



# **Houses in Multiple Occupation Policy**

**June 2010**

## **INTRODUCTION**

This Policy is made in accordance with the provisions of the Housing Act 2004 ("The Act"). The Act came into force in April 2006 and overhauled the powers available to Local Housing Authorities, in particular, housing enforcement officers. The Act introduced an inspection regime referred to as the Housing Health and Safety Rating System (HHSRS) which enables officers to assess hazards in residential premises that may affect the health and safety of the occupants. The Act also redefined the classification for Houses in Multiple Occupation (HMO) and introduced mandatory licensing of certain categories of HMOs.

The introduction of a new definition of an HMO clarifies previous confusion of what constituted an HMO. A dwelling is considered to be in multiple occupation if it contains occupants who do not form a single household, share one or more amenity and is the occupant's main or only place of residence. The definition includes houses containing bedsits, hostels, shared houses and flats. The exact definition is described by standard tests detailed in Section 254 of the Act.

Tamworth Borough Council aims to maximise the availability of private rented accommodation in Tamworth and ensure that it is of a decent standard to protect the health, safety and welfare of tenants. The availability of good quality HMOs helps sustain the availability of affordable housing, particularly for vulnerable residents who access the Housing Advice Team and Social Services.

The risk to health and risk of death and injury from fire is greatly increased in this type of dwelling and persons who live in such properties tend to be more vulnerable than persons in other types of accommodation. The Government has therefore introduced a mandatory licensing scheme for certain types of HMO and has also introduced standards specific to these properties over and above those expected of normal rented dwellings.

Tamworth Borough Council aims to ensure that the occupiers of HMOs live in safe and healthy homes by providing advice, education and where appropriate enforcing the relevant provisions of the Act. Consequently, Tamworth Borough Council is taking a proactive approach by actively identifying and inspecting HMOs in the borough.

This policy has been produced by the Tamworth Borough Council Private Housing Enforcement Team. The content has been set out following consultation with the Town Planning Service and the Housing Advice team at the council. The policy also considers guidance issued by Local Authorities Coordinators of Regulatory Services (Lacors) and Homestamp (a partnership consortium with an interest in private sector housing comprising of Local Authorities, the Private Rented Sector, Universities, West Midlands Police and West Midlands Fire Service) . The purpose of the policy is to ensure that Tamworth Borough Council carry out the requirements of the Act in relation to HMOs. It is also intended to provide a local area standard to ensure that a consistent approach is taken throughout the council and to assist in a pro-active program designed to eliminate poor housing standards in this type of accommodation. It will also give an insight in to how Tamworth Borough Council intend to develop this policy further for the future regulation of HMOs within the borough.

## **BACKGROUND**

The 2008 West Midlands C1 Housing Market Area Assessment estimated that 5.6% of Tamworth Borough Council's households rent from private landlords, which is below the national average from the English House Condition Survey in 2001 of 10%. With 7.24% of private sector dwellings in Tamworth being considered unfit, housing conditions are poorer in the private rented sector than in any type of tenure in Tamworth. The 2007 Stock Condition survey has estimated that there are around 35 HMOs in the borough. General house condition surveys usually under estimate the true number of HMOs in a locality because of the sampling methodology. Further discrepancies can arise due to

the definitions and categorisations applied by the consultants undertaking the survey. Therefore, to increase the statistical data available to ensure more accurate figures for identification and classification of HMO's in Tamworth are obtained, the Council has recently carried out a thorough HMO survey. The survey has so far identified 80+ HMOs of various types operating within the Tamworth area. Around 30 of these may require a mandatory licence.

The Government has set a target of 70 percent of private sector homes, occupied by vulnerable people, to meet the Decent Homes Standard by 2010. Tamworth Borough Council is working towards meeting the Government target and our implementation and enforcement of a HMO Licensing regime and proactive HMO inspection programme will support this requirement.

### **General Obligations**

The Act imposes certain general obligations on the Council, including:

- The Local Housing Authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under parts 1 and 2 of the Act, this includes;
  - To make such arrangements as are necessary to secure the effective implementation in their district of a mandatory HMO licensing regime.
  - To ensure that all applications for a licence and other issues to be determined by them under this Part are determined within a reasonable time; and
  - To satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions (HHSRS) that ought to be exercised by them in relation to the premises in respect of which such applications are made.

