



CITY OF  
*Lincoln*  
COUNCIL

## **Mandatory Licensing of Houses in Multiple Occupation**

**A scheme adopted for the purposes of  
Part 2 Housing Act 2004.**

**Date of adoption: 24 September 2018**

**Effective 1 October 2018**



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## **Introduction**

This scheme has been adopted for the purposes of MANDATORY LICENSING and does not refer to ADDITIONAL LICENSING or SELECTIVE LICENSING. The scheme shows how the Council intends to apply the law in relation to the mandatory licensing of houses in multiple occupation and how it uses its powers of discretion. Any changes in the law after the adoption of the scheme will take precedence over the scheme.

The main body of this document sets out the licensing framework, and where relevant the detail is provided by an appendix. Whilst the City Council attempts to apply a consistent standard it reserves the right to deviate from its scheme in the case of any particular HMO or HMO licence application should the circumstances demand it.

A Planning “Article 4 Direction” is in place across Lincoln requiring permission for change of use from a single dwelling to a HMO of any size. It is important to note that landlords must satisfy both Planning and Housing Act requirements which are independent of each other. The issuing of an HMO licence does not confer planning permission. Similarly the refusal of planning permission is not a defence against not having a licence. The definition of a HMO may differ under different legislation such as planning, housing, building control and council tax. Only Housing Act 2004 definitions are relevant to this scheme.

## **Definitions**

This document refers throughout to “person having control” and “person managing”. For the definition of both terms see **appendix 1**.

*[Sections 263 and 66(7) Housing Act 2004 refer]*

## **Properties to be licensed**

Any building or part of a building which is deemed to be a “house in multiple occupation” and which is of a “prescribed description” shall be licensed, unless a temporary exemption notice, interim management order or final management order is in force.

For “house in multiple occupation” see test in **appendix 2**.

For “prescribed description” (and exemptions) see **appendix 3**.

For the circumstances as to when a temporary exemption notice may be granted see **appendix 4**.

*[Sections 55, 61 and 62 Housing Act 2004 refer]*

## **The Application**

The application shall be made on-line using the Council’s web site, or at the council’s discretion made in writing submitted on a form provided by the Council, and in each case shall be accompanied by specified documents. The licence application shall incur a fee payable at the time of application.

For the fee structure see **appendix 5**.

For details about the specified documents to accompany the application, see **appendix 6**.

The Council will make advice and assistance available. Open access computer terminals are available in City Hall. However, if the submitted application is incomplete, unintelligible, or is not accompanied by the relevant documents, then the application will be deemed not to have been made. This is important in that it removes a defence in the event of any proceedings for not having a licence.

*[Sections 63(2) and (3) and 72(4) Housing Act 2004 refer]*

### **The Licence Holder and the Manager**

The Council may grant a licence to the applicant or some other person. Whether the proposed licence holder is the most appropriate person to be the licence holder shall be determined with regard to the matters in **appendix 7**.

*[Sections 64 (2), (3) (b) (ii) and 66(4) Housing Act 2004 refer]*

The licence **application** may identify the manager. The factors to be taken into account in consideration of the proposed manager are described in **appendix 8**.

*[Section 64(3) (c) (ii) and 67(5) Housing Act 2004 refer]*

### **Fit and Proper Person**

The Council if it is to issue a licence must be satisfied that the proposed licence holder is a fit and proper person to be a licence holder and that the proposed manager is a fit and proper person to be the manager of the house. Whether the proposed licence holder or the proposed manager is a fit and proper person shall be determined by reference to the matters in **appendix 9 and its annex**.

*[Sections 64(3), and 66 Housing Act 2004 refer]*

### **Management Arrangements**

The Council if it is to issue a licence must be satisfied that the proposed management arrangements for the house are satisfactory. Whether the proposed management arrangements for the house are satisfactory shall be determined by reference to the matters in **appendix 10**.

*[Sections 64(3) (e), 66(5) and 66(6)) Housing Act 2004 refer]*

### **Suitability for Occupation**

The Council if it is to issue a licence must be satisfied that the house is reasonably suitable for occupation by not more than a maximum number of households or persons, or that it can be made so suitable by the imposition of conditions. To be satisfied that the house is “reasonably suitable for occupation by a particular maximum number of households or persons” the Council is obliged to have regard to the “prescribed standards”. These are summarised in **appendix 11**

The Council may decide that a “house is not reasonably suitable for occupation” by a particular maximum number of households or persons, even if it does meet the prescribed standards. Regard shall be had to the adopted

standards in **appendix 12** when deciding whether or not the house is reasonably suitable for occupation and in interpreting the prescribed standards.

*[Sections 64(3) (a), 65 and 67 Housing Act 2004 refer]*

### **Licence Conditions – Mandatory**

All licences must contain the conditions required by Schedule 4 of the Act. These conditions and how they are to be satisfied are described in **appendix 13**.

*[Section 67(3) Housing Act 2004 refers]*

### **Licence Conditions - Discretionary**

The Council may include licence conditions which it considers appropriate for regulating the management, use, and occupation of the house concerned, and its condition and contents. The City Council considers that there are other conditions that are appropriate for the regulation of all licensable houses in multiple occupation, and these are listed in **appendix 14**. They shall be attached as conditions to all licences.

*[Section 67(1), (2) & (4) Housing Act 2004 refers]*

Where a particular HMO is not reasonably suitable for occupation by a particular maximum number of households or persons but can be made so suitable by the imposition of a condition then the Council may make such a condition. There are no standard conditions in such circumstances and each will be suited to the particular HMO.

*[Sections 64(3)(a) and 67 Housing Act 2004 refer]*

### **Condition of the House in Multiple Occupation**

Where an application for a licence is made then the HMO will be inspected for the purposes of:

1. determining whether the house is reasonably suitable for occupation by a particular number of households or persons, and
2. identifying whether there are any circumstances, which would require the Council to use its Part 1 powers (powers of enforcement to deal with hazards), and
3. noting visual evidence of the quality of the management.

In scheduling inspections before or during the licence term, and in determining whether or not the Council should use its enforcement powers to remove or reduce hazards, regard will be had to the contents of **appendix 15**.

*[Sections 55(5) & (6), 64, 65(5) & (6) and 67(4) Housing Act 2004 refer]*

### **Fire Safety**

The Lincolnshire district councils and Lincolnshire Fire and Rescue have adopted a protocol which describes joint working arrangements to deliver the objective of improved fire safety.

It is recognised that in general fire safety measures, especially structural measures, are not to be introduced through HMO licensing but through powers in Part 1 of the Housing Act under the Housing Health and Safety Rating System. Nevertheless, there are some specific references to fire safety within the licensing scheme.

For the purposes of clarification the Council when using part 1 enforcement powers in relation to fire safety will endeavour to apply the national guidance known as “*Housing – Fire Safety. Guidance on fire safety provisions for certain types of existing housing*” published by LACORS, and any successor guidance.

The responsible person may have a duty to undertake a fire risk assessment of the property for the purposes of the *Regulatory Reform (Fire Safety) Order 2005* (Article 9 of the Order refers). The local authority’s own risk assessment of the HMO does not discharge the responsible person’s duty to undertake a risk assessment.

### **Duration of the Licence**

No licence may have a duration of greater than 5 years. Many licences issued by the Council will have a duration of 5 years, but some licences may have a duration of less than 5 years. In determining whether to issue a licence of duration less than 5 years regard will be had to the contents of **appendix 16**.

*[Section 68 Housing Act 2004 refers]*

### **Variation of Licences**

The Council may vary a licence if there has been a change in circumstances, or with the agreement of the licence holder. No fee will be charged.

*[Section 69 Housing Act 2004 refers]*

## **Revocation of Licences**

The Council may revoke a licence with the agreement of the licence holder, or it may do so if there is a serious breach of the conditions, or if it no longer considers the licence holder to be a fit and proper person. In determining whether to revoke a licence, the Council will have regard to its Housing Services Enforcement Policy, available on the website, and the provisions of the Act.

*[Sections 70, and 93 Housing Act 2004 refer]*

## **Steps to ensure that applications for licences are made**

The Council has a legal duty to take all reasonable steps to secure that applications are submitted for all licensable HMOs in its area.

The Council will endeavour to make persons having control of or managing HMOs aware of the licensing requirements by undertaking a range of activities in accordance with best practice.

