condition report.
- f) Copy of a valid automatic fire detection certificate.
- g) Application must include the correct fee.

9.9 The applicant may also be asked to provide the following if the council deem it appropriate:

- a) Emergency lighting commissioning/servicing certificate.
- b) Portable appliances test record.

9.10 A complete application for a Selective licence should contain the following but not limited to²⁰:

- a) A completed application form signed and dated, details of the property and any interested parties.
- b) A floor plan of the property, which clearly marks the use and dimensions of all rooms.
- c) A valid current gas safety certificate, or a declaration of the lack of gas supply in the property.
- d) The application must include the correct fee (where applicable).

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¹⁹ Housing Act 2004, Part 2, s 63(2)

²⁰ Housing Act 2004, Part 3, s 87(2)

9.11 The council may challenge any information which it considers may be false or misleading. It is a criminal offence to provide false or misleading information in an application form and such offence can attract an unlimited fine²¹.

10.0 Incomplete applications

10.1 Where a mandatory HMO or selective licence application is submitted and there is missing documentation or is otherwise incomplete, a letter or email will be sent to the applicant detailing the problems with the application and requesting that the deficiencies be rectified within 21 days of the date of the correspondence.

10.2 If the applicant does not provide the requested information within 21 days, the application will remain invalid and the property will be considered to be unlicensed, and as such, the council may take enforcement action. Wherever possible, the council intends to support applicants to complete applications in a manner in which the council deems to be appropriate.

10.3 Where there are delays in the validation of a selective licence application on the part of the applicant, this may impact on whether a fee is payable for those applications that were previously exempt from a licence fee before 1 April 2018.

10.4 Delays in the validation of either a mandatory HMO or selective licence application may impact on the level of licence fee payable and could result in an existing licence application lapsing.

10.5 If the information/documentation is not returned so that the application can be validated, the council will return the application to the applicant and may also consider the following actions.

- a) Implementing an interim management order, and/or;
- b) Issuing a financial penalty or prosecuting the applicant for failing to licence a property.

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²¹ Housing Act 2004 Part 7, s 238

11.0 Granting a licence

11.1 Under the Housing Act 2004 the council can either grant or refuse a licence. In determining whether to grant or refuse a licence the council must satisfy itself of the following:

- a) That all the required information and documents have been submitted;
- b) That the proposed licence and manager of the property;
- c) That there are satisfactory management arrangements in place or that such arrangements can be put into place by the imposition of conditions in the licence;
- d) That the applicant is a fit and proper person.

11.2 Before a licence is granted, the council will issue a draft licence along with conditions²². It will be sent to the proposed licence holder and all relevant persons named in the application. All paper documentation served on companies will be sent to their registered office as shown on Companies House.

11.3 The council's consultation period lasts 21 days, although in some circumstances it may be appropriate to allow more or less time. This should be no less than 14 days after the date of service of the notice (the statutory minimum) and up to 28 days²³.

11.4 Any representations received will be considered by the council before the final licence is issued. If the council proposes any modifications a further notice will be served setting out the reasons.

11.5 If the council does not receive any representations within the consultation period, the licence will be prepared with the proposed conditions as shown in the draft licence.

11.6 Once the consultation period has ended a final notice is served on the proposed licence holder and all relevant people advising of the decision to grant the licence. The council must hold the original licence, and place it onto the public register. Only copies of the licence and conditions are issued to all relevant parties.

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²² Housing Act 2004, Schedule 5, part 1(1-4)

²³ Housing Act 2004, Schedule 5, part 2(29)

11.7 Once a decision to grant a licence has been made, the licence becomes operative.

12.0 Refusing a licence

12.1 A licence application may be refused if the council is satisfied that one or more of the following criteria but not limited to has been met:

- a) The proposed licence holder is not considered a fit and proper person;
- b) The proposed licence holder is not considered the most appropriate person to hold the licence;
- c) the proposed manager is not the person who has control of the house or is an agent or employee of the person in control;
- d) The proposed manager is not considered a fit and proper person to be the manager;
- e) The proposed management arrangements are not satisfactory and;
- f) The licence holder resides abroad.

12.2 A mandatory HMO licence application may also be refused if the council is satisfied that the property is not reasonably suitable for the maximum number of households and persons stated either in the application or decided by the council²⁴:

12.3 Before refusing to grant a licence the council must serve a notice on the applicant and each relevant persons under Schedule 5, Part 1, and paragraph 5 of the Housing Act 2004 stating that the council are proposing to refuse to grant the licence and set out:

- a) The reasons for refusing to grant the licence application, and;
- b) The end of the consultation period.

12.4 The council's consultation period lasts 21 days, although in certain circumstances it may be appropriate to allow more or less time. This should be no less than 14 days after the date of service of the notice (the statutory minimum) and up to 28 days²⁵.

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²⁴ Housing Act 2004, Part 2, s 64(3a)

²⁵ Housing Act 2004, Schedule 5, part 2(29)

12.5 The applicant or proposed licence holder should provide within their representation response, ways in which the proposed reasons for refusing to grant the licence can be overcome.

12.6 Once the consultation period has ended and it is still not possible to grant the licence, a final notice must be served to state the decision to refuse to grant the licence, the reasons for refusal, details on the right of appeal including the period within which an appeal can be made

13.0 Consequences of refusing a licence application

13.1 If a licence application is to be refused, serious consideration should be given to the consequences of this decision. Depending on the reasons for the refusal, it may be appropriate for the council to consider enforcement options available for dealing with the property.

13.2 The council's over-riding objective is to ensure that the health, safety and welfare of the occupiers of the property are not jeopardised during the licensing process.

13.3 The council will take all reasonable steps to assist the proposed licence holder or owner to take any action which may be required in order to enable the property to be licensed.