Part 1 of the Act focuses on the HHSRS. It adapts and extends the powers of housing enforcement currently available to LHAs to tackle poor housing conditions.

If the LHA considers that it would be appropriate to inspect residential premises to establish whether or not there is a category 1 or category 2 hazard, the authority must arrange for an inspection to be carried out.

Section 5 of Part 1 of the act imposes a general duty on LHAs to take appropriate enforcement action where there is a category 1 hazard.

The system seeks to provide proper enforcement of the HHSRS in the highest risk HMOs. This Policy is therefore written in the context of Tamworth Borough Council's Private Housing Enforcement Team's Enforcement Policy and the Regulators Compliance Code which came into force on 6 April 2008 by virtue of the Legislative and Regulatory Reform Code of Practice (Appointed Day) Order 2007.

In addition to physical property standards the Act allows LHA's to consider the management competency and 'fitness' of those managing or providing HMO accommodation. Licensing aims to ensure that the HMOs presenting the most significant health and safety risks, come to the attention of the Council placing a more direct obligation on landlords to provide acceptable standards.

Tamworth Borough Council will investigate all reports regarding potential HMOs and take appropriate action based on this policy and the Enforcement Policy.

### **Definition of an HMO**

The definition of a "House in Multiple Occupation" is contained in section 254 of the Act.

The definition is quite long and detailed in its entirety therefore, the following is a summary of the main points.

A House in Multiple Occupation (HMO), is a building, or part of a building, (such as a flat) that is occupied by more than one household and;

- shares or lacks an amenity, such as a bathroom, toilet or kitchen

- is a converted building which may contain, but is not entirely, made up of self-contained flats, eg floor-by-floor lets, (whether or not some amenities are shared or lacking)
- is converted into self contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulations, and at least one third of the flats are occupied under short tenancies.
- the living accommodation is occupied by persons as their only or main residence, and whether the occupation constitutes a 'significant use' of that accommodation (section 255(2)).

### **Definition of 'a Household'**

The definition of a "household" is contained in section 258 of the Housing Act 2004 as follows:

(2) Persons are to be regarded as not forming a single household unless -

(a) they are all members of the same family,

(3) For the purposes of subsection (2) (a) a person is a member of the same family as another person if -

(a) those persons are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex);

(b) one of them is a relative of the other, or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

### **Identifying HMOs in Tamworth**

The Council will utilise a range of information sources to identify HMOs within the borough. The Private Housing Enforcement Team will liaise with internal departments and external organisations as follows:

- Housing Benefit and Council Tax – in accordance with the Act, Section 237, information sharing agreement.
- Environmental Health – will inform the Private Housing Enforcement Team of any action taken in relation to an HMO whilst carrying out their duties.
- Town Planning Service – will inform and consult with the Private Housing Enforcement Team on all HMOs that are subject to planning permission.
- Housing and Advice Services – will notify the Private Housing Enforcement Team of housing register applicants that declare they live in shared accommodation.
- Police Service – will inform and work together with Private Housing Enforcement on dealing with problem HMOs.
- Street Wardens – will alert the Private Housing Enforcement Team of any anti-social behaviour that they encounter at a house in multiple occupation.
- Fire Service – The Staffordshire Fire and Rescue Service have a duty to consult with the Private Housing Enforcement Team on the issue of fire safety standards in HMOs within the Borough.
- Social Services – will alert the Private Housing Enforcement Team where any of their clients are living in an HMO.

### **Mandatory Licensing in Tamworth**

The Act places a duty on Tamworth Borough Council to implement the mandatory licensing regime in their district.

The aim of HMO licensing is to ensure the highest risk and lowest quality properties in the private rented sector meet the legal standards and are properly managed.

### **Definition of HMOs requiring a licence**

Under the Act, a HMO will require a licence if:

- It is three or more storeys high;
- It has five or more people in more than one household; and

- The occupants share amenities such as bathrooms, toilets or cooking facilities.