*[Section 61(4)) Housing Act 2004 refers]*

## **Enforcement**

The Council will take enforcement action in respect of unlicensed HMOs where they should be licensed, breaches of licence conditions and any other offence for the purposes of licensable HMOs

The following policy documents will guide any actions.

- The Council's Enforcement Policy (July 2003 and any amendments thereafter);
- Housing Services Enforcement Policy (March 2005 and any amendments thereafter), available on the Council's website;

*[Sections 72, 73, 74 Housing Act 2004 refer]*

## **Procedural Matters**

The procedures for licensing houses in multiple occupation are those set out in Housing Act 2004, and those described within this scheme.

The detailed administration will be that determined by the City Council in its method statements and appropriate to the proper management of the scheme. Regard will be had to the Council's Equality and Diversity Policy.

## **Standards**

The standard of service adopted by the Council will be that described in **appendix 17**.

## **Appeals**

Many decisions relating to HMO licensing include a right of appeal to the First Tier Tribunal (Property Chamber). This right of appeal is time limited. In addition to the statutory appeals any decision made by an officer may be considered within the Council's own appeals procedures.

## **Appendix 1**

### **Definition of person having control**

The person having control of a premises is the person who receives the rack-rent or who would receive it if the premises were let at the rack rent<sup>1</sup> charged, whether on his own account or as an agent or trustee for another person.

When considering an HMO licence application any reference to a “person having control” includes any person proposing to have control at the time when the proposed licence would come into force.

*[Section 263(1), (2) and section 66(7) Housing Act refer]*

### **Definition of person managing**

The person managing an HMO can be any of the following:

- a. The owner or lessee of the premises who receives rents or other payments directly from the tenants or licensees of parts of the premises;
- b. The owner or lessee of the premises who receives rents or other payments, via an agent or trustee, from the tenants or licensees of parts of the premises;
- c. An owner or lessee who would receive the rents or other payments but has entered into an arrangement whereby another person who is not an owner or lessee receives the rents or other payments;
- d. Where the rents or other payments are received via another person as agent or trustee, that other person.

When considering an HMO licence application, any reference to a person managing the HMO includes any person proposing to manage the house at the time when the proposed licence would come into force.

*[Section 263 (3) and section 66(7) Housing Act refer]*

### **Definition of “household”**

Members of the same family are considered to be a single household. The Act does go on to describe membership of a family

*[Section 258) Housing Act refers]*

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<sup>1</sup> “rack rent” means a rent which is not less than two-thirds of the full net annual value of the premises (section 263(2) Housing Act refers). This is broadly two thirds of the market rent.

In certain circumstances lodgers and persons undertaking work or service of a domestic nature, or involved with care may be included as part of one household.

*[Regulations 3 and 4 The Licensing and Management of houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 refer]*

## Appendix 2

### Definition of a house in multiple occupation and the exemptions

The definition of a house in multiple occupation is complex. It is important to realise that what constitutes a house in multiple occupation for the purposes of general enforcement powers is not the same as for licensing, where certain circumstances will exempt a building from the definition.

The descriptions below summarise the main provisions of the Act. The circumstances of any particular case will be determined by the facts, and by reference to the Act and supporting Regulations or Orders.

There are 5 sets of circumstances to determine whether a building is a house in multiple occupation:

#### 1. The standard test

- a. The building has one or more units (**not self-contained flats**) of living accommodation.
- b. The living accommodation is occupied by persons who do not form a single household (**see definition in appendix 1**).
- c. The living accommodation is occupied by persons as their only or main residence<sup>2</sup>
- d. Their occupation of the living accommodation constitutes the only use of that accommodation.
- e. Rents are payable, or other consideration is provided in respect of at least one of those person's occupation of the living accommodation.
- f. Two or more of the households who occupy the living accommodation share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities.

*[Section 254(1), (2) Housing Act 2004 refers]*

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<sup>2</sup> Section 259 provides clarification about persons who may be treated as occupying premises as their only or main residence such as students, and persons using the property for refuge

2. **The self-contained flat test**

A self-contained flat which meets all of (b) to (f) above.

*[Section 254(1), (3) Housing Act 2004 refers]*

3. **The converted building test**

- a. The building is a converted building.
- b. It has one or more units of living accommodation (**not self-contained flats**).
- c. The living accommodation is occupied by persons who do not form a single household.
- d. The living accommodation is occupied by persons as their only or main residence.
- e. Their occupation of the living accommodation constitutes the only use of that accommodation.
- f. Rents are payable or other consideration is provided in respect of at least one of those person's occupation of the living accommodation.

*[Section 254(1),(4) Housing Act 2004 refers].*

4. **Converted blocks**

A building is an HMO where it has been converted into a block of self-contained flats which did not comply with and still does not comply with Building Regulations 1991 (SI 1991/2768), **and** less than two thirds of the flats are owner-occupied.

Such HMOs consisting of a block of "Poorly converted flats" are not required to be licensed. An individual flat within the block may meet the self-contained flat test and itself be an HMO.

*[Sections 254(1) (e), 257 Housing Act 2004 and article 1(1) The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 refer].*

5. **HMO declarations**

Where all the other factors in the standard test, or the self contained flat test, or the converted building test are satisfied, but it is unclear whether households are occupying the building as their only or main

residence, the Council can declare the building to be an HMO to remove any doubt.

*[Section 255 Housing Act 2004 refers*

**Buildings which are not considered to be HMOs and are therefore exempt from licensing**

1. Buildings managed by:
  - a. A local housing authority.
  - b. A registered provider (most commonly a housing association).
  - c. A police authority.
  - d. A fire and rescue authority.
  - e. A health service body.

*[Paras. 1 and, 2 Schedule 14, Housing Act 2004 refer]*

2. Buildings regulated otherwise than under the Act.

*These are listed in The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006, and its amendments and any successors*

*[Para. 3, Schedule 14, Housing Act 2004 refers]*

3. Buildings occupied by students, and which are managed by an educational establishment, or a specified person, and where an approved Code of Practice has been adopted.

*[Section 233 and para. 4, Schedule 14, Housing Act 2004 refer]*

*The Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2008 and its amendments and any successors.*

*The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2008 and its amendments and any successors*

4. Buildings occupied by religious communities. This exemption does not apply to a converted block of flats to which section 257 applies.

*[Para. 5, Schedule 14, Housing Act 2004 refers]*

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

*[Para. 6, Schedule 14 Housing Act 2004, and regulation 6(2), The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 refer]*

6. Buildings occupied only by 2 persons who form 2 households.

*[Para. 7 Schedule 14, Housing Act 2004 refers]*

**Buildings which are considered to be HMOs for some purposes but not for licensing**

In general these are properties regulated by other laws and include care homes, prisons, young offender institutes, residential family centres and similar establishments.

*Regulation 6 and Schedule, 1 The Licensing and management of houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 refers*

## Appendix 3

### Description of HMO which shall be licensed

The descriptions below summarise the main provisions of the Act.

An HMO meeting the **standard test, self-contained flat test** or **converted building test** (see appendix 2) must have a licence if:

- a. It is occupied by **5** or more persons, and
- b. It is occupied by persons living in **2** or more households, and
- c. It is not a purpose-built flat in a block of three or more purpose-built flats.

The number of storeys in a HMO is not relevant to the licensing criteria from 1 October 2018.

*Refs: 1. Section 55(3) Housing Act 2004.  
2. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.*

## **Appendix 4**

### **Temporary Exemption**

The Council may serve a temporary exemption notice if a person having control of, or managing an HMO which requires a licence but which is not licensed, notifies the Council of his intention to take particular steps to make the premises no longer licensable

The temporary exemption will last 3 months from the date the notice is served, and during this period a licence will not be required.

The council may grant a further three months temporary exemption notice if the person having control or managing the HMO makes a further declaration, but only if there are exceptional circumstance. There is no definition of “exceptional circumstances” and the Council will consider each case on its merits.

The maximum period of exemption is six months and the council cannot serve a third exemption notice.

The Council does not consider the proposed sale of a HMO, on its own merits, to be a step that would make the premises no longer licensable.

*[Section 62 Housing Act 2004 refers]*

## **Appendix 5**

### **Licence Fee**

The licence fee covers the costs of administering the licensing scheme. It comprises an application fee based around the amount of time required to process a typical application, together with a licence fee which includes the cost of enforcing the scheme, and takes account of Government guidance and recent case law.

