

<b>10 July 2018</b>	<b>ITEM: 5</b>
<b>Housing Overview &amp; Scrutiny Committee</b>	
<b>Implementation of Mandatory Licensing of Houses in Multiple Occupation and the introduction of an Additional Licensing scheme</b>	
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key
<b>Report of:</b> Dulal Ahmed, Housing Enforcement Manager	
<b>Accountable Assistant Director:</b> Richard Birchett, Interim Assistant Director of Housing	
<b>Accountable Director:</b> Roger Harris, Corporate Director of Adults, Housing and Health	
<b>This report is Public</b>	

## **Executive Summary**

### Mandatory Licensing

On 28 February 2018 the Ministry for Housing, Communities and Local Government announced parliamentary approval to implement the extension of mandatory Houses in Multiple Occupation (HMO) licensing in England.

This order changed the prescribed description of houses in multiple occupation that are required to be licensed replacing the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2006.

The council has a statutory duty to implement this order and is allowed to charge the property owner or managing agent a licensing fee to manage this scheme. All licensing income must be ring fenced to administer the scheme.

The report outlines the main changes brought into force in the Order and the number of properties in Thurrock that will meet the new requirements for the first time and therefore will require a license from the council from 1 October 2018.

The council will raise awareness of the new changes to ensure private landlords or their agents comply with the new requirements as anyone who fails to apply for a license will be liable for prosecution.

The Government will review the regulatory impact of this new order by October 2021.

## Additional Licensing

On December 13 2016, the Housing Overview & Scrutiny Committee agreed that officers should explore introducing Additional Licensing of privately rented properties that would not be covered by the mandatory licensing of Houses in Multiple Occupation (HMO) coming into force on 1 October 2018.

The authority will carry out an extensive public consultation programme to gather views and representations before any recommendations to Cabinet to implement an Additional Licensing scheme.

This proposed scheme could run alongside the new mandatory licensing scheme and cover far more HMOs giving greater protection to tenants. There are an estimated 700 shared houses currently unregulated in Thurrock.

### **1. Recommendation(s)**

- 1.1 Comment on and note the Central Government changes to implement a mandatory HMO licensing scheme on 1 October 2018**
- 1.2 Comment on and note the duty to raise awareness of the new changes**
- 1.3 Comment on and note Additional HMO Licensing falls outside the scope of mandatory HMO licensing**
- 1.4 Comment and note on proposals to carry out consultation on the introduction of Additional Licensing of HMOs not covered by the Mandatory scheme**
- 1.5 Comment and note the council has adopted the Essex Amenities standards for houses in multiple occupation to develop good quality HMO stock within the borough and will carry out public consultation with landlords, letting agents and tenants on updating these standards in 2018.**

### **2. Introduction and Background**

#### **2.1 Mandatory Licensing**

- 2.1.1** The Government first consulted on technical changes to the definition of Houses in Multiple Occupation on 6 November 2015 with the formal consultation paper *'Extending mandatory licensing of houses in multiple occupation in England'*. The Government issued a second consultation on 18 October 2016 with *'Houses in multiple occupation and residential property licensing reforms'* before issuing this regulation order in February 2018.

