

## **POLICY TITLE**

Private Sector Housing Policy for HMO Licensing and Housing Health and Safety Rating System

## **REVISION DATE**

## **REPLACES POLICY**

Not applicable

## **POLICY NUMBER**

## **POLICY AIM**

The Housing Act 2004 radically overhauls the way the council regulates standards in private rented housing. It also introduces compulsory licensing of certain houses in multiple occupation (HMO) see below for definition. These changes are due to come into force in **on 6 April 2006**.

This policy sets out the way South Holland will carry out the requirements of the Housing Act 2004 in relation to HMO licensing and the Housing Health and Safety Rating System. It also outlines how we intend to use the discretionary powers in the new act to ensure fair and equal enforcement.

## **POLICY STATEMENT**

### **Introduction**

The council aims to maximise the availability of private rented accommodation in South Holland and ensure that it is of a decent standard to protect the health and safety of tenants. The availability of HMO lettings is also important in order to sustain affordable housing. The council sees the new legislation as an opportunity to improve the services provided by landlords and the provision of decent homes for all residents in the district.

### **The Wider Picture**

This policy is written in the context of South Holland's Housing Strategy. You can view this at [www.sholland.gov.uk](http://www.sholland.gov.uk).

Following a recent review of the Corporate Plan affordable housing has emerged as the Council's biggest priority for the immediate future. Other priorities for housing are to:

- reduce the incidence of homelessness
- work with others in support of the housing needs of the district.

The Council recognises the contributions of a vibrant private sector improving houses for let and the role private sector landlords play in providing the affordable housing requirements of the district.

The Government has set a target for 70 percent of private sector homes, occupied by vulnerable people, to meet the Decent Homes Standard by 2010. We are working towards meeting the government target and our enforcement of the new Housing Act will support this.

The Council is in the process of commissioning a Private Sector stock condition survey. The previous one took place in 1997. This survey will inform us as to the standards in private sector including Houses in Multiple Occupation.

## **HMO Licensing**

The aim of HMO licensing is to ensure the poorest properties in the private rental market meet the legal standards and are properly managed.

A HMO is a building occupied by more than one household and includes houses containing bedsits, hostels and shared houses. The Housing Act 2004 includes a new definition of households, which is families, including single persons and cohabiting couples (whether or not of opposite sex). This has clarified past confusions and means that shared houses will always be HMOs. South Holland has approximately 141 HMOs, and we anticipate that 10% of these will need to be licensed.

HMOs of three or more stories, with five or more occupiers in more than two households will need to be licensed but social housing and HMOs owned by the police, health authorities, universities and some other listed organisations are exempt, as are buildings converted into flats.

Licences will be granted where the house is reasonably suitable for occupation as a HMO, the management arrangements are satisfactory and the licensee and manager are fit and proper persons. The applicant must be the most appropriate person to hold the licence. A member of the Environmental Health Team may visit before licensing a HMO to assess compliance with the licensing requirements and the number of people the HMO should be licensed for.

### **Fit and Proper Persons**

The council is required to assess whether the applicant and any manager and any person associated with them or formerly associated with them\* are fit and proper people to own or manage an HMO.

\* If a person associated or formally associated with the applicant or any manager, has done any of the things stated below, the council will only take these issues into account if they are relevant to the applicant or manager being a fit and proper person to manage the house.

A person will be considered fit and proper if the council is satisfied that:

- they have no unspent convictions\*\* relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
- they have no unspent convictions relating to unlawful discrimination on grounds of sex, race, or disability
- they have no unspent convictions relating to housing or landlord and tenant law
- they have not been refused a HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the approved code of practice under S197 of the Act within the last five years
- they have not been in control of a property subject to an HMO Control Order an Interim Management Order (IMO) or Final Management Order (FMO) or work in default carried out by a local authority
- they have not been subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation

\*\*A conviction where the penalty is a fine is spent after 5 years.

We will require all applicants to provide a Basic Criminal Record Disclosure. Details of how to obtain these are attached.

## **Management Arrangements**

We will expect the licensee to have satisfactory arrangements and funding in place for the management of the HMO. Satisfactory arrangements for management will include:

- A reliable contact for tenants to report defects, including in emergencies, who will arrange repairs to be carried out within a reasonable period
- Where the manager of the HMO is not the owner, the manager must have the authority to fund urgent repairs, when the owner's approval cannot be obtained
- Arrangements in place for periodic inspections to identify where repair or maintenance is needed
- A system for dealing with anti-social behaviour caused by tenants or their visitors, which causes nuisance or annoyance to people in the locality.