The basic fee is published with the Council's Housing fees and charges, and together with all other Council charges will be reviewed annually. Any adjustments will be made as part of the corporate annual review of fees and charges. An example structure, subject to review, is shown at the end of this appendix.

The fee charged in respect of any one licence application will be that which is current at the time of the complete application.

### **Multiple Application Discount**

Where an application is received within 12 months of the date of receipt of a previous successful application, and the fit and proper person check was undertaken for the earlier application then the charge will be reduced by an amount attributable to the fit and proper person test.

### **Trusted Landlord Scheme Discount**

Landlords who are current members of the Lincoln Trusted Landlord Scheme will receive a discount on their licence fees to reflect the fit and proper person status and evidence of satisfactory management confirmed by their accreditation.

The purpose of the Trusted Landlord Scheme is to improve standards of accommodation, management of tenants and neighbourhood relations. It also offers public recognition and support for landlords who participate in the scheme, including discounts for licence fees.

The scheme works alongside national, regional and local accreditation schemes operating within Lincoln:

- National Landlords Association Accreditation Scheme ([www.landlords.org.uk](http://www.landlords.org.uk))
- Residential Landlords Association Accreditation Scheme ([www.rlaas.co.uk](http://www.rlaas.co.uk))
- Lincoln Student Housing Accreditation Scheme ([www.lincolnstudentpad.co.uk](http://www.lincolnstudentpad.co.uk) or or [www.bgcstudentpad.co.uk](http://www.bgcstudentpad.co.uk))
- Decent and Safe Homes Landlord Accreditation Scheme ([www.dashservices.org.uk](http://www.dashservices.org.uk))

- Private Rented Sector Accreditation Scheme (<http://prsaccreditation.com>)

The multiple application discount and trusted landlord scheme discount can both apply to the same licence fee.

### **Renewal of licences**

The Council will handle a licence renewal as if it were a new licence application; consequently the fee charged will be the same. However the offset of fees for multiple applications and Trusted Landlord Scheme will remain.

Example structure HMO premises licence fee: 2018 - 2019	
Basic (up to 5 persons)	Reviewed annually
6 to 10 persons	Basic + 10%
11 to 15 persons	Basic + 20%
16 to 20 persons	Basic + 30%
For every 5 or part thereof, over 20 persons	Additional 10%
Variation of licence	Not charged
Multiple Application Discount	-5% of Basic
Trusted Landlord Scheme Discount	-35% of Basic

## **Appendix 6**

### **Documents to Accompany the Application**

An application for an HMO licence shall be provided electronically in a format designed by the Council, or at the Council's discretion, paper application forms will be provided. Application forms must be accompanied by the documents described below in order for the application to be valid:

For new licence applications

1. Floor plans of the house, that provide a reasonable representation of each floor level, and identifies each room and its use, individual lettings, the position of smoke alarms and any other fire detection and alarm systems, the kitchen, bathing, washing and toilet facilities.
2. If gas is supplied to the house a gas safety certificate produced by a Gas Safe registered installer which relates to the HMO, and which has been produced during the period 12 months before the date of receipt of the application. The report shall include comment on the condition and safety of any gas appliances within the HMO and state that all gas appliances and installations are safe to use.
3. A declaration which itemises (i.e. lists by type and identifying features) the furniture supplied by the licence holder and makes reference in each case as to whether the furniture meets the requirements of the *Furniture and Furnishings (Fire Safety) Regulations 1998* (or any regulations which subsequently replaces them).
4. For the purposes of the fit and proper person test:
  - a. A Basic Disclosure document issued by Disclosure Scotland in respect of the proposed licence holder and proposed manager identified in the HMO application form, or
  - b. a disclosure containing at least the same level information issued by the English Criminal Records Bureau , or
  - c. evidence provided by the Police National Computer containing at least the same level information, or
  - d. a reference from an accreditation scheme recognised by the Council and which has required the same level of information.

In each case the document should be no older than 2 months from the date of the application being submitted. An exception to this rule will be made if an application in respect of another property has been made no more than 12 months from the date of the current application and the basic disclosure or other document was no older than 2 months from the date of the earlier application.

5. Documentary evidence of the management arrangements referred to in **appendix 10**

### **For licence renewals**

An up to date gas safety certificate and Basic Disclosure must be submitted with renewal applications as described in (2) and (4) above.

Where the existing licence holder applies to renew a licence prior to the end of its five year (or other agreed) licence period, the applicant will be sent a copy of the existing licence and required to sign a declaration as follows—

I/We declare that the house in respect of which a licence is sought under Part 2 of the Housing Act 2004 is subject to a licence under that Part at the time this application is made.

I/We further declare that to the best of my/our knowledge either:

(a) none of the information described in paragraph 2(c) to (g) of that Act and previously submitted to the authority has materially changed since that licence was granted;

or (b) the only material changes to that information are described as follows:  
[include description of all material changes].”

*Refs: 1.[Section 63(2) Housing act 2004 refers*

*2. The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 SI 2006 No 373*

*3. The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions)(Amendment) (England) Regulations 2012 SI 2012 No 2111*

## Appendix 7

### The most appropriate person to be the licence holder

In deciding whether a person is the **most appropriate person to be the licence holder** reference will be had to:

- The name put forward in the application for licence.
- The person having control of the HMO.

The Council must assume that the **person having control of the house (see appendix 1)** is a more appropriate person to be a licence holder than a person not having control.

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

- Does the proposed licence holder receive the rack rent for the premises?
- Is the proposed licence holder the owner of the property?
- If the proposed licence holder is not the owner what financial interest do they have in the property?
- Is the proposed licence holder an agent acting on behalf of someone else?
- If the proposed licence holder is an agent what power do they have to ensure compliance with the licence conditions?
- Does the proposed licence holder have an address in England or Wales where notices may be served<sup>3</sup>?

The City Council shall consider that an agent is only the person having control if they have demonstrable authority to ensure compliance with the licence conditions, including the retention of sufficient funds. The Council shall consider that unless otherwise demonstrated, an agent **collects** the rent, but only retains a management fee from it and passes the **rack rent** to the owner.

The City Council shall consider that a person normally resident outside England and Wales would not be a person having control, unless there is a business address in England or Wales and a demonstrable means of receiving correspondence sent to that address.

*[Section 66(4) and 263 Housing Act 2004 refer]*

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<sup>3</sup> This is to be consistent with section 48 Landlord and Tenant Act 1987 and to facilitate enforcement action if necessary

## **Appendix 8**

### **Factors to be taken into account in consideration of “the proposed manager”**

The Council has to be satisfied that the proposed manager of the house is either

1. the person having control of the house, or
2. is an agent or employee of the person having control of the house has control of the house.

(See the definition in appendix 1)

The person having control of the house will normally be the licence holder. In the first instance therefore the licence holder will also be named as the manager.

If, however, someone else has significant involvement in the management of the HMO the council must consider if this third party is a fit and proper person and competent to ensure satisfactory management, and they should be named as manager on the application form.

The Council has to be satisfied that the proposed manager has been made aware of the HMO Licence application naming them.

Where the Council intend to impose licence conditions on a manager who is not the proposed licence holder, the council will require the express written consent of the manager to the imposition of the restrictions and obligations.

*[Section 64(3) (c) and section 67(5) Housing Act 2004 refer]*

## **Appendix 9**

### **Factors to be taken into account when determining whether the PROPOSED LICENCE HOLDER or the PROPOSED MANAGER is a FIT AND PROPER PERSON for the purposes of the licence**

*Reference:*

*Section 66 Housing Act 2004*

*Section 233 Housing Act 2004 (Approved Code of Practice, if made)*

*Regulation 7(2) (b) and Schedule 2 para 3, The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006*

#### **Introduction**

When deciding upon an application for a licence the Council has to consider whether the proposed licence holder and the proposed manager are “fit and proper persons”. In considering this question the Council has to have regard to, amongst other things, evidence relating to criminal offence. This appendix sets out the Council’s response should there be any such evidence.