- 2.1.2 On 28 February 2018 the Government confirmed that Part 2 of the Housing Act 2004 (Licensing of HMOs) would include the new broader definition of a HMO.
- 2.1.3 The new HMO definition extends to cover buildings irrelevant of the number of storeys which are occupied by five persons or more in two or more households. Previously, it was three storeys or more occupied by five persons in two or more households.
- 2.1.4 This includes any HMO which is a building or a converted flat where householders share basic amenities such as a toilet, personal washing facilities or cooking facilities.
- 2.1.5 In addition flats above and below commercial premises where there are less than 3 flats in the building will now fall into the scope of mandatory HMO licensing.
- 2.1.6 The mandatory scheme does not apply to converted blocks of flats to which section 257 of the Act applies. These are buildings converted into and consist of self-contained flats where the conversion work did not comply with building standards and still does not comply with them and less than two thirds of the self-contained flats are owner occupied.
- 2.1.7 The new changes come into force on 1 October 2018. Properties that fall into the scope of the new definition but are already licensed by the council will be passported over to the new scheme at no cost to the landlord. This totals 12 properties on our public HMO register at the end of 2017/18.
- 2.1.8 The council will be obliged to license more HMOs than we currently do. The council is allowed to charge a licensing fee to cover the cost of administering the licensing function under Part 2 of the Act.
- 2.1.9 The HMO fee charges for 2018/19 were approved by Cabinet on 7 February 2018. This schedule can be found in Appendix 1.
- 2.1.10 A landlord who fails to apply for a license by 1 October 2018 will have committed a criminal offence. Landlords operating without a license are liable to prosecution and face an unlimited fine for renting out an unlicensed HMO unless it is subject to either a temporary exemption under section 62 of the Act or an interim or final management order under Chapter 1 of Part 4 of the Act. The council may issue a civil penalty notice up to £30,000 as an alternative to prosecution.
- 2.1.11 To improve living conditions for HMO tenants, the council adopted the Essex Amenities standards for HMOs in 2010. The Essex Amenity standards give advice and guidance on room sizes to prevent overcrowding. Landlords must follow the county guidance on providing suitable HMO accommodation in Thurrock. The county standards are attached in the appendix and help to support enforcement action for noncompliance. The Housing Act 2004

allowed councils to adopt local standards. The county guidance on room sizes advises rooms sleeping one adult should be not less than 8.5 square metres and 12 square metres for two adults. This is above the minimum floor space standard for one bedroom in the Housing Act 1985.

## 2.2 Additional Licensing

- 2.2.1 There is a high concentration of small HMOs in Thurrock and evidence has shown that the management standards, and thereby the living conditions of the tenants, of these HMOs often falls below an acceptable standard. Licensing of HMOs assists in tackling the problems of poor condition, poor management and in certain circumstances poor behaviour and provides greater protection for tenants and a better neighbourhood for local residents.
- 2.2.2 Additional licensing would be appropriate for Thurrock to improve local standards as HMOs present a higher risk to safety and health of the occupants than other homes, particularly in relation to injury from fire, overcrowding or lack of amenities.
- 2.2.3 The Mandatory Licensing scheme will apply to approximately 300 landlords who will need to be license d for the first time and will therefore need to pay the applicable fee. Some landlords may seek to avoid mandatory licensing and the requirement to improve living conditions by reducing the number of occupiers to 3 or 4 persons who share a kitchen, bathroom or toilet.
- 2.2.4 The proposed additional licensing scheme will encompass smaller HMOs and thereby provide the same level of protection for all HMO tenants and the same standards of provision for landlords.
- 2.2.5 Under the Housing Act 2004 the council has discretion to introduce an additional licensing scheme for HMOs in all or parts of their area. An Additional Licensing scheme would not control numbers of HMOs but would put in place suitable control over those that already exist or may be created during the period of the scheme.
- 2.2.6 Since the Housing Overview & Scrutiny Committee considered the proposal to explore the option of an Additional Licensing scheme the council has tested its appropriateness in Thurrock and established that there are some 700 smaller HMOs that would be included in an Additional Licensing scheme.
- 2.2.7 Although Secretary of State approval is not necessary for the council to adopt a scheme it does have to properly evidence the need and comply with legislative requirements such as consulting with those affected.
- 2.2.8 The council will run this scheme alongside the mandatory HMO licensing scheme. Any additional licensing scheme lasts for a period of five years before the council must review its justification to readopt it.

2.2.9 HMO landlords covered in the additional licensing scheme must pay the council a license fee to rent out their property. Getting an HMO license means their property is safe and managed at a suitable standard for tenants. This also helps landlords find and keep good tenants.