13.4 If a licence application is refused and there is no reasonable prospect of the property being licensed in the near future, the council may have a duty to take on the management of the property by making an interim management order²⁶. Interim management orders are a last resort, and the council will consider all other alternatives before taking this course of action.

14.0 Varying a licence

14.1 The council may vary a licence with the agreement of the licence holder or when the council considers there has been a change of circumstances^{27,28}. A

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²⁶ Housing Act 2004, Part 4, Chapter 1 s 102(3b)

²⁷ Housing Act 2004, Part 2, s 69(1)

²⁸ Housing Act 2004, Part 3, s 92(1)

change of circumstances includes any discovery of new information or changes in policy.

14.2 The council may seek to vary the licence period where evidence has been gathered that the licence holder and/or manager has committed offences under the Housing Act 2004 or any other relevant legislation. In addition, a property inspection carried out after the grant of a licence may identify matters which were previously unknown to the council, resulting in the need to vary the licence.

14.3 Before the licence can be formally varied the council are required to serve a notice on the licence holder and interested parties, stating the effect of the variation and the reasons for it²⁹. It should also state the council's consultation period of 21 days, although in certain circumstances it may be appropriate to allow more or less time. This should be no less than 14 days after the date of service of the notice (the statutory minimum) and up to 28 days.

14.4 Where no representation is received the council may proceed to issue a final decision with the variation of the licence. A final notice should be served stating the council's decision, the reasons for that decision, and setting out the right of appeal against that decision³⁰. There is a 28 day period in which an appeal can be made to the first-tier tribunal (residential property). The licence will be suspended until an appeal decision has been made by the tribunal.

14.5 If the council decides not to vary the licence, it must serve a notice on the licence holder and each relevant person advising of its decision and the reasons why the request has been refused³¹.

15.0 Revoking a licence

15.1 Should any issues arise or new information be discovered after a licence has been issued, the council reserves the right to revoke the licence.

15.2 The council may revoke a licence for a number of reasons including but not limited to the following:^{32,33}:

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²⁹ Housing Act 2004, Schedule 5, part 2(14-15)

³⁰ Housing Act 2004, Schedule 5, part 2(16)

³¹ Housing Act 2004, Schedule 5, part 2(19-21)

³² Housing Act 2004, Part 2, s 70(2-3)

³³ Housing Act 2004, Part 3, s 93(2-3)

- a) Where the licence holder or any other person has committed a serious breach of a condition on the licence or repeated breaches;
- b) Where the council no longer consider the licence holder to be a 'fit and proper person';
- c) Where the council no longer considers the management to be satisfactory or the person involved to be a 'fit and proper person';
- d) Where the property ceases to be a licensable HMO or a property subject to selective licensing;
- e) Where the authority believes the structure of the HMO is such that they would not have granted a licence, e.g. it is no longer suitable for the number of households or persons; and
- f) By request of the licence holder or other relevant persons, with the agreement by the council.

15.3 Where the decision is made to revoke the licence, a notice should be served setting out the council's intention to revoke, its reasons why it is proposing to revoke the licence and to allow a 21 day consultation period. In certain circumstances it may be necessary to allow more or less time. This should be no less than 14 days after the date of service of the notice and up to 28 days³⁴.

15.4 Where no representations are received a final notice should be served stating the council's decision to revoke the licence, the reasons for that decision, and setting out the rights of appeal against the council's decision³⁵.

15.5 In deciding whether to revoke the licence, consideration must be given to the consequences of doing so.

15.6 Where the variation licence holder consents to the variation, it takes effect on the date it is made. Otherwise the variation comes into force when the time for appealing expires. If an appeal is made, the revocation will come into force following the appeal decision made by the tribunal.

15.7 If the council decides not to revoke the licence, it should serve a notice advising of its decision and the reasons why it has made that decision³⁶.

1.1 _____

³⁴ Housing Act 2004, Schedule 5, part 2(29)

³⁵ Housing Act 2004, Schedule 5, part 2(24)

³⁶ Housing Act 2004, Schedule 5, part 2(28)

16.0 Licence fees

16.1 The council is able to set fees in respect of applications to licence properties under both Part 2³⁷ and Part 3³⁸ of the Housing Act 2004 respectively.

16.2 Where an application for a number of dwellings in a block is received, the fee will be the relevant Selective Licence fee multiplied by the number of dwellings in the block application.

16.3 The licence fees will be reviewed annually in accordance with the council's fees and charges policy.

16.4 The current fee structures can be found on the council's website.

17.0 Inspections

17.1 The majority of applications will be considered without the need for any prior inspections.

17.2 It is expected that licence holders will ensure properties are well managed, safe and comply with all relevant conditions. As part of both licensing schemes, the council may inspect any of the licensed properties in order to check compliance during the scheme. Those properties which are subject to an inspection will be partly dependent on the application content, history of the licence holder and the outcome of an initial inspection.

17.3 Where the council is made aware of any issues related to the property, licence holder or manager, any potential breaches of licence conditions or any other issues that may arise, the council may investigate these concerns in order to determine the facts and what enforcement action, if any, should be taken.

1.1 _____

³⁷ Housing Act 2004, Part 2, s 63(7)

³⁸ Housing Act 2004, Part 3, s 87(7)

18.0 Enforcement

18.1 It is a criminal offence for a person who is in control of or is managing a property which is required to be licenced under either mandatory licensing or selective licensing to operate the property without a licence^{39,40}. It is also a criminal offence if a person who is in control of or managing a property fails to comply with any conditions imposed on either a mandatory HMO or selective licence^{41,42}.

18.2 The council may take formal enforcement action for failure to apply for a licence or failure to comply with licence conditions and this will be carried out in line with the housing standards enforcement policy.

18.3 One or more of the following enforcement action may be taken depending on the circumstances of the case:

- a) Statutory notices or orders;
- b) Revocation or variation of licences;
- c) Rent repayment orders;
- d) Civil penalty notice;
- e) Criminal proceedings (e.g. prosecution);
- f) Interim or final management orders;
- g) Banning order.