Wherever a person is to be subject to the fit and proper person test, then the licence application shall be accompanied by any of the following documents:

- a Basic Disclosure in respect of each person and obtained from Disclosure Scotland, or
- the results of a subject access search under the Data Protection Act 1998 of the Police National Computer by the National Identification Service available by application to the relevant person’s local police service, and

in any case such certificate or search results shall be issued no earlier than two calendar months<sup>4</sup> before the giving of the application to the relevant licensing authority.

The Council cannot require a Disclosure and Barring Service disclosure for the purposes of the Housing Act 2004 but if it has been made available for any other purposes the Council will accept it *in lieu* of either of the two documents specified above. The Council does not require information about spent convictions.

Where a public company is the proposed licence holder or manager of the property, the basic disclosure will usually be required for a representative person who could be a director or the company secretary. Alternatively a basic disclosure or other record mentioned above may be submitted by a director or senior manager where this person has direct involvement with the HMO and the company secretary does not.

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<sup>4</sup> For taxi licensing and personal licensing purposes the time is limited to 1 calendar month

Information collected for the purposes of the fit and proper person test may be shared with other authorities in the East Midlands region and other authorities where the licence holder holds other licences. This is subject to the requirements of the Data Protection Act 1998 and the General Data Protection Regulation. The information shared is limited to:

- Name and address
- Role of relevant person
- Name of local housing authority
- Date licence granted or refused
- Reason for refusal

The Council's guidelines, below, relate to the relevance of convictions and these will be referred to when determining applications. The guidelines do not deal with every type of offence; however similar offences will be taken into account in accordance with those in the guidelines.

Persons who have convictions within the guidelines will be required to attend an interview to have their application considered. The onus is on the applicant or other person to demonstrate to the interview panel why it should depart from its policy when considering previous convictions.

It is acknowledged that where a managing agent is acting on behalf of a number of landlords, or where a landlord is dealing with a large portfolio of properties the need to provide an up to date disclosure for each application can be onerous. This has to be balanced against the Council's responsibility to safeguard public safety. For the purposes of this policy therefore where an application for an HMO licence has been submitted within 12 months of an earlier application, and the earlier formal disclosure is no older than 12 months at the time of the later application then this will be accepted as evidence. See also Appendix 6 paragraph (6) (documents to accompany the application) and appendix 5 (fees).

## ANNEX TO APPENDIX 9-GUIDELINES RELATING TO THE RELEVANCE OF PREVIOUS CONVICTIONS and OTHER MATTERS

### **General Policy**

Each case will be decided on its merits. A person with a current conviction need not be excluded from being considered as a “fit and proper person”. A series of offences over time is more likely to give cause for concern than an isolated conviction of the same description.

Details will not be required of spent convictions for the purposes of the Rehabilitation of Offenders Act 1974. The aim is not to punish twice but to ensure public safety is not compromised in the management of houses in multiple occupation.

The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those named within the HMO licence are fit and proper to be the licence holder, or the manager, or both.

A person with a current conviction for a crime as described below need not be permanently barred from obtaining a licence or being described as a manager but should be expected to:

- remain free of conviction for an appropriate period; and
- show adequate evidence of good character from the time of the conviction.

Simply remaining free of conviction will not generally be regarded as sufficient evidence of good character.

Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account.

#### **(a) Offences of fraud or other dishonesty**

HMO licence holders and managers of HMOs are expected to be persons of trust. Tenants not only expect to be safe within their home but also expect that their property is safe too, that the terms of their tenancy agreement are reliable and that any deposits are properly dealt with.

Tenants may comprise of young adults unfamiliar with the respective responsibilities of rented accommodation, and vulnerable people of any age who are dependant for their safety and welfare on good property management.

For these reasons a serious view is taken of any convictions involving dishonesty. In general, a period of 5 years free of conviction will be

required before a relevant person can be held to be a fit and proper person.

In particular the test will normally be regarded as having failed where the relevant person has a conviction for an offence of:

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception

**and** the conviction is less than 5 years prior to the date of the HMO licence application.

Between 3 and 5 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

## **(b) Offences involving Violence**

A person's home is generally regarded as a place of safe refuge. HMO licence holders and managers of HMOs have a control over that home, and may have to deal with landlord and tenant disputes. They should not therefore present a threat to tenants, and in general a period of 5 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will be required before a relevant person is deemed to be fit and proper.

In particular:-

(i) The fit and proper person test will be deemed to have been failed where the relevant person has a conviction for an offence of:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Arson with an intent to endanger life
- Malicious wounding or grievous bodily harm (s.20 *Offences Against the Person Act 1861*) which is racially aggravated (s.29 (1)(a) *Crime and Disorder Act 1998*)
- Actual bodily harm (s.47 *Offences Against the Person Act 1861*) which is racially aggravated (s.29 (1)(b) *Crime and Disorder Act 1998*)

**and** the conviction is less than 10 years prior to the date of application.

(ii) The fit and proper person test will be deemed to have been failed where the applicant has a conviction for an offence of:-

- Grievous bodily harm with intent (s.18 Offences Against the Person Act 1861)
- Grievous bodily harm (s.20 Offences Against the Person Act 1861)
- Robbery
- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Racially-aggravated s.4 Public Order Act 1986 offence (fear or provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress) (s.31(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)

**and** the conviction is less than 8 years prior to the date of application.

Between 8 and 10 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(iii) The fit and proper person test will be deemed to have been failed where the relevant person has a conviction for an offence of:

- Common assault
- Common assault which is racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act )
- Assault against the police
- Racially aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)
- Riot
- Violent disorder
- Affray
- Fear or provocation of violence
- Harassment, alarm or distress
- Putting people in fear of violence
- Possession of offensive weapon
- Possession of firearm

- Criminal damage
- Obstruction
- Resisting arrest

**and** the conviction is less than 5 years prior to the date of application.

Between 5 and 8 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

### **(c) Offences involving drugs**

Tenants are entitled to expect that HMO licence holders and managers of HMOs will be in a position to take responsible decisions, and that they will not be exposed to drug abuse as a consequence of renting their home. It is for these reasons that the fit and proper person test will be deemed to have been failed where:

the relevant person has a conviction for a drug-related offence  
**and** the conviction is less than 5 years prior to the date of application.

### **(d) Sexual Offences**

Tenants expect to be safe within their home. They may comprise of young adults, and vulnerable people of any age. HMO licence holders and managers of HMOs have access to the tenants' homes and may have close personal contact. They are therefore expected to be persons of trust. For that reason the fit and proper person test will be deemed to have failed where the relevant person has a conviction for an offence of:

- Any listed in Schedule 3 to the Sexual Offences Act 2003
- Soliciting, importuning, indecent exposure or any sexual offence

Relevant persons with convictions will normally be deemed to have failed the fit and proper person test until they can show a substantial period (usually between 5 and 10 years) free from any such conviction.

In particular the fit and proper person test will be deemed to have been failed if the relevant person has a conviction for an offence involving certain sexual offences such as:-

- Rape, and
- sexual assaults

**and** the conviction is less than 10 years prior to the date of the application.

**(e) Unlawful discrimination.**

Licence holders and HMO managers are expected to be even handed in the manner in which they deal with tenants. They are expected not to have practised unlawful discrimination and will act in accordance with current statutory requirements<sup>5</sup> in the carrying on of their business.

Where there is a formal finding of unlawful discrimination as described above then it is expected that a period of 5 years will have lapsed from the date of the application otherwise the fit and proper person test will be deemed to have failed.

When considering any offence the Council will have regard to whether the crime was motivated by hostility or prejudice based on a protected characteristic under the Equality Act 2010.

**(f) Contravention of the law relating to housing or landlord and tenant law.**

A “contravention” shall be regarded as having been a conviction of an offence in a court of law. The law relating to housing shall be regarded as including not just the Housing Acts but law such as the Health and Safety at Work Act 1974 where the conviction relates to housing matters.

Tenants should not be at risk of intimidation by their landlords. Where a person has been convicted of illegal eviction or harassment for the purposes of the Protection from Eviction Act 1977 then a period of 8 years free of conviction should lapse before the relevant person is deemed to be a fit and proper person. Subject to the Rehabilitation Offenders Act.

Failure to comply with the law relating to housing will be regarded as indicative of an inability, for whatever reason, to properly manage housing accommodation. A person with such a conviction will be expected to have a period of 5 years free of conviction before being deemed to be a fit and proper person.