### **3. Mandatory Licensing**

- 3.1 Since 2006, HMOs of three storeys or more having five or more persons in two or more separate households have been subject to mandatory licensing in Thurrock.
- 3.2 The traditional supply of private housing stock in Thurrock, however, consists of small properties below three storeys high. This can explain the small number of licensable HMOs on the council's public register - only 12 at the end of 2017/18.
- 3.3 The authority supports the extension of mandatory HMO licensing for improving management and safety standards and providing better tenant protection for those living in small HMO properties. Under the new Regulations rooms used for sleeping must be no smaller than 6.51 square metres for one adult and 10.22 square metres for two adults.
- 3.4 The council will, however, continue to use the Essex Amenities standards which requires larger rooms but may accept smaller rooms (still subject to the Regulations) where there is greater communal space available to tenants in the HMO.
- 3.5 Mandatory licensing will allow the council to proactively identify and engage with landlords, particularly less responsible landlords, to improve management standards as HMOs increasingly become the housing option for many people. With the pressure on housing supply the council is increasingly looking to discharge its duties to homeless households with safe, secure and suitable accommodation in the private rented sector. It is imperative that we are confident that we are placing households in suitable licensed premises.
- 3.6 The council has 300 two storey buildings, including shared houses and individual tenancies, on its private sector housing database that meet the Government's new HMO definition in England - and which will therefore require licensing.
- 3.7 Many new landlords will have properties that fall into the mandatory licensing requirements and will become licensable for the first time. They will be required to submit an application for a license by 1 October 2018.
- 3.8 We will support private landlords by promoting the changes to help everyone understand the new requirements and offer help, advice and guidance on how to complete the application process to comply with the law.

- 3.9 The fee charges reflect the administrative costs to license HMOs. The fees do not apply to a private landlord leasing a whole house/flat to one tenant/family.
- 3.10 Additional resources will be needed to administer the scheme for collecting the General Fund income of up to £285k.
- 3.11 The council will accept early HMO applications in advance of 1 October 2018.

#### **4. Additional Licensing**

- 4.1 The demand for affordable housing in Thurrock has increased significantly over the last 5 years. Small HMOs have been popular with landlords providing multiple homes to satisfy consumer demand without being subject to licensing regulations.
- 4.2 Although HMOs provide a valuable resource to the housing market a high concentration of HMOs in a small area can have a detrimental effect on the surrounding properties and their neighbourhood. Thurrock has around 700 HMO properties in its area that are not covered by the mandatory Licensing scheme and a large number have management issues such as anti-social behaviour by tenants, unacceptable waste storage and disposal and with overcrowding.
- 4.3 The proposed licensing scheme can regulate this area so that the private housing team can address these management issues with the landlord or his or her agent under their license conditions.
- 4.4 The Housing Act 2004 sets out the grounds on which a licensing scheme can be introduced. These grounds are that a *'significant proportion of the Houses in Multiple Occupation of that description in the area are being managed sufficiently ineffectively as to give rise or to be likely to give rise to one or more particular problems either for those occupying the Houses in Multiple occupation or for members of the public.'*
- 4.5 The council has established the evidence base needed to support the introduction of a designated additional licensing scheme in parts of the borough. This information will be shared during the consultation process with those affected by the scheme and the wider general public.
- 4.6 The consultation process will last for 11 weeks, it includes public meetings, landlord forums, an on-line survey on the council's website, and a general public awareness campaign to ensure the council's consultation process has been carried out extensively and the review findings are properly evidenced.
- 4.7 The consultation findings at the end of the 11 weeks period will be presented to Cabinet to consider all the relevant issues before determining whether to recommend the introduction of a designated Additional Licensing scheme in the borough.

## **5. Reasons for Recommendation**

- 5.1 The council has a statutory duty to implement the Regulatory Order for the mandatory licensing of Houses of Multiple Occupation.
- 5.2 This 2018 order replaces Licensing of Houses in Occupation (Prescribed Descriptions) (England) Order 2006.
- 5.3 Part 2 of the Housing Act 2004 gives local authorities the power to declare Discretionary Licensing areas where problems in the private rented sector have been identified. There are a number of areas in the Borough where the problems with the private rented sector would warrant additional licensing.