19.0 Civil penalty notices

19.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 came into force on 6 April 2017. These provisions give the council as local housing authority the power to issue a financial penalty for certain housing offences as an alternative to prosecution.

19.2 A civil penalty may be imposed for the following offences

- a) Failure to comply with an Improvement notice;

1.1 _____

³⁹ Housing Act 2004, Part 2, s 72(1)

⁴⁰ Housing Act 2004, Part 3, s 95(1)

⁴¹ Housing Act 2004, Part 2, s 72(3)

⁴² Housing Act 2004, Part 3, s 95(2)

- b) Offences in relation to licensing of HMOs;
- c) Offences in relation to licensing of houses under Part 3 of the Act;
- d) Offences of contravention of an overcrowding notice;
- e) Failure to comply with management regulations in respect of HMOs;
- f) Breach of a banning order.

19.3 A civil penalty notice can only be imposed as an alternative to prosecution. The council cannot impose a civil penalty and prosecute for the same offence.

19.4 The council will consider the housing standards enforcement policy and the formal guidance on civil penalties under the Housing and Planning Act (DCLG April 2018).

19.5 Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean that civil penalties should not be used in cases where serious offences have been committed.

19.6 A civil penalty of up to £30,000 may be imposed where a serious offence has been committed and the council decides that a significant financial penalty rather than prosecution is the most appropriate course of action in a particular case.

19.7 The decision on whether to use the civil penalty powers or to seek a prosecution will be made by the head of democratic and legal services in conjunction with the head of housing services.

19.8 In relation to breaches concerning the HMO management regulations, a civil penalty may be imposed for each separate breach.

19.9 A civil penalty may be imposed on both the landlord and the letting agent for licensing offences where both could be prosecuted even where they have committed the same offence.

19.10 The council must be satisfied that there is sufficient evidence and determine beyond reasonable doubt that an offence has been committed in order to issue a civil penalty notice or prosecute

19.11 There is a right of appeal against a civil penalty notice to the first-Tier tribunal (residential property) against the decision to impose a penalty or the penalty amount.

19.12 The appeal has the effect of suspending the notice and requirement to pay until the appeal has been determined.

19.13 Where a landlord or property agent fails to pay a civil penalty the council may refer the case to the county court for an order of recovery. If necessary, the council will use bailiffs (high court or county court) to enforce the order and recover the debt. Other methods of enforcement may include attachment of earnings and charging order.

19.14 If a landlord or property agent receives a civil penalty this can be taken into account when considering if they are a fit and proper person to be the licence holder for a HMO or property subject to selective licensing.

19.15 The council will consider civil penalties under the Housing and Planning Act 2016 and the DCLG Guidance 'Civil Penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' when determining harm, culpability and level of penalty to impose.

19.16 Consideration is also given to aggravating factors which may increase the penalty imposed and/or mitigating factors which may decrease the penalty imposed.

20.0 Rent repayment orders

20.1 Section 40 of the Housing and Planning Act 2016 confers a power on the first-tier tribunal to make a rent repayment order where a landlord has committed an offence. The council will have regard to the statutory guidance (DCLG April 2017) in the exercise of their functions in respect of rent repayment orders.

20.2 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of houses in multiple occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

20.3 Rent repayment orders have now been extended to cover the following offences:

- a) Failure to comply with an improvement notice under section 30 of the Housing Act 2004;

- b) Failure to comply with a prohibition order under section 32 of the Housing Act 2004;
- c) Breach of a banning order made under section 21 of the Housing and Planning Act 2016;³
- d) Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- e) Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

20.4 There are two types of rent repayment order:

- a) Obtained by the council in respect of housing benefit and local housing allowance payments.
- b) Obtained by an occupier for the whole or for part of the property in respect of private rental payments.

20.5 A rent repayment order can be made for the period of up to 12 months between that of when the property should have been licenced, and when an application for a licence is made^{43,44}.

20.6 Rent repayment orders can be granted either to the tenant or the local housing authority. If the tenant paid for their rent themselves, then the rent must be repaid to the tenant. If rent was paid through housing benefit or through the housing element of universal credit, then the rent must be repaid to the local housing authority.

20.7 Where the council is satisfied that the landlord has committed one or more specific offences pertaining to the licensing of mandatory HMOs and selective licenses, the council aims to instigate action to recover housing benefit and local housing allowance payments^{45,46}. The council will usually apply for the full amount that can be recovered. The tribunal determines the amount of rent to be repaid, and this is detailed on the rent repayment order, if granted.

1.1 _____

⁴³ Housing Act 2004, Part 2, s 73(8c)

⁴⁴ Housing Act 2004, Part 3, s 96(8c)

⁴⁵ Housing Act 2004, Part 2, s 73(5)

⁴⁶ Housing Act 2004, Part 3, s 96(5)

20.8 The council may offer advice, guidance and support to assist private sector tenants to apply for a rent repayment order.

21.0 Interim and final management orders

21.1 An interim management order is made for the purpose of securing any action that the council may deem to be necessary, in order to protect the health, safety and welfare of the occupants⁴⁷. An interim management order can also be served in circumstances which the council considers to be appropriate, with a view to ensure proper management of the house which is pending the grant of a licence⁴⁸.

21.2 The council has a duty to make an interim management order in respect of a property which has no reasonable prospect of being licensed in the near future, or where it is necessary to protect the health, safety and welfare of the occupants⁴⁹.

21.3 Where a licence has been revoked for any reason and the property remains licensable, an interim management order should be made if there is no reasonable prospect of the property regaining its licence⁵⁰.

21.4 An interim management order transfers the management of a residential property to the local housing authority for a period of up to 12 months. This includes carrying out any remedial works necessary in order to deal with the immediate risks to health and safety.