Licences will be valid for five years and will specify the maximum number of occupiers or households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities.

The following mandatory conditions must be applied to all licences:

- to provide copies of gas safety certificates annually
- to keep electrical appliances and furniture safe
- to keep smoke alarms in working order
- to provide tenants with a written tenancy agreement.

A draft licence must be served on all interested parties, allowing at least fourteen days for representations before granting the actual licence.

Following licensing, HMOs will be prioritised for assessment under the Housing Health and Safety Rating System (HHSRS – see below). The owner must deal with all Category 1 hazards, if they do not, then the council is expected to use their enforcement powers to improve the property.

## **Temporary Exemption Notice**

The council may serve a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances, however the council does not wish these notices to be used routinely, and therefore a second notice will only be acceptable in exceptional and unforeseen circumstances. Any exception to the policy will be agreed by the Environmental Health Manager.

## **Encouraging Applications**

The council will encourage landlords to apply for licences using a variety of methods.

We will:

- publicise the need to licence HMOs
- send letters and reminders to landlords
- provide for electronic and paper application forms
- arrange drop-in sessions to assist with applications
- offer a service assisting applicants with completion of forms
- send letters warning of prosecution and application for a rent repayment order

## **Fees for Licences**

The fees structure has been set in consultation with neighbouring authorities. The fees will be calculated using methods recommended by DASH (Decent and Safe Homes) East Midlands. See attached calculation sheet. The fees will be reviewed annually.

## **Rent Repayment Orders and Management Orders**

Where a landlord is convicted for failure to licence a HMO, the council can apply to the Residential Property Tribunal (RPT) for a Rent Repayment Order (RRO). The RPT will replace the courts and will judge cases relating to offences and appeals under the Act. The RPT has the power to require that up to 12 months' rent is repaid to the council where a tenant is on housing benefits. Tenants can also apply to the RPT for repayment of any rents they have paid.

Where there is no prospect of an HMO being licensed, the Act requires that the council uses its interim management powers. This enables the council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years with the council also having the power to grant tenancies.

## **HMO Standards**

The council will determine the number of people an HMO is licensed for in accordance with compliance with the relevant HMO Code of Practice for room sizes and kitchen and bathroom facilities. These codes of practice are available at [www.sholland.gov.uk](http://www.sholland.gov.uk) or on request from the Private Sector Housing Team in Environmental Health. There is a code of practice for bedsit HMOs and another for shared houses. They require bedrooms/bed-sitting rooms to be at least 8 to 15 square metres, depending on whether there is a shared kitchen or whether the kitchen is in the room. In general, bathrooms should be available for every five occupiers. In bedsit HMOs, one kitchen per household should be provided where possible and in shared houses, up to five occupiers can share a kitchen. Applications will need to include dimensions of rooms and details of the kitchen and bathroom facilities to enable assessment of the number of occupiers permitted in the licence.

## **Discretionary Licence Conditions**

In addition to the mandatory licensing conditions (see above), the council will apply discretionary conditions to all licences.

These will include:

- the HMO will comply with the statutory Management Regulations\* within three months
- to provide copies of reports of fire detection, alarm system and emergency lighting to the council annually
- the name, address and telephone number for licensee or manager is to be displayed in the common parts of the HMO
- a copy of a valid gas safety certificate to be displayed in the common parts
- a copy of the licence to be displayed in the common parts
- that any anti-social behaviour arising in the HMO is dealt with under the terms of the tenancy agreement
- where anti-social behaviour occurs outside the HMO, the licensee or manager will report incidents to the council and the police and work with them to find the best solution

The council will apply other conditions to individual licences with respect to the use, management and occupation of the HMO, where appropriate and may seek evidence of compliance with conditions at any time.

\*The HMO Management Regulations have not yet been published but will be relevant. The consultation paper on licensing in the private rented sector gives more information and can be found at [www.odpm.gov.uk](http://www.odpm.gov.uk). These regulations require HMOs to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept clean and in a reasonable state of decoration.

## **Bed and Breakfast Hotels**

The council will declare bed and breakfast hotels as HMOs if they are housing any people who use the hotel as their main residence for more than 30 days. We believe that where this accommodation is used as a main residence, the same standards as for other HMOs should be met.

## **Additional Licensing**

The council has the power to set up additional local area HMO licensing schemes to enable HMOs which are not licensable under the mandatory scheme and that are considered to be badly managed to be licensed. The Council may designate the whole of the district or an area within it, however this designation must be confirmed by the Secretary of State.