## **6. Consultation (including Overview and Scrutiny, if applicable)**

- 6.1 Central Government had consulted widely on the extension of mandatory HMO licensing before confirming the new Regulations. This was broadly supported within the private rented sector and it is generally accepted that licensing has been successful in improving management and safety standards in those HMOs.
- 6.2 The government's consultation exercise was shared with the Housing Overview and Scrutiny Committee on 13 December 2016.
- 6.3 The council has a duty to raise awareness of these new changes to landlords and tenants. We will promote the implementation of Mandatory Licensing on the council's website, in local newspapers and at the private landlord forum. In addition the Government will be publishing guidance targeted at local authorities but also useful for landlords to help everyone understands the new requirements.
- 6.4 The council will consult on the introduction of an Additional Licensing scheme to obtain the views of key stakeholders including HMO tenants, landlords, letting/managing agents, local residents, businesses, stakeholder representative organisations and the proposals of neighbouring boroughs.
- 6.5 The details and results of the consultation will be shared with the Housing Overview & Scrutiny Committee.
- 6.6 The council and Essex Housing Officer Group [EHOG] consisting of Braintree, Brentwood, Castlepoint, Chelmsford, Colchester, Epping, Maldon and Tending councils will consult with landlords, letting agents and tenants on the revising the current Essex Amenities standards for HMOs in June and July 2018.
- 6.7 The Government will review the regulatory impact of this new order by October 2021.

## **7. Impact on corporate policies, priorities, performance and community impact**

7.1 Licensing will improve the health and wellbeing of private tenants through the reduction of poor and unsafe housing conditions and will enable the authority to bring about general improvements in the neighbourhoods where licensing takes place.

## **8. Implications**

### **8.1 Financial**

Implications verified by: **Julie Curtis**  
**HRA and Development Accountant**

Section 63[3] of the Housing Act 2004 provides that license applications may be accompanied by a fee to be determined by the local housing authority [LHA]. In setting its fee the LHA may take into account all costs it has incurred in carrying out its licensing function.

Based on the HMO license fee of £950 the General Fund income could be up to £285k over 5 years for Mandatory Licensing and £665k for Additional Licensing. All income generated by a licensing scheme must be ringfenced to the delivery of the licensing schemes.

The implementation of the Mandatory Licensing scheme will require 2 additional Licensing Officers on Band 5 at estimated maximum cost of £60k per year and the implementation of an Additional Licensing scheme an additional 3 Licensing Officers on Band 5 and a Licensing Assistant on Band 4 at a maximum cost of £130k. These costs will be covered by the license fee.

### **8.2 Legal**

Implications verified by: **Chima Obichukwu**  
**Senior Housing Licensing Solicitor**

Before making a designation of Additional Licensing scheme the authority must–

- (a) Take reasonable steps to consult persons who are likely to be affected by the designation;
  - (b) Consider any representations made in accordance with the consultation and not withdrawn.
- (4) The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.

(5) In forming an opinion as to the matters mentioned in subsection (2), the authority must have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question. Section 57 applies for the purposes of this section.

### 8.3 **Diversity and Equality**

Implications verified by: **Natalie Warren**  
**Community Development & Equalities Manager**

The Additional licensing proposals aims to improve the private rented sector in terms of meeting minimum legal safety standards to protect lives and the wellbeing of residents. A draft equality impact assessment will be completed alongside the consultation. No negative equality implications are foreseen but there are expected to be positive measures by ensuring a minimum standard for all residents.

### 8.4 **Staffing implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

There will be staffing implications associated with taking on new employees to deliver Mandatory Licensing in 2018/19. There are a minimum of 300 HMOs that will require a Mandatory License therefore staffing will need to be increased to manage this scheme. Two additional Licensing Officers at Band 5 will be recruited and 1 Property Licensing Assistant at Band 4. The costs will be met by the license fee.

There are approximately 700 properties in the borough that would be brought into an Additional Licensing scheme. The administration of this scheme will require an additional 3 Licensing Officers.

The income generated from licensing will finance the staff to administer the scheme as all licensing income is ring fenced as per the regulatory guidance on HMO fees.

### 9. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

Housing Overview & Scrutiny Committee, Update on HMO Licensing Fee Consultation and the Proposal of Additional Licensing, 13 December 2016

[http://www.legislation.gov.uk/uksi/2018/221/pdfs/uksiem\\_20180221\\_en.pdf](http://www.legislation.gov.uk/uksi/2018/221/pdfs/uksiem_20180221_en.pdf)

<https://www.gov.uk/government/consultations/extending-mandatory-licensing-of-houses-in-multiple-occupation-and-related-reforms>

**10. Appendices to the report**

Appendix 1 - Fee Charges 2018/19

**Report Author:**

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Private Housing