21.5 If there is still no prospect of a licence being granted after 12 months, then a final management order must be made⁵¹ which will remain in force for a maximum of five years⁵². If after five years, there is still no prospect of the property becoming licensed a further management order must be made.

21.6 The council has a duty to make Interim and final management orders where necessary. The council may instigate this action, if required, but as a last resort. All practical steps will be taken to assist the owner of the property to satisfy the licensing requirements.

1.1 _____

⁴⁷ Housing Act 2004, Part 4, s 101(3a)

⁴⁸ Housing Act 2004, Part 4, s 101(3b)

⁴⁹ Housing Act 2004, Part 4, s 102(2)

⁵⁰ Housing Act 2004, Part 4, s 102(3)

⁵¹ Housing Act 2004, Part 4, s 113(3)

⁵² Housing Act 2004, Part 4, s 114(3)

21.7 Management orders can be varied or revoked at any time as a result of a request from the owner or on the council's own initiative⁵³

21.8 Once an interim management order is in force a relevant person may appeal to a residential property tribunal against the making of the order or its terms. An appeal must normally be made within 28 days of the order being made. In exceptional circumstances the tribunal has the discretion to extend this period.

21.9 Once a final management order is in force a relevant person may appeal to a residential property tribunal against the making of the order or its terms. An appeal must normally be made within 28 days of the order being made. In exceptional circumstances the tribunal has the discretion to extend this period.

22.0 Banning orders

22.1 In circumstances where a landlord has been successfully prosecuted for a banning order offence⁵⁴, the council may apply for the first-tier tribunal to impose a banning order. A banning order must be for a minimum of 12 months and has no statutory maximum period.

22.2 A landlord subject to a banning order is prevented from⁵⁵:

- a) Letting housing in England;
- b) Engaging in English letting agency work;
- c) Engaging in English property management work; or
- d) Doing two or more of the above.

22.3 The council may apply for a banning order when the landlord has been convicted of one or more of the following Housing Act 2004 offences:

- Failing to comply with an improvement notice
- Failing to comply with a prohibition order
- Offences in relation to licensing of HMOs
- Offences in relation to licensing of houses under Part 3 (selective licensing)

1.1 _____

⁵³ Housing Act 2004, Part 4, s 112 and 122

⁵⁴ The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 – Schedule of Offences

⁵⁵ Housing and Planning Act 2016, Part 2, Chapter 2, s 14(1)

- Failure to comply with management regulations in respect of HMOs
- False or misleading information.

22.4 Where a landlord or agent breaches a banning order they may be prosecuted and if convicted may be imprisoned and/or receive a fine. The council may impose a civil penalty notice as an alternative to prosecution or apply for a management order.

23.0 Unlicensed properties identified by the council

23.1 Where the council becomes aware of a property that is privately rented and an application for a licence has not been made, the council will send a letter to the landlord making them aware that their property is unlicensed under the relevant licensing scheme (mandatory HMO or selective licensing). The letter will request a fully completed licence application form (including associated documents and licence fee). A period of 28 days will be given to allow the landlord time to apply for a licence before enforcement action may be taken.

23.2 If a fully completed application is received within 28 days the application will be processed.

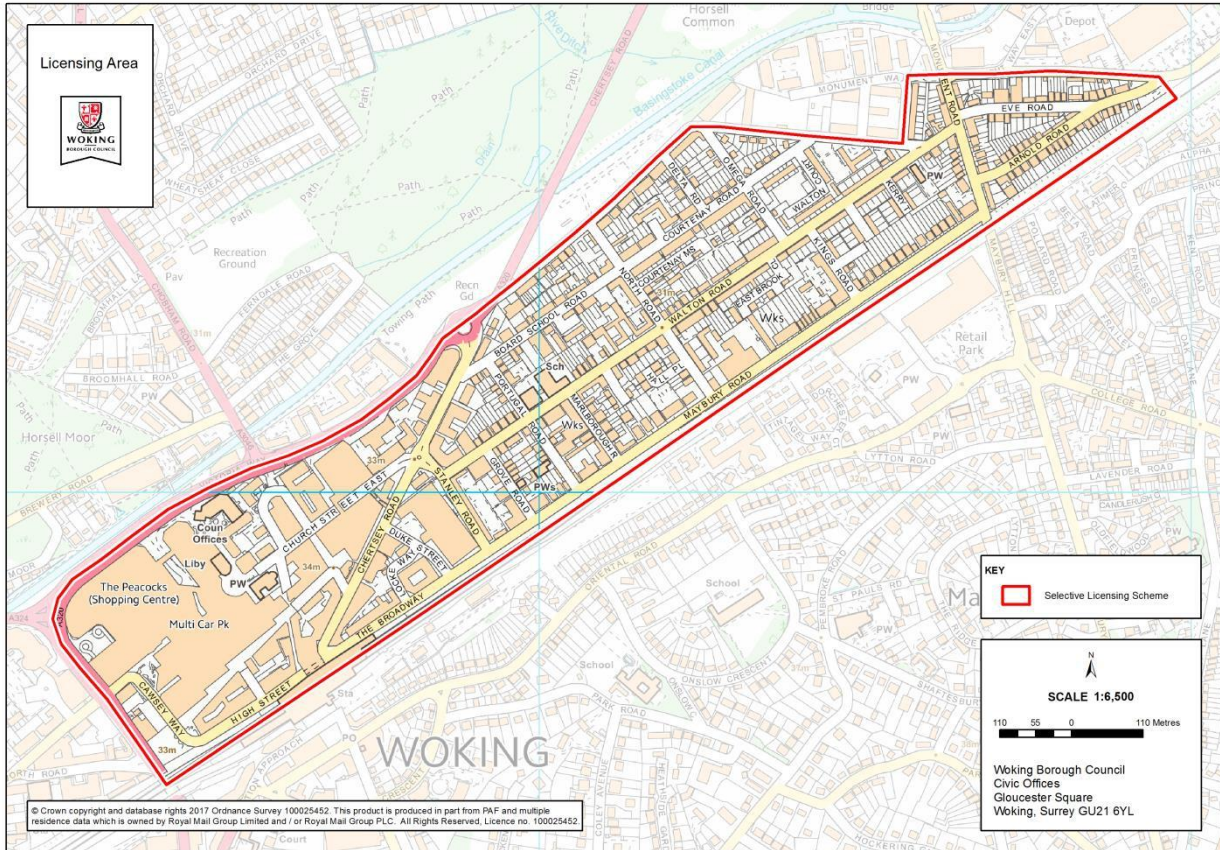
23.3 If a licence is granted for a property which is identified by the council to be unlicensed, the council may issue the licence for a period of 1 year.