Many HMOs in South Holland will not be licensable. These include houses containing self-contained flats and smaller HMOs. The only additional regulation of these HMOs will be under the proposed HMO Management Regulations. They will need to be free of all Category 1 hazards under the HHSRS, which applies to all dwelling irrespective of whether they are an HMO.

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

The fitness standard will be replaced by the Housing Health and Safety Rating System (HHSRS), which is a risk assessment of the effect of housing conditions on the health of occupiers. The HHSRS is more complex than the fitness standard. It involves the assessment of 29 potential hazards and scoring of their severity to decide whether improvements are needed. If more serious Category 1 hazards are found the council has a duty to require the owner to remedy the defect. If less serious Category 2 hazards are found, the council has discretionary power to require action.

The enforcement regime involves a new set of notices to deal with these HHSRS hazards requiring improvement, prohibition of the use of the dwelling or demolition. The notices are similar to those we currently use except that a prohibition notice can be served to prohibit the use of part of a dwelling or use by a description of persons, for example those aged under five or over 60.

When a hazard is identified, the council must decide the most practical course of action. There is no longer a legal requirement for a prior warning notice to be served, so the council will ensure that the landlord and tenant(s) have the opportunity to discuss the council's proposed action before a notice is served.

An improvement notice will be the most practical remedy for most hazards; repair or renewal is generally cost-effective. However, prohibition notices may be required on part or all of a dwelling, for example, where there is inadequate natural lighting or there is no fire escape from the top floor. The council can serve suspended improvement notices, these can be used in circumstances where obtaining other consents will cause delay –an example would be where planning permission is being applied for.

## **Principles of Enforcement**

The overriding principle of Enforcement and that which has been adopted by South Holland District Council is contained within the Office of the Deputy Prime Minister's Enforcement concordat. Any

enforcement action that is taken has to be in the best interests of the public and the four principles of enforcement are:-

- Proportionality – the degree of enforcement action taken should be proportional to the risk involved.
- Consistency – officers should take a similar approach in similar circumstances to achieve similar outcomes.
- Transparency – making sure that our role is clear to Businesses, Employees and Customers and that any advice given or action taken by enforcement officers is understood.
- Targeting – inspection priorities are aimed at highest risk areas and we identify those responsible for controlling those risks.

The council believes that enforcement alone is unlikely to have much effect on improving standards: our ethos is to work in partnership with landlords. However, where landlords do not co-operate, enforcement action will be taken. Enforcement action will be based upon receipt of a complaint, a licence application or where an assessment of risk indicates a property is sub-standard.

Tenants are expected to have informed the landlord of the problems with disrepair before contacting the service for assistance. Before serving a notice, we will discuss the need for a notice with the landlord and tenants, where possible, and will outline the works required. In addition to carrying out the requirements of the Housing Act 2004, in private sector homes the council has a duty to investigate complaints of statutory nuisance, defective sanitary appliances and drainage and other related matters and serve notice. We also have the power to make a compulsory purchase order to acquire property for housing purposes. This action is only taken where all other means of bringing a property back to use have been explored and where possible, the property will be brought back into use as social housing.

### **Improvement Notices**

Where an Improvement Notice is served, the council will require sufficient works to abate the hazard for five years. The law prescribes that the minimum works must abate the hazard. We will require works of a reasonable duration to prevent recurrence. We consider five years to be reasonable.

## **WHO IS AFFECTED BY THE POLICY?**

Everyone who owns, manages or rents a large HMO within the South Holland district.

## **IMPLEMENTATION**

The mandatory licensing of HMO's will be carried out by the Private Sector Housing Team within Environmental Health. The Environmental Health Manager and ultimately the Head of Environmental Health will be accountable for ensuring the policy is implemented effectively.

## **MONITORING**

The policy will be monitored in the following ways:

<b>MONITORING ACTIVITY</b>	<b>PERSON RESPONSIBLE</b>
Check to see if policy has been implemented effectively	Head of Environmental Health
Review of policy annually	Environmental Health Manager


### **POLICY CONSULTATION**

South Holland District Council's Corporate Management Team was consulted on the draft policy prior to the formal consultation process. A list of consultees is available. The draft policy was made available through the SHDC website, main reception and local libraries. The general public was invited to comment on the draft via an article published in the local press.

### **POLICY APPROVAL**

### **RELATED POLICIES & STRATEGIES**

- Housing Strategy
- Homelessness Strategy
- Private Sector Renewal Policy
- Empty Homes Policy (currently in draft)
- HMO Policy
- Regulatory Services Enforcement Policy
- Community Plan
- Corporate Plan
- Affordable Housing Delivery Plan