**(g) Other things**

The matters referred to in parts (a) to (f) above deal with the specific circumstances listed in the Housing Act 2004<sup>6</sup> to which the local housing authority must have regard. The City may have regard to other matters, and in exercise of that discretion it will have regard to the matters outlined below.

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<sup>5</sup> Equality Act 2010. See Equality and Human Rights Commission website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

<sup>6</sup> Housing Act 2004, section 66(2) (a)-(c)

## **Housing management**

In part (f) above reference is made to contraventions of the law, and contraventions in that context are regarded as synonymous with “convictions”. However the Council will also have regard to the frequency and number of actions that its officers have to take in dealing with poor accommodation whether by way of informal actions such as letters, or formal actions such as the service of statutory notices. The Council will also take into account the degree of risk to health relevant to each of the enforcement actions, the willingness or otherwise to remedy the situation and the number of dwelling houses controlled or managed by the relevant person.

Where, within a period of 4 years from the date of the application, there is compelling evidence that the relevant person is unable to provide satisfactory living conditions without persistent intervention by the local housing authority or other statutory bodies then the relevant person will be deemed not to be a fit and proper person.

The Council will also have regard to any landlord listed on the Rogue Landlord Database or if they have been issued with a Banning Order under the Housing and Planning Act 2016.

## **Road Traffic Offences**

Road traffic offences can be indicative of a person’s attitude to safety and responsibility to others. A conviction for a major traffic offence such as dangerous or careless driving, driving without due care and attention, and driving without insurance will require careful consideration and relevant persons will be interviewed by the Council with an expectation that a period of at least 3 years free from conviction to have elapsed before being deemed fit and proper. When considering motor traffic offences the Council will have regard to the advice<sup>7</sup> adopted for the purposes of the Council’s Statement of Licensing Policy.

## **Anti social behaviour**

Anti social behaviour is indicative of a person’s attitude to others. A conviction for breaching the terms of an anti social behaviour order under Anti-social Behaviour, Crime and Policing Act 2014 will require careful consideration and relevant persons will be interviewed by the Council who would expect a period of at least 3 years free from conviction to have elapsed before being deemed fit and proper.

## **Associates**

The term “associates” is not defined in the Act. The Council will consider any person or organisations involved with the management or control of the relevant person’s residential property or of his or her other business interests

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<sup>7</sup> “Guidelines Relating To The Relevance Of Previous Convictions”

as likely to be an “associate”. This may be in the form of a written contract or on an informal basis.

### **After the licence has been issued**

During the period of the licence a landlord may be convicted of a relevant offence, or may contravene housing or other law, which would make him or her not a fit and proper person to hold a licence. To help deal with such circumstances the Council has introduced a standard discretionary condition, which requires the licence holder to notify the council of any relevant change in circumstances.

**Appendix 10**  
**Satisfactory Management Arrangements**

When determining an application for a licence the Council has to decide, amongst other things, whether the proposed management arrangements are satisfactory. Satisfactory arrangements for management will include the factors described in column 1 of the table below, and column 2 suggests types of evidence that could demonstrate this.

<b>Management Arrangements</b>	<b>Evidence</b>
A system for tenants to report defects, including emergencies.	Confirmation of information given to tenants with contact details of owner or agent. A notice to the same effect clearly displayed on the premises.
A system to respond to reports of defects and emergencies.	Confirmation of proposed response times and whether arrangements are in place for the procurement of contactors. A notice to the same effect clearly displayed on the premises. Any visual inspection by an officer of the condition of the premises.
A process for dealing with claims of anti-social behaviour arising from the tenants or their visitors.	Confirmation of how anti-social behaviour will be dealt with by the person having control of the house.
Arrangements in place for periodic inspections to identify where repair or maintenance is required.	Confirmation of the frequency and extent of proposed inspections. Any visual inspection by an officer of the condition of the premises.
The proposed funding arrangements are suitable. <i>[Section 66(6)(c ) refers]</i>	A declaration that there is adequate funding to manage and maintain the HMO. This will be found in the application.
The person or persons named in the licence are competent to be in control of or manage a house in multiple occupation as the case may be.	A declaration providing details of training, affiliation to any relevant professional bodies, and relevant experience
Arrangements in place for the assessment and management of the fire risk.	Document(s) detailing the frequency and extent of relevant testing, inspection and risk controls, appropriate to the size and type of HMO.
Arrangements in place for routine inspection and testing of the fixed electrical installations at intervals not exceeding five years by a competent person	A copy of the certificate of a satisfactory electrical installation condition report.

Arrangements in place for routine inspection and testing of the gas safety at intervals not exceeding 12 months by competent gas installer.	A copy of the gas safety certificate carried out within the last 12 months, a copy of which has also been provided to the tenant(s).
A system in place for ensuring compliance with local authority schemes for disposal and collection of waste.	Confirmation of how local authority waste disposal schemes will be complied with.
A system for ensuring the cleaning and maintenance of the communal areas, fixtures, fittings and appliances.	Confirmation of how kitchens, bathrooms, hallways, outdoor areas and amenities are intended to be maintained.

In considering whether the proposed management arrangements for the house are satisfactory regard will be had to the contents of; *The Management of Houses in Multiple Occupation (England) Regulations 2006, as amended or any of its successors; Anti-Social Behaviour, Crime and Policing Act 2014 as amended or any of its successors, Gas Safety (Installation and Use) Regulations 1998 as amended by the Gas Safety (Installation and Use) (Amendment) Regulations 2018 or any of its successors & Furniture and Furnishings (Fire) (Safety) Regulations 1988 or any of its successors.*

Where the proposed licence holder or manager is a member of the Lincoln Trusted Landlord Scheme at the time of application, in recognition of adherence to the terms of the accreditation scheme, the management arrangements will be deemed to have been satisfied for the enrolled landlord.

## **Appendix 11**

### **The Prescribed Standards**

The City Council cannot issue a licence if the 'prescribed standards' are not met.

The City Council can issue a licence for less than the number of households or persons requested on the licence application if that does allow the prescribed standards to be met.

The prescribed standards are summarised below, however they may be subject to change and for full details the Regulations should be consulted.

The City Council has adopted standards based on local housing conditions in Lincoln to define "adequate", "suitable" and "sufficient" for the purposes of the prescribed standards. These are set out in Appendix 12.

#### *References:*

*(1) Section 64(3) (a) Housing Act 2004.*

*(2) Section 65 Housing Act 2004.*

*(3) Regulation 8 and Schedule 3, The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006,*

*(4) Regulation 12(4) and 12(8), The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007*

#### **Space Heating**

Each unit of living accommodation must be equipped with adequate means of space heating.

#### **Washing facilities**

There must be an adequate number of bathrooms, toilets and wash hand basins for the number of persons sharing those facilities, and where reasonably practicable there must be a wash hand basin in each unit which does not contain a sink.

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

All bathrooms must be suitably and adequately heated and ventilated.

All baths, toilets and wash hand basins must be of adequate size and layout

All baths, toilets and wash hand basins must be fit for purpose.

All bathrooms and toilets must be suitably located.

## **Kitchens**

Shared kitchens must be suitably located, and of such layout and size, and so equipped as to enable the persons sharing to store, prepare and cook food

The following equipment must be provided, and in sufficient quantities;

- (i) sinks with draining boards,
- (ii) cold and hot water supplied to the sinks,
- (iii) installations or equipment for the cooking of food,
- (iv) electrical sockets,
- (v) worktops,
- (vi) cupboards for food and utensils,
- (vii) refrigerators with an adequate freezer compartment,
- (viii) refuse disposal facilities,
- (ix) appropriate extractor fans,
- (x) fire blankets,
- (xi) fire doors.

## **Kitchen facilities provided for the exclusive use of an individual household**

The following standards apply unless the landlord is not contractually bound to provide such appliances or equipment; the occupier is entitled to remove such appliances or equipment, or the appliances or equipment are otherwise outside the control of the landlord.

- (a) Adequate appliances and equipment for cooking food,
- (b) a sink with a supply of hot and cold water,
- (c) a work top,
- (d) sufficient electrical sockets,
- (e) cupboards for utensils and crockery,
- (f) a refrigerator.

## **Washing facilities provided for a unit of living accommodation**

An enclosed and adequately laid out and ventilated room with a toilet and bath or fixed shower, with a supply of constant hot and cold water.

The toilet and bath (or shower) must be within the living accommodation or within reasonable proximity of the living accommodation.