23.4 The council reserves the right to impose a civil penalty notice even where an application is received within 28 days and a subsequent licence issued.

23.5 Where an application is not received within 28 days the council reserves the right to impose a civil penalty notice or instigate prosecution proceedings and/or reduce the period of licence for any subsequent application made.

Appendix 1: selective licensing scheme boundary

The boundaries of the selective licensing scheme are set out in the map below:



Appendix 2: HMO mandatory licensing conditions

Mandatory conditions imposed by Part 3, Schedule 4 of the Housing Act 2004 (as amended)

1. If gas is supplied to the house the licence holder must produce to the council annually for inspection a gas safety certificate obtained in respect of the house within the last 12 months.
2. The licence holder must keep electrical appliances and furniture supplied by him in the house in a safe condition, and, on demand, to supply the council with a declaration as to the safety of such appliances and furniture.
3. The licence holder must:
 - i) ensure that a smoke alarm is installed on each storey of the house on which there is a room used wholly or partly as living accommodation, and
 - ii) keep each such alarm in property working order.
 - iii) supply to the council, on demand, with a declaration by him as to the condition and positioning of such alarms.

This condition applies to a bathroom and lavatory which are treated as a room used as living accommodation.

4. The licence holder must:
 - i) ensure that a carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
 - ii) to keep any such alarm in proper working order; and
 - iii) to supply to the council, on demand, with a declaration by him as to the condition and positioning of such alarms.

This condition applies to a bathroom and lavatory which are treated as a room used as living accommodation. 'Room' also includes a hall or landing.

5. The licence holder must supply the occupier(s) of the house with a written statement of the terms on which they occupy it (tenancy agreement)
6. The licence holder must comply with the scheme provided by the local housing authority which relates to the storage and disposal of household waste at the HMO pending collection
7. The licence holder is required to ensure that:

- i) the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres;
- ii) the floor area of any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 square metres;
- iii) the floor area of any room in the area used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres;
- iv) any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation
- v) where any room in the HMO is used as sleeping accommodation by persons aged over 10 years only, it is not used as such by more than the maximum number of persons aged 10 years specified in the licence;
- vi) where any room in the HMO is used as sleeping accommodation by persons aged under 10 years only, it is not used as such by more than the maximum number of persons aged under 10 years specified in the licence;
- vii) where any room in the HMO is used as sleeping accommodation by persons aged over 10 years and persons aged under 10 years, it is not used as such by more than the maximum number of persons aged over 10 years specified in the licence and the maximum number of persons aged under 10 years so specified;
- viii) to notify the local housing authority of any room in the HMO with a floor area of less than 4.64 square metres.

Additional conditions imposed under Section 67 of the Housing Act 2004 (as amended)

1.0 Information to be displayed/notification of changes

- 1.1 The licence holder must display a copy of the licence to which these conditions apply in the common parts of the property where it can be viewed by all occupiers. The schedule of licence conditions must also be available for viewing by any occupier either by providing copies to each person before the start of their tenancy or by displaying them along with the licence.
- 1.2 The licence holder must provide all occupiers of the property at the start of their tenancy with the name(s) of the licence holder and/or manager including a contact address, day time telephone number and an emergency telephone number. The above information must also be clearly displayed in a prominent position inside the property where all occupiers are able to view the said information.

- 1.3 The licence holder and their managing agent must inform the council within 14 days of any changes in their circumstances as follows:
- i) details of new convictions/cautions not previously disclosed to the council that may be relevant to the licence holder and/or his managing agent and their fit and proper person status; and
 - ii) Information about any property the licence holder and/or his managing agent owns or manages which a local housing authority has refused to grant a licence or revoked a licence under Part 2 or 3 of the Housing Act 2004; and
 - iii) change in ownership or management of the licence property; and
 - iv) change of address of the licence holder or landlord; and
 - v) change in managing agent or the instruction of a managing agent; and
 - vi) advertising the property for sale
- 1.4 The licence holder must inform the housing standards licensing team by telephone (01483 743882) within 72 hours of becoming aware of the occurrence of a fire at the property.
- 1.5 The licence holder shall display a copy of the current gas safety certificate in the common parts of the property where it can be viewed by all occupiers.
- 1.6 The licence holder shall display a copy of the current electrical safety certificate in the common parts of the property where it can be viewed by all occupiers.
- 1.7 The licence holder and/or manager must ensure that all upholstered furniture supplied by them for use by any occupier of the premises, whether new or second-hand is compliant with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended). Any such furniture which fails to comply with these regulations must be removed from the premises without delay and properly disposed of. Suitable replacement furniture must be provided as appropriate. The licence holder and/or manager must provide to the council, on demand, a declaration as to the safety of furniture detailed in condition 4.1 above.
- 1.8 The licence holder and/or manager must maintain a file for the property holding copies of all tenancy agreements for inspection at any time.
- 1.9 The licence holder and/or manager must on request provide a written statement to the council detailing names of persons occupying the property together with the rooms which they occupy, their tenancy start date and any agreement, within 14 days of receiving such a request.

