

PLACE COMMITTEE

31st OCTOBER 2018

REPORT OF THE ASSISTANT DIRECTOR OF PLANNING & REGULATORY SERVICES

NEW MANDATORY LICENSING FOR HOUSES IN MULTIPLE OCCUPATION

1.0 PURPOSE OF REPORT

1.1 Inform Members of new legislation and the implications for the Council.

2.0 RECOMMENDATIONS

2.1 It is recommended that

- (i) The Committee notes the new mandatory provisions highlighted in paragraphs 3.5-3.8 below;
- (ii) The Committee approve the revision to the fee structure of £635 for a 5 year licence under the revised HMO licensing provisions as 3.10 below.

3.0 KEY ISSUES

3.1 The Licensing Of Houses In Multiple Occupation (Prescribed Description) (England) Order 2018

The Government has introduced new rules regarding licensing of houses in multiple occupation (HMO) that will mean a substantially higher number of properties will require a licence.

3.2 From 01 October 2018, an **HMO licence will be needed for properties occupied by five or more people from two or more separate households (and who share facilities) regardless of the number of storeys**. The new rules apply to HMOs in England, but not to converted blocks of flats, to which section 257 of the Act 2004 applies.

3.3 Local housing authorities are under a duty to grant the 5 year licence if they are satisfied that:

(a) the house is reasonably suitable for occupation for the maximum number of households or persons specified in the application or decided by the authority (or that it can be made so suitable by the imposition of conditions);

(b) the proposed licence holder is the most appropriate person to be the licence holder and is a fit and proper person to be the licence holder;

(c) the proposed manager of the house is the person having control of the house or an agent or employee of that person and is a **fit and proper person** to be the manager of the house; and

(d) the proposed management arrangements for the house are otherwise

satisfactory.

3.4 **The Mandatory Conditions Regulations 2018** amend Schedule 4 of the Act, introducing the following new conditions:

- Mandatory national minimum sleeping room sizes; and
- Waste disposal provision requirements.

3.5 **Mandatory national minimum sleeping room sizes**

In addition to extending the licensing requirements, the Government has introduced minimum room size for bedrooms in licensed HMOs. The new guidance states floor space be no less than **6.51 square meters for a single person** and **10.22 square meters for two adults sharing**.

The mandatory room size conditions will however be the statutory minimum and are not intended to be the optimal room size.

If convicted for such an offence the licence holder is liable to an unlimited fine. The local housing authority may impose a financial penalty of up to £30,000 as a Civil Penalty as an alternative to prosecution. A Civil Penalty procedure will be considered and if deemed appropriate will be brought back to Members for consideration.

3.6 **Waste disposal provision requirements**

Local authorities are required to impose a mandatory condition concerning the provision of suitable refuse storage facilities for HMOs.

HMOs, occupied by separate and multiple households, generate more waste and rubbish than single family homes. Some Local Authorities have made specific provision under their function as the local waste authority for landlords of HMOs to ensure there are appropriate facilities for storing rubbish their properties generate.

All licensed HMOs will need to comply with the scheme issued by the Local Authority for the storage and disposal of domestic refuse pending collection.

A licence holder's failure to comply with the scheme is a breach of the licence and a criminal offence.

Local Authorities should be mindful that HMOs are residential properties, and as such, they should provide a comprehensive and frequent waste collection service for such households which is free at the point of use; this includes HMOs which are occupied by students.

3.7 **Fees**

The existing fee for HMO licensing is £450 for a 5 year licence. This is under the former regulation and related to properties with 3 or more storeys. Melton currently licences 5 such properties. A revised approach has been devised to calculate the appropriate fee is proposed for approval by the Committee. This includes an assessment for the time required for all aspects of the process including the Licensing Team carrying out 'fit and proper person checks' carrying out and an Environmental Health Officer inspection of the property to be licenced and applying relevant conditions. There is also the administration of issuing the licence. This has involved application of correct salary rates with relevant overheads for different level of Officer involved in the process. The revised fee for HMOs in Melton is £635 which includes provision for a contribution towards management and enforcement costs. The revised fees across Leicestershire range from approximately £525-£795.