## **Fire precautionary facilities.**

Appropriate fire precaution facilities and equipment must be provided of such type, number and location as is considered necessary.

## Appendix 12

### Adopted standards for HMOs within the City of Lincoln

The City Council will use the following standards to determine what is adequate, suitable and sufficient provision of facilities for HMOs within the City of Lincoln.

The City Council may in any particular case decide that a house is not reasonably suitable for occupation by a particular maximum number of households or persons, or may impose conditions to make it suitable, having regard to these standards.

*[Section 65(2) Housing Act 2004 refers]*

Annexe to Appendix 12

<b>CITY OF LINCOLN COUNCIL</b>
<b>Adopted standards for Licensable Houses in Multiple Occupation (HMO)</b>
<b>REVISED: August 2018</b>

The following standards/facilities shall be provided in Houses in Multiple Occupation within the City of Lincoln district:

#### Bathing and toilet facilities

<b>Number of persons sharing the amenity</b>	<b>Shared wash hand basins (minimum size 500 x 400mm)</b>	<b>Shared toilets</b>	<b>Shared baths or showers</b>
Up to 4	1	1	1
5	2	1 (a)	1 (a)
6	2	2	2
7	2	2	2
8	2	2	2
9	2	2 (b)	2 (b)
10	2	2 (b)	2 (b)
11	3	3 (c)	3 (c)
12	3	3 (c)	3 (c)
13	3	3 (d)	3 (d)
14	3	3 (d)	3 (d)
15	3	3 (d)	3 (d)

Number of persons sharing the amenity	Shared wash hand basins (minimum size 500 x 400mm)	Shared toilets	Shared baths or showers
16 or more	4 and 1 additional for every 5 extra people sharing	4 and 1 additional for every 5 extra people sharing  At least 2 must be separate from bath or shower rooms	4 and 1 additional for every 5 extra people sharing

Notes:

### Toilets

- (a) Where five people share one toilet it must be separate from the bath or shower room
- (b) Where 9 or 10 people share only 2 toilets at least one must be separate from a bath or shower room
- (c) Where 11 to 12 people share only 3 toilets at least one must be separate from a bath or shower room
- (d) Where 13 to 15 people share only 3 toilets at least two must be separate from a bath or shower room

### Wash Hand Basins

- (e) all wash hand basins to be supplied with hot and cold water with tiled splash backs and connected to the foul drainage in accordance with building regulations requirements
- (f) A wash hand basin shall be provided in each room that contains a WC
- (g) A wash hand basin may be required in a self-contained unit of accommodation (i.e. a bedroom or bedroom / living room) where an HMO consists of bedsit type accommodation.

### Baths and showers

- (h) All baths and showers shall be provided with a hot and cold water supply and properly connected to the drainage system.
- (i) If there is both a shower and a bath in one room only one will be counted
- (j) All bath/shower rooms and shower rooms shall be suitably heated. The preferred means of heating will be a central heating radiator. A wall mounted electrical heating operating from a fused spur may be acceptable.
- (k) All bath/shower rooms and shower rooms shall be ventilated by an appropriately sized extractor fan and reference should be made to Building Regulations for sizing.

### **Siting and layout of bath and shower rooms**

- (l) A reasonable amount of space must be provided for access to use toilets, baths and showers safely. The following floor areas are recommended:
- (m) There shall be no more than one floor distance between a letting (bedroom) and a shared WC.
- (n) For a WC, an area of 800 mm width and 600 mm depth from the front lip of the WC pan.
- (o) For a wash hand basin an area of 1100 mm width and 700 mm depth from the front of the wash hand basin.
- (p) Where a wash hand basin sides on to a bath, there should be a gap of 200 mm between the side of the bath and the side of the basin.
- (q) For a bath an area of 700 mm depth from the side of the bath where ingress/egress to the bath is required.
- (r) For a shower 700 mm in front of the shower door for the full total of its width.
- (s) Overlap of work space in front of the amenities can take place by up to 150 mm where two amenities are next to each other.

## Kitchen and food preparation facilities

Shared facilities where cooking facilities are not provided in letting rooms

<b>Number of persons sharing the amenity</b>	<b>Cooker (minimum 4 ring hob, oven &amp; grill)</b>	<b>Sink and drainer</b>	<b>Fridge and freezer (minimum 100 litre fridge &amp; 85 litre freezer)</b>	<b>Worktop length (minimum depth 500 mm)</b>	<b>Electric sockets in addition to those for fixed appliances</b>	<b>Storage cupboards or drawers</b>
	See notes a, b, & c	See note d	See notes J & k	See notes e & f	See note g	See notes h & i
1 to 2 in one household	Oven, grill and min 2 rings	1	Fridge with ice compartment	1.0m	4 sockets	2 cupboards
Up to 5	1	1	1 fridge & 1 freezer	2.0m	4 sockets	5 cupboards plus utensil storage
6	2 or 1 plus a microwave, or a range cooker with double oven & 6 rings	2 Or 1 sink with drainer & a dishwasher	2 fridges & 2 freezers	2.25m	8 sockets	6 cupboards plus utensil storage
7	2	2 Or 1 sink with drainer & a dishwasher	2 fridges & 2 freezers	2.5m	8 sockets	7 cupboards plus utensil storage
8	2	2	2 fridges & 2 freezers	2.75m	8 sockets	8 cupboards plus utensil storage
9	2	2	2 fridges & 2 freezers	3.0m	8 sockets	9 cupboards plus utensil storage
10	2	2	2 fridges & 2 freezers	3.25m	8 sockets	10 cupboards plus utensil storage

<b>Number of persons sharing the amenity</b>	<b>Cooker (minimum 4 ring hob, oven &amp; grill)</b>	<b>Sink and drainer</b>	<b>Fridge and freezer (minimum 100 litre fridge &amp; 85 litre freezer)</b>	<b>Worktop length (minimum depth 500 mm)</b>	<b>Electric sockets in addition to those for fixed appliances</b>	<b>Storage cupboards or drawers</b>
	See notes a, b, & c	See note d	See notes J & k	See notes e & f	See note g	See notes h & i
11	3	3 Or 2 sinks with drainer & a dishwasher	3 fridges & 3 freezers	3.5m	12 sockets	11 cupboards plus utensil storage
12	3	3 Or 2 sinks with drainer & a dishwasher	3 fridges & 3 freezers	3.75m	12 sockets	12 cupboards plus utensil storage
13	3	3 Or 2 sinks with drainer & a dishwasher	3 fridges & 3 freezers	4.0m	12 sockets	13 cupboards plus utensil storage
14	3	3 Or 2 sinks with drainer & a dishwasher	3 fridges & 3 freezers	4.25m	12 sockets	14 cupboards plus utensil storage
15	3	3 Or 2 sinks with drainer & a dishwasher	3 fridges & 3 freezers	4.5m	12 sockets	15 cupboards plus utensil storage
16 or more	4 plus 1 per every 5 additional people	4 plus 1 for every 5 additional people, 1 sink & drainer may be replaced by a dishwasher	4 fridges & 4 freezers Plus 1 fridge & 1 freezer for every additional 5 people	4.75m then 0.25m for each additional person	16 plus 4 for every 5 additional people	16 cupboards plus utensil storage, plus 1 for each additional person

Notes:

**Cookers**

(a) Cookers must be fixed and preferably located between worktops. There should be a minimum width of 250mm worktop either side of the cooker.

(b) The cooking rings must be no more than 920mm above floor level.

(c) Mini cookers sited on worktops are not suitable in shared kitchens.

### **Sinks and drainers**

(d) All sinks must be supplied with hot and cold water and connected to the foul drainage system in accordance with building regulations requirements.

### **Worktops**

(e) Worktops must have impervious surfaces which are in good condition and with water proof seals to all adjoining walls, sinks, drainers, and where appropriate appliances.

(f) Areas of worktop less than 500mm in depth will not be counted towards the provision for the number of occupants.

### **Electric sockets**

(g) Each fixed appliance e.g. cooker, oven, hob, microwave, fridge, freezer, dishwasher, requires its own dedicated electric socket. Additional over worktop sockets are required as set out in the table above for portable appliances such as kettles, toasters, blenders, etc.