1.10 The licence holder and/or manager must ensure that occupants of the property receive written confirmation detailing the arrangements that have been put into place to deal with repair issues and emergencies should they arise.

1.11 The licence holder and/or manager must give at least 24 hours' notice of his intention to enter the HMO to the occupiers for non-emergency repairs and inspecting rooms. In an emergency, the licence holder and/or manager is able to enter the property (including the rooms) without notice to address immediate issues in the following circumstances:

- If there is suspected violent criminal activity happening inside the property.
- If there's a fire in the property.
- If there is a smell gas or suspected gas leak in the property.
- If there has been structural damage to the property that needs urgent attention.

2.0 Management of property

2.1 The licence holder must not permit the house or any part of the house to be occupied in any other way or by more than the number of households or persons stipulated within the licence. Where a room is deemed suitable for two people, this is based upon the room being occupied by a co-habiting couple only.

2.2 The licence holder and/or manager must ensure that any installations in common use or which serve any part of the house in common use, are in and are maintained in good repair, a clean condition and in good order (including where appropriate proper working order). Installations include the supply of gas and electricity and sanitary facilities and facilities for the cooking and storage of food.

2.3 The licence holder and/or manager must ensure that such parts of the house in common use including staircases, passageways, corridors, halls, lobbies and entrances are clean, maintained in a good state of repair and kept free from obstruction.

2.4 The licence holder and/or manager must ensure that all outbuildings, yard areas and forecourts belonging to the property and are used in common are maintained in a good state of repair and in a clean condition, and that any garden belonging to the property is kept in a safe and tidy condition.

2.5 The licence holder must write to the housing standards team before making any material change to the layout, amenity provision, fire precautions or mode of occupation.

2.6 The licence holder and/or manager must ensure that appropriate procedures are put in place to receive and respond to a notification from any occupier or officer of the council

relating to a defect or defects of a general nature and to carry out suitable remedial work within an appropriate period according to the nature and extent of the reported defect.

- 2.7 The licence holder or their manager must be resident within the UK.
- 2.8 The licence holder and/or manager must take reasonable steps to prevent smoking in the common parts of the property. Such reasonable steps include informing the tenants at the start of each tenancy that smoking is not permitted to take place in the communal areas of the premises by any person. If evidence of smoking in the communal areas is found during inspections of the property, reasonable steps must be taken by the licence holder or nominated manager to prevent any further contraventions.
- 2.9 The licence holder must provide a sufficient number of receptacles for the occupiers to dispose of waste. They are also responsible for ensuring that any kind of refuse which the council will not ordinarily collect (e.g. large items of furniture, hazardous waste etc.), are disposed of responsibly and appropriately in accordance with current legal requirements.
- 2.10 The licence holder must give new tenants in writing within seven days of the start of their occupation information on waste and recycling. The information must include:
- i) the collection days for the refuse and recycling bins for the property;
 - ii) contact details for refuse/bulky item collections undertaken by Woking Borough Council or other waste collection services; and
 - iii) details on what they can and cannot recycle.
- 2.11 The licence holder must retain a copy of the information provided to each tenant for a period of five years, signed by the tenant acknowledging receipt and produce to Woking Borough council within 28 days on demand.
- 2.12 The licence holder and/or manager must, if required by the council, attend a training course (or otherwise demonstrate, as directed by the council), competence in relation to any applicable code of practice under Section 233 of the Housing Act 2004.

3.0 Antisocial behaviour

- 3.1 The licence holder and/or manager must take reasonable steps to prevent and deal with antisocial behaviour by persons occupying or visiting the property and shall if appropriate take legal advice and act either to issue formal warnings or evict those responsible for the antisocial behaviour.
- 3.2 The licence holder and/or manager must take reasonable and effective steps to deal with any complaints regarding antisocial behaviour by the occupants and/or their visitors of the house made directly to them or via the council.

- 3.3 The licence holder shall keep a record of all complaints made directly to them or via the council regarding antisocial behaviour by occupants and/or their visitors of the house, and on demand from the council's HMO licensing team, provide details including copies of warning letters, notices seeking possession, within 14 days of it being demanded.
- 3.4 The record shall include the:
- i) date and time of complaint
 - ii) name and addresses of complaint (person making complaint)
 - iii) date and time of incident
 - iv) details of the incident/complaint (location, what exactly happened, who was involved)
 - v) details of any witnesses
 - vi) name and address of alleged 'perpetrator', and
 - vii) action taken by the licence holder to resolve the problem (e.g. contact made with the 'alleged perpetrator', face to face or by letter or both).
- 3.5 A sign must be displayed at all times in a prominent position in the hallway/common area of the house stating that antisocial behaviour in the premises will not be tolerated.

4.0 Fire protection facilities

- 4.1 The licence holder must ensure that the premises are provided with a satisfactory means of escape from fire according to the size, layout and type of accommodation provided.
- 4.2 The licence holder must ensure that an emergency lighting system is installed within the communal fire escape route of the premises in accordance with the current British Standard 5266.
- 4.3 The licence holder and/or manager must ensure that the emergency lighting system is maintained in proper working order.
- 4.4 The licence holder and/or manager must provide to the council, on demand, a declaration as to the condition of the emergency lighting system.
- 4.5 Such a declaration must include the provision of a test certificate or report issued by a suitably qualified person stating that the system is installed in accordance with the appropriate British Standard and is in proper working order.