An objective of this Policy is to clearly state:

- The procedure by which a landlord can apply for an HMO Licence
- The licensing fee that a landlord will pay to obtain an HMO licence
- The tools available for HMO enforcement
- How the system will operate in practice

Tamworth Borough Council has developed a mandatory licensing procedure to ensure that all requirements as prescribed by the national authority are met.

Licences will be granted where:

- the house is deemed reasonably suitable for occupation as an HMO
- the management arrangements are satisfactory, and
- the licensee and manager are deemed 'fit and proper' persons.

The licensee must be the most appropriate person to hold the licence.

A copy of the procedures for licensing an HMO in Tamworth is appended as **Attachment 1** to this policy.

### **Encouraging Applications**

Tamworth Borough Council will encourage landlords to apply for a licence using a variety of methods, including:

- Discussions through the Private Landlords' Forum.
- Periodically publicise the need to licence HMOs using local newspaper and newsletter advertising.
- Provide electronic and paper application forms.
- Provide Landlord Information Packs detailing general guidance on the landlord's role and responsibilities when renting a property.

- Offer a service assisting applicants with completion of forms and measuring rooms, where resources permit.
- Send information letters, reminders to landlords and letters of warning of prosecution, where necessary.
- Involve landlords and letting agents through information sessions and forums

### **Licensing Fee**

The fee for each application will be £574.80 with an additional £37.79 for each bedspace above five. The calculation methodology is appended as **Attachment 2** to this policy. If a landlord approaches the Council with a view to licensing an HMO they will be entitled to a 20% discount if a full application (including all necessary enclosures and fee) is received by the Council within 28 days of sending the application pack. The discount will be applied after the application has been verified by the Private Housing Enforcement Team and a refund will be given. The availability of decent HMO properties is an important resource in order to sustain affordable housing within Tamworth and the fee level has been set to cover the Council's reasonable costs of setting up and administering the application process.

### **'Fit and Proper' Persons**

Tamworth Borough Council is required to assess whether the applicant, and/or any manager, and any person associated with them or formerly associated with them<sup>1</sup>, are 'fit and proper' people to own or manage a HMO.

A person will be considered 'fit and proper' if Tamworth Borough Council is satisfied that:

1. They have no unspent convictions<sup>2</sup> relating to:

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<sup>1</sup> If a person associated or formally associated with the applicant or any manager, has done any of the things stated above, 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.

<sup>2</sup> A conviction where the penalty is a fine is spent after 5 years.

- offences involving fraud, dishonesty, violence or drugs, or sexual offences
  - unlawful discrimination on grounds of sex, race, or disability
  - Housing or Landlord and Tenant law
  - breaches of planning, compulsory purchase, environmental protection or other legislation enforced by the Council.
2. 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 Section 197 of the Act within the last five years.
3. They have not been in control of a property subject to a HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had works in default carried out by a Local Authority.

### **Licence Period**

A licence will be valid for upto 5 years, unless revoked, and will specify the maximum number of occupiers and households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. Each licence will represent a single property and is not transferable upon change of owner or person in control of the HMO.

### **Licence Conditions**

A licence must include mandatory conditions as prescribed by the Act and the associated regulations. Additionally Tamworth Borough Council may include discretionary conditions for the purpose of improving the management, and occupation of the house.

The following mandatory and discretionary conditions will be applied to all licences:

The following mandatory conditions will be applied to all licences:

- Provide copies of gas safety certificates annually.
- Ensure electrical appliances and furniture are in a safe condition.
- Ensure the smoke detection system is in working order.
- Provide tenants with a written tenancy agreement.

The following discretionary conditions will be applied to all licences:

**Licence Conditions section 67(1) and (3):**

1. The licensed premises will comply with all statutory requirements including Management Regulations as outlined in the Management of Houses in Multiple Occupation (England) Regulations 2006.
2. Anti-social behaviour within the premises will be dealt with under the terms of the Tenancy.
3. Anti-social behaviour outside the building is notified to the Council and the Police by the Licence holder or Manager who will work