### **Food and utensil storage**

(h) A minimum of 500 x 700 x 290 mm cupboard for each occupant

Note: cupboards under sink units cannot be used for dry food storage

(i) A minimum of 1000 x 500 mm storage space below worktop height (cupboard or draws) for keeping cooking utensils, crockery and cutlery in addition to the occupants food storage cupboards.

(j) For each 5 occupants or part thereof, a refrigerator with a minimum 100 litre capacity (typically an under worktop refrigerator H840 x W500 x D560 mm).

(k) For each 5 occupants or part thereof, a freezer with a minimum 85 litre capacity (typically an under worktop freezer H840 x W545 x D595 mm).

### **Fire Precautions**

(l) A 30 minute fire resisting door with intumescent strip/smoke seals and self-closer shall be provided to any doors in the kitchen giving access to any part of the house.

(m) A 1m x 1m fire blanket shall be supplied and located on a wall opposite the cooker where it should be readily accessible if and when necessary

### **Ventilation**

(n) Satisfactory ventilation shall be provided for kitchens and an extractor fan of adequate capacity shall be provided and fixed in a suitable position (preferably over a cooker where most steam is generated)

(o) Suitable and sufficient refuse storage bins e.g. 30 litre swing bins shall be provided. Refuse sacks by themselves are not acceptable.

### **Heating of a letting or unit of living accommodation**

Bedrooms, living rooms, and bath or shower rooms must be equipped with adequate means of space heating so that they can be heated to at least 21 degrees centigrade when the outside temperature is minus 1 degrees centigrade	
1	<p>For this purpose the following forms of heating are considered acceptable:-</p> <ol style="list-style-type: none"><li>1. Gas or oil fired central heating systems with a radiator in each room.</li><li>2. Electric storage heaters.</li><li>3. In a living room the use of a gas or electric fire.</li><li>4. For bath or shower rooms only, electric fan heaters</li></ol> <p>Note: Electric heaters must be fixed in place and wired to their own dedicated electrical socket.</p>
2	The heating system controls should be available to the occupiers so that they may adjust the timing and the temperature
3	Thermostatic radiator valves should be fitted to radiators to assist with the control of the heating.
4	Free standing electric, liquefied petroleum gas (LPG) or paraffin heaters are not acceptable as a source of heating.

## Minimum sizes for rooms

<b>Sizes for letting rooms</b>	<b>1 person room</b>	<b>2 person room</b>
Note: Any area of the room with a ceiling height less than 1.5 m cannot be counted towards the minimum room size.		
Where adequate an adequate kitchen, communal living and dining space are provided elsewhere in the HMO as set out below	6.51m <sup>2</sup> <u>for sleeping only</u> (National mandatory minimum sleeping room size for a person over 10 years of age)	10.22 m <sup>2</sup> <u>for sleeping only</u> (National mandatory minimum sleeping room size for two people over 10 years of age sharing)
Where there is a shared kitchen but no lounge or dining facilities other than in the letting room	10 m <sup>2</sup>	15 m <sup>2</sup>
Where cooking facilities are provided within the letting room	14 m <sup>2</sup>	18 m <sup>2</sup>
<b>Kitchens</b>	A minimum of 7 m <sup>2</sup> if used by 1 to 5 persons with an additional 2 m <sup>2</sup> per person if any more are sharing the kitchen	
<b>Dining space</b>	2 m <sup>2</sup> for each person sharing	
Regard will be had to layout of rooms including doorways and location of appliances and other factors contained in the published advice concerning overcrowding standards and the Housing Health and Safety Rating System. Space taken up by ensuite shower rooms is not included in the room size assessment.		

## Fire Precautions

1	<p>The licence holder must ensure that appropriate fire precaution facilities and equipment must be provided of such type, number and location as is considered necessary.</p> <p>The appropriate facilities and equipment will be determined having regard to the LACORS Fire Safety Guidance 2008 and if appropriate discussion with the Lincolnshire Fire and Rescue Service.</p>
2	<p>The licence holder may have responsibilities under the Regulatory Reform (Fire Safety) Order 2005 to carry out fire risk assessments for the common areas of the HMO. This duty does not apply to a shared house with all tenants on a single joint tenancy and living as a cohesive group.</p>
3	<p>As a minimum mains wired smoke alarms will be required on each floor of the common staircase. These alarms must be interlinked and have battery back up</p>
4	<p><b>Fire Doors</b></p> <p>It is recommended that purpose made door sets which meet the 30 minute fire resisting standard BS 476: Part 22:1987 are fitted.</p> <p>For difficult/non standard door openings blanks can be purchased and cut down. In most cases standard fire doors can be adjusted to fit normal door opening sizes.</p> <p><b>Hinges</b> All fire doors must be hung on three fire rated hinges, to resist bowing in the event of a fire and to bear the increased weight of the door.</p> <p><b>Self-closing devices</b> Fire resisting doors should be fitted with external dual action hydraulic type self-closing devices which are adjusted to close quickly but latch slowly so as not to wear the smoke seals or damage the door or frame. Perco-type (Chain) closers are not suitable as they cause the doors to slam causing noise nuisance to occupiers and they tend to wear the smoke seals/frames causing damage over a period of time. Self-closers are to be attached using appropriate fixings that are designed to prevent removal/tampering by tenants.</p> <p><b>Door fitting</b> On completion doors should be flush with the frame, close fitting to the stops. Close fitting into frames with a maximum</p>

	<p>gap of 3mm (the thickness of a £1 coin) between door and frame to both sides and the head. A maximum gap of 9mm to the base of the door.</p> <p>Smoke seals/Intumescent strips Intumescent strips incorporating cold smoke seals must be fitted to all fire doors. Fire door performance and integrity depends on the installation of such strips which can be fixed into a channel in the door or rebated into the frame. New doors and frames may come with these factory fitted, it is useful to choose this option as it saves work on site and ensures the doors/frames perform to the British Standard.</p> <p>Door furniture Door handles must give security but do not allow tenants to be locked out of their lettings by the action of the self-closers. For this reason, the best design is a simple mortice lock and door handles which require a key to lock the door, but the inside has a thumb turn instead of a key. This means that the occupant can escape from the room in an emergency without relying on a key.</p> <p>All final exit doors must also have this type of lock or a simple latch lock which allows exit without using a key in the event of an emergency. Care must be taken when installing any additional security locks to final exit doors, so that this requirement is not overridden and by doing so, occupiers are locked into the house if a fire breaks out. This lock standard applies to all bedroom/bed-sit doors and final exit doors, including doors onto any secondary fire escape stairs.</p>
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**Further measures may be needed which are specific to the particular HMO**

Advice can be obtained by contacting the Private Housing team, City of Lincoln.

e.mail: [housing.privatesector@lincoln.gov.uk](mailto:housing.privatesector@lincoln.gov.uk)

Note:

*These standards define “adequate”, “suitable” and “sufficient” for the purposes of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation and Other Houses (Additional Provisions) (England) Regulations 2007.*

## Appendix 13

### Summary and Interpretation of Mandatory Conditions

*References:*

(1) *Schedule 4 Housing Act 2004*

(2) *Section 67(3) Housing Act 2004*

A licence must include the following conditions.

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

**Electrical appliances** The electrical appliances made available by the licence holder must be kept in a safe condition.

The licence holder must supply to the authority on demand a declaration that the electrical appliances are safe.

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

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

**Smoke Alarms** Smoke alarms must be installed on each storey of the house where there is a room used as living accommodation, and each alarm shall be kept in proper working order.

The licence holder must ensure that a carbon monoxide alarm is installed in any room in the house, which is used as living accommodation and contains a solid fuel burning combustion appliance, and each alarm shall be kept in proper working order.

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

**Floor Area** The licence holder must ensure that 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, and by two persons aged over 10 years is not less than 10.22 square metres.

The licence holder must ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres and if the floor area is less than this then the room is not used as sleeping accommodation.

The licence holder shall ensure any room in the HMO used as sleeping accommodation is not used by more than the maximum number of persons specified in the licence.

\*Please note that if the ceiling height is less than 1.5 metres it is not to be taken into account in determining the floor area of that room.

**Household Waste** The licence holder shall comply with the Council's scheme, which relates to the storage and disposal of household waste.