- 4.6 The emergency lighting must be tested and certified on an annual basis by a competent person in accordance with the current British Standard 5266; further declarations including an up to date test certificate or report must be supplied to the council upon demand.
- 4.7 The licence holder must ensure that an automatic fire detection and warning system is installed in the premises in accordance with the appropriate category and grade of the current British Standard 5839.
- 4.8 The licence holder and/or manager must ensure that the automatic fire detection and warning system is maintained in proper working order.
- 4.9 The licence holder and/or manager must provide to the council, on demand, a declaration as to the condition of the automatic fire detection and warning system. Such a declaration must include the provision of a test certificate or report issued by a suitably qualified person stating that the system is installed in accordance with the appropriate British Standard and is in proper working order.
- 4.10 The automatic fire detection system must be tested and certified on an annual basis by a competent person in accordance with current British Standard 5839; further declarations including an up to date test certificate or report must be supplied to the council thereafter, upon demand.
- 4.11 The operation of the emergency lighting and the fire alarm system and any other communal appliance and lighting must be powered from the landlord's supply of electricity which is not permitted to be on a pre-payment top up meter.
- 4.12 The licence holder and/or manager must ensure that all firefighting equipment, where provided, is maintained in accordance with the manufacturer's recommendations and that replacement or refilled equipment is provided without delay following any usage which renders it no longer effective.
- 4.13 The licence holder and/or manager must ensure that a suitable and sufficient fire risk assessment is carried out for the property to identify what fire hazards exist at the premises and what measures have been taken (or will be taken) to minimise the risk.
- 4.14 The licence holder and/or manager must provide to the council, on demand, a written copy of the risk assessment.
- 4.15 The licence holder must ensure that:
 - i) Means of escape are maintained and kept free from obstruction.
 - ii) Electricity supplies to automatic fire detection and emergency lighting systems are not disconnected or threatened with disconnection for any reason.

iii) Fire notices are clearly visible.

iv) All residents are fully aware of the procedures to be followed in the event of a fire.

4.16 The licence holder should advise all new tenants to contact the Surrey Fire and Rescue Service for a free home safety fire check. They can request a safe and well visit by calling 0800 085 0767 or [make a request online](#)

5.0 Electrical installation and appliances

5.1 The licence holder and/or manager must ensure that the fixed electrical installation of the premises is inspected and tested at intervals not exceeding five years by a person qualified to undertake such inspection and testing and must provide to the council, on demand, a current periodic electrical inspection certificate for the premises in accordance with British Standard 7671.

5.2 The licence holder and/or manager must thereafter provide a further periodic electrical inspection certificate to the council within 14 days of the expiry of the most recent electrical certificate or upon demand as the council deems necessary.

5.3 The licence holder and/or manager must ensure that all portable electrical appliances supplied by them for use by any occupier of the premises are maintained in a safe condition.

5.4 The licence holder and/or manager must provide to the council, on demand, a declaration as to the safety of such electrical appliances. Such a declaration must include the provision of a portable appliance test certificate or report issued by a suitably qualified person with respect to each item of electrical equipment so supplied.

6.0 Provision of standard amenities

6.1 The licence holder must ensure that the premises are provided with sufficient and adequate standard amenities as defined in council's Private Sector Housing Standards Policy for use by the current or intended number of occupiers according to the type of accommodation offered.

6.2 The licence holder and/or manager must ensure that all standard amenities and equipment provided for use by the occupiers of the premises are maintained in good repair and proper working order.

7.0 Provision of adequate means of space heating

7.1 The licence holder must ensure that each unit of accommodation within the premises including all bathrooms, shower rooms and toilets, whether shared or for exclusive use are adequately heated in accordance with the council's approved standards for houses in multiple occupation.

Appendix 3: selective licensing conditions

Mandatory conditions imposed by part 3, Schedule 4 of the Housing Act 2004 (as amended)

1. If gas is supplied to the house the licence holder must produce to the council annually for inspection a gas safety certificate obtained in respect of the house within the last 12 months.
2. The licence holder must keep electrical appliances and furniture supplied by him in the house in a safe condition, and, on demand, to supply the council with a declaration as to the safety of such appliances and furniture.
3. The licence holder must:
 - i) ensure that a smoke alarm is installed on each storey of the house on which there is a room used wholly or partly as living accommodation, and
 - ii) keep each such alarm in proper working order.
 - iii) supply to the council, on demand, with a declaration by him as to the condition and positioning of such alarms.

This condition applies to a bathroom and lavatory which are treated as a room used as living accommodation.

- 4 The licence holder must:
 - i) ensure that a carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
 - ii) to keep any such alarm in proper working order; and
 - iii) to supply to the council, on demand, with a declaration by him as to the condition and positioning of such alarms.

This condition applies to a bathroom and lavatory which are treated as a room used as living accommodation. 'Room' also includes a hall or landing.

- 5 The licence holder must supply the occupier(s) of the house with a written statement of the terms on which they occupy it (tenancy agreement).

Additional conditions imposed under Section 90 of the Housing Act 2004 (as amended)

- 6 Where the gas supply to the house has been disconnected, for whatever reason, the council requires the licence holder to ensure that the gas supply is cut off by a gas safe registered engineer and that they have issued a certificate to confirm that the gas has been cut off, and

that the certificate must be provided to the council's selective licensing team within 14 days of the gas being disconnected.

- 7 The licence holder and their managing agent must provide the council up to date contact details including a telephone number so that problems with the house can be addressed quickly.
- 8 The licence holder and their managing agent must inform the council within 14 days of any changes in their circumstances as follows:
 - i) Details of new convictions/cautions not previously disclosed to the council that may be relevant to the licence holder and/or his managing agent and their fit and proper person status; and
 - ii) Information about any property the licence holder and/or his managing agent owns or manages which a local housing authority has refused to grant a licence or revoked a licence under Part 2 or 3 of the Housing Act 2004; and
 - iii) Change in ownership or management of the licensed property; and
 - iv) Change of address of the licence holder or landlord; and
 - v) Change in managing agent or the instruction of a managing agent;
 - vi) Advertising the property for sale.
- 9 The licence holder must provide all occupiers of the property at the start of their tenancy with the name(s) of the licence holder and/or manager including a contact address, daytime telephone number and an emergency telephone number.
- 10 The above information must be clearly displayed in a prominent position inside the property where all occupiers are able to view the said information.
- 11 The licence holder must ensure that the occupants of the property receive written confirmation detailing the arrangements that have been put into place to deal with repair issues and emergencies should they arise. This should include management arrangements that will be put into place in the licence holder's absence.
- 12 The licence holder must display at all times a copy of the licence certificate and conditions in a prominent position inside the property where all occupiers are able to view the said document.
- 13 The licence holder should advise all new tenants to contact the Surrey Fire and Rescue Service for a free home safety fire check. They can request a safe and well visit by calling 0800 085 0767 or [make a request online](#).