3.8 The Residential landlords Association (RLA) are requesting that where a review of fee structure has taken place and have resulted in a fee increase, each Council publicly justify the increase in fees. It is considered that the approach to fees described above is sufficiently robust to meet with these requirements

4.0 **POLICY AND CORPORATE IMPLICATIONS**

4.1 There are no specific changes to policy as we will be applying the law as now prescribed.

5.0 **FINANCIAL AND OTHER RESOURCE IMPLICATIONS**

5.1 Overall this change in legislation will increase the workload carried out by our Environmental Health and Licensing teams. At present we have very few HMO's requiring inspection and licensing (circa 5) and a commensurate level of activity associated with enquiries, potential enforcement issues etc, but the widening of the scope of the legislation to all HMO's will increase this ten fold (circa 50)

5.2 The income from this has been calculated as likely to be around £32k. However it needs to be noted that there is insufficient capacity within the existing team to carry out 50 additional inspections (especially as the new Animal Licensing requirements also impose additional inspections) and it is likely that the additional capacity will need to be established. With the new fee structure being implemented within 2018/19 it is expected that a net £22k in an additional income will be achieved after taking into account additional temporary resource of £10k to implement the new charges. However this is unlikely to impact on the basis on which the fees have been set because it will be procured at a cost base equivalent to our in house cost base. It should also be noted, it is anticipated that all inspections will take place in one year and therefore the income will all be received in that same year which covers the whole 5 year licence period. This means there is likely to be fluctuations in the income levels every 5 years.

6.0 **LEGAL IMPLICATIONS/POWERS**

6.1 It is a requirement under the above legislation that these changes are introduced.

- 6.2 The relevant provisions for HMO and selective licensing (including discretionary HMO licensing) state that "when fixing fees the local authority may take into account all costs incurred by the authority in carrying out their functions under this Part". This means that the part of the Act which deals with HMO or selective licensing is the appropriate basis for establishing fees.
- 6.3 HMO licensing and selective licensing fees are different to most fees charged by authorities, which are normally payable annually. These schemes run for five years and the fees must be related to the cost of operating the scheme.
- 6.4 The Supreme Court has decided that the European Services Directive (ESD) does not prevent the recovery of enforcement costs against unlicensed operators. At the same time the Court confirmed that the licensing authority must not make a profit so fees must be reasonable and proportionate.
- 6.5 For both HMO and Selective Licensing, the Housing Act provides that applicants must comply with such requirements as the authority may specify. The costs of administering the Housing Health and Safety Rating System (HHSRS) are not recoverable as part of the licence fee.
- 6.6 The order stated at 3.1 above introduces changes to the Housing Act 2004.

7.0 **COMMUNITY SAFETY**

- 7.1 The impact of this legislation means that there will be closer monitoring of the private rented HMO sector. This should improve standards for those living in such properties.

8.0 **EQUALITIES**

- 8.1 There are no specific protected characteristics affected by these changes.

9.0 RISKS

L I K E L I H O O D	A	Very High				
	B	High				
	C	Significant			2	
	D	Low				
	E	Very Low				
	F	Almost Impossible			1	
			Negligible 1	Marginal 2	Critical 3	Catastrophic 4
	IMPACT					

Risk No	Risk Description
1	Failure to impose the new requirements could bring about a Government challenge
2	Insufficient resources to complete process

10.0 CLIMATE CHANGE

10.1 There are no specific climate change implications with this report.

11.0 CONSULTATION

11.1 Internal consultation with Corporate Services to ensure the fee structure is correct.

11.2 Leicestershire authorities have worked together to try and achieve a more standardised process.

12.0 WARDS AFFECTED

12.1 These changes will mean more licensed HMOs in many wards, but predominantly these will be in Melton town wards.

Contact Officer Victoria Clarke, Environmental Protection Manager

Date: 19th October 2018

Appendices :

Background Papers: THE LICENSING OF HOUSES IN MULTIPLE OCCUPATION (PRESCRIBED DESCRIPTION)
(ENGLAND) ORDER 2018

Reference : X : Committees\