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

**In applying the mandatory conditions the City Council will be satisfied that they have been applied in the following circumstances.**

**Gas Safety Certificate** Where a gas safety certificate has been produced for the purposes of the Gas Safety (Installation and Use) Regulations 1998 (or any regulations which subsequently replace these), and satisfies the requirements of those regulations, then it shall also satisfy the requirements of this condition. The Council will expect the certificate to include a statement to the effect that the gas appliances and installations are safe to use.

**Electrical appliances** A declaration provided to satisfy the condition shall make reference to a list which itemises all the electrical appliances supplied by the licence holder, and each description shall include a reference to the type of appliance, the make or brand, and any other identifying name or reference, and its location within the HMO. The declaration must state each item has been visually inspected and is in a safe condition.

**Furniture** A declaration provided to satisfy this condition shall make reference to a list, which itemises the furniture supplied by the licence holder and will where appropriate state whether the furniture meets the requirements of the Furniture and Furnishings (Fire Safety) Regulations 1998 (or any regulations which subsequently replaces them) and is in otherwise a safe condition.

**Smoke Alarms** The type and condition of any fire detection and alarm system will be determined by reference to the Housing Health and Safety Rating System, and in particular to the LACORS *Housing – Fire Safety Guidance on fire safety provisions for certain types of existing housing (August, 2008)*, and any successor guidance.

The Council may require on demand a declaration or certificate confirming the proper working order of the smoke and carbon monoxide alarms.

**Floor Area** The mandatory condition confirms the national minimum room sizes. Please note that the City of Lincoln Council's adopted HMO standards (appendix 12) cite a higher room size standard that will be used to determine the maximum number of persons permitted to occupy each sleeping room.

The licence holder shall ensure that all rooms within the HMO used as sleeping accommodation are not used by more than the maximum number of persons of particular ages specified in the licence.

**Household Waste** The council will be satisfied that this condition has been met with reference to the City of Lincoln Council's Domestic Refuse, Recycling and Composting Collection Policy, or its successor. In particular, the licence holder is expected to provide a storage area for wheeled bins or purple sacks and recycling boxes as appropriate for the number of occupiers and location of the HMO, which is accessible for removal of waste by tenants or collection of communal bins at larger developments. The licence holder should display in the HMO the arrangements for appropriate presentation of waste and ensure that bins and sacks are placed and removed at appropriate times.

**Tenancy Terms** The City Council will be satisfied that this condition has been met if a copy of the tenancy agreement or a written statement of the existing tenancy terms is provided on demand, with a statement to the effect that the agreement or statement has been provided to existing tenants, and will be provided to future tenants. The tenancy terms may not attempt to undermine the tenant's statutory rights under the Protection from Eviction Act 1977.

## **Appendix 14**

### **Discretionary licence conditions to be applied on all licences**

The City Council has decided against introducing conditions that would duplicate in detail the requirements of *The Management of HMO (England) Regulations 2006 (as amended)*, nevertheless the following conditions will be specified for each licence.

#### **Landlord and tenant matters**

The licence holder shall display in a communal area of the HMO the arrangements in place to deal with repairs and their contact details in the event of an emergency.

The licence holder shall ensure that all reasonable and practical steps are taken to prevent or reduce anti-social behaviour by persons occupying or visiting the house.

Where required by the City Council the licence holder and/or manager shall attend training as specified in writing by the City Council to demonstrate satisfactory competence in property management.

The licence holder shall ensure up to date records are maintained for all residents. These records shall include each resident's full name, date of birth and part of the property they occupy.

#### **The building**

The licence holder shall maintain the exterior of the property in reasonable decorative order.

The licence holder shall make arrangements for regular inspections of the property to monitor and ensure compliance with this licence and associated conditions.

The licence holder will ensure compliance with *The Management of Houses in Multiple Occupation (England) Regulations 2006 (as amended)*.

#### **Notification of change of circumstances**

The licence holder shall notify the City Council in writing as soon as reasonably practicable of any change in the details of the person having control of the HMO, or managing the HMO. The relevant changes include:

1. Change of the person or business having control of, or managing the HMO.
2. Change of the address, telephone number or e-mail address of the person having control of, or managing the HMO.

3. Change of any of the following where the person having control or managing the HMO is a company, registered charity, or partnership:
  - a. Company name
  - b. Company number
  - c. Registered address
  - d. Directors
  - e. Company secretary
  - f. Charity correspondent
  - g. Trustees
  - h. Partners
4. If the property subject to the licence is made available for sale, or sold.
5. If there are any changes made to the property layout, either in the way in which individual rooms and circulations spaces are used, or if there are any structural alterations to the property.
6. A conviction of a criminal offence by any person or organisation named in the licence.

### **Amenities and equipment**

The licence holder shall ensure that the amenities, facilities and equipment required to make the building suitable for occupation are maintained and in good repair and proper working order.

### **Display of notices**

The licence holder shall cause to be clearly displayed in a common area in the building copies of:

1. the licence, including the conditions
2. if applicable, a current copy of the gas test certificate
3. if applicable, a current copy of the Energy Performance Certificate

## **Appendix 15**

### **Inspections of HMOs subject to licensing**

#### *References:*

- (1) Section 55(5) (c) Housing Act 2004.*
- (2) Section 67(4) Housing Act 2004.*
- (3) The Housing Health and Safety Rating System (England) Regulations 2005.*
- (4) Housing Conditions: Enforcement Guidance.*

#### **Introduction**

An assessment of the HMO is carried out in accordance with the requirements of Part 2 of the Housing Act 2004, to ensure that the HMO has adequate space and amenity standards and is properly managed.

Part 1 of the Housing Act 2004 introduced the Health and Safety Rating System. Under this system hazards are classified as Category 1 or Category 2. The category of risk is significant in respect of the Council's duties, as follows:

Category 1 hazard	the Council has a duty to take action
Category 2 hazard	the Council may take action

The Act states that in general councils should use their powers in Part 1 of the Act to deal with hazards and not use the licensing system. However, as part of the licensing system councils must make an assessment of the need to use their Part 1 powers.

#### **Determining the need for inspection**

All HMOs in Lincoln will be inspected before or during the licence term. The inspection(s) will be scheduled according to risk, taking account of the circumstances of the HMO at the time of application, and whether or not the proposed licence holder or manager is a member of the Lincoln Trusted Landlord Scheme.

#### **The Application Details and Licensing Standards**

When inspecting a building subject to HMO licensing, an officer acting on behalf of the Council will verify the information provided in the application. The provision of false or misleading information in a HMO licence application may result in a licence being varied or revoked, in addition to enforcement action.

#### **Housing Health and Safety Rating System**

On inspecting a property for the purposes of a HMO licence application the officer acting on behalf of the Council will undertake a risk assessment. If

deficiencies are found, an assessment of the hazards will be made under the Housing Health and Safety Rating System. This may, if appropriate, lead to the service of a statutory notice under Part 1 of the Housing Act 2004. The officer will have regard to the council's Housing Enforcement Policy to inform such action.

This local authority duty does not replace the duty of the responsible person to undertake a fire risk assessment for the purposes of the *Regulatory Reform (Fire Safety) Order 2005* (Article 9 of the Order refers).

## Appendix 16

### Duration of Licences

A licence may be granted before the time it is required, but the licence will not come into force until that time.

A licence cannot be in force for a period greater than 5 years. Many licences issued by the Council will be granted for a period of 5 years.

The City Council will grant a licence for a period of less than 5 years if it is appropriate to do so. In particular a term of 1 to 3 years will be granted in the following circumstances:

The application follows an investigation or a request made by the council.	1 - 3 years
Where the property should have been licenced previously	1 - 3 years
There is evidence of previous poor management of a HMO	1 - 3 years
Where there has been repeated intervention with the proposed licence holder or manager by the council's enforcement teams.	1 - 3 years

A decision to reduce the duration of the licence will be taken independent of any decision(s) taken for the purposes of the enforcement policy.

## Appendix 17

### Service Standards

The service standards relating to correspondence will be the adopted corporate standards.

The service standards relating to enforcement will be those contained in the adopted enforcement policies.

The City Council undertake to complete the tasks described in column 1 of the table within the time scale described in column 2

The determination of an application for an HMO licence from receipt of the completed application	3 calendar months.
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Tacit approval of a HMO Licence Application under The Provision of Services Regulations 2009 will not take place if these service standards are not met, due to the risk to public safety of not properly determining the suitability of the licence holder and the condition of the HMO.