- 14 The licence holder must obtain references from any persons seeking to occupy any part of the house prior to their occupation.
- 15 The licence holder must take reasonable and practicable steps to prevent and deal with anti-social behaviour by persons occupying or visiting the property and shall if appropriate take legal advice and act either to issue formal warnings or evict those responsible for the anti-social behaviour.
- 16 The licence holder must take reasonable and effective steps to deal with any complaints regarding antisocial behaviour by the occupants and/or their visitors of the house made directly to them or via the council.
- 17 The licence holder shall keep a record of all complaints made directly to them or via the council regarding anti-social behaviour by occupants and/or their visitors of the house, and on demand from the council's selective licensing team, provide details including copies of warning letters, notices seeking possession, within 14 days of it being demanded.

The record shall include the:

- i) Date and time of complaint;
 - ii) Name and address of complainant (person making complaint);
 - iii) Date and time of incident;
 - iv) Details of the incident/complaint (location, what exactly happened, who was involved);
 - v) Details of any witnesses;
 - vi) Name and address of the alleged 'perpetrator'; and
 - vii) Action taken by the licence holder to resolve the problem (e.g. contact made with the 'alleged perpetrator'; face to face or by letter or both).
- 18 A sign must be displayed at all times in a prominent position in the hallway/common area of the house stating that anti-social behaviour in the premises will not be tolerated.

Appendix 4: civil penalty assessment guidance

This guidance for determining the level of civil penalties under the Housing and Planning Act 2016 follows the DCLG Guidance '[Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities](#)' published in April 2017.

councils must have regard to this guidance to determine the civil penalty for certain specified offences under the Housing Act 2004 as referred to in the Woking Borough Council's enforcement policy. The legal basis for the power to impose a civil penalty is section 126 and Schedule 9 of the Housing and Planning Act 2016 as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- s30 – failure to comply with an improvement notice
- s72 – licensing of HMO offences
- s95 – selective licensing offences
- s139 – failing to comply with an overcrowding notice
- s234 – failure to comply with a regulation in respect of an HMO.

The maximum penalty is £30,000 but the amount is determined by the council in each case having regard to the above statutory guidance. It is expected that the maximum amount is reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the council should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In order to actually achieve a conviction in the magistrates' court, the council needs to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a civil penalty is imposed and an appeal is subsequently made to the first-tier tribunal, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

The prosecution/civil penalties report should be used together with the statutory guidance to impose the level of fine. The definitions below are informed by the guidance and are required to carry out the civil penalty assessment.

The council should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.

- b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

- c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

- d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

- e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

- f) **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

g) Remove any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

In formulating this guidance, the principles of the [‘Sentencing council: Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences - Definitive Guidelines’](#) have been used to help develop the key factors table below. Specific reference was made to the ‘Breach of food safety and food hygiene regulations’ for micro businesses as this provided the most comparative guidelines.

Factors that should be taken into account when deciding on the level of civil penalty and completing the assessment sheet below.

Key factor: Culpability

Very high

- Deliberate breach of, or flagrant disregard for the law.

High

- Offender fell far short of the appropriate standard; for example, by:
 - failing to put in place measures that are recognised standards in the industry/profession
 - ignoring concerns raised by regulators, tenants, employees or others
 - allowing breaches to subsist over a long period of time.
- Serious and/or systemic failure to address the risks.

Medium

- Offender fell short of the appropriate standard in a manner that falls between descriptions in ‘high’ and ‘low’ culpability categories.
- Systems were in place but these were not sufficiently adhered to or implemented.

Low

- Offender did not fall far short of the appropriate standard. For example, because:
 - significant efforts were made to meet housing legislation although they were inadequate on this occasion

- there was no warning/circumstance indicating a risk to safety and breach of legislation.
- Failings were minor and occurred as an isolated incident.

Key factor: Harm

High

- Serious risk of adverse effect(s) on individual(s) and/or having a widespread impact.
- High risk of an adverse effect on individual(s) including vulnerable groups.

Medium

- Adverse effect on individual(s) (not amounting to High).
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.
- Regulator and/or legitimate industry/landlords/agents substantially undermined by offender's activities.
- Relevant authorities inhibited from investigating or addressing risks and offences.
- Tenants misled regarding compliance.

Low

- Low risk of an adverse effect on individual(s).
- Public/community misled, but little or no risk of actual adverse effect on individual(s).

Key factor: Aggravating factors

Statutory aggravating factor:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction.

Other aggravating factors include:

- Motivated by financial gain.
- Deliberate concealment of illegal nature of activity.
- Established evidence of wider/community impact.
- Breach of any court order.
- Obstruction of justice.
- Previous poor housing record.
- Refusal of free advice or training.

Key factor: Mitigating factors

- No previous convictions or no similar/relevant/recent (within 2 years) convictions.
- Steps taken voluntarily to remedy problem.
- High level of co-operation with the investigation, beyond that which will always be expected.
- Good history of compliance / no history of non-compliance.
- Self-reporting, co-operation and acceptance of responsibility.

Key factor: Asset check

Local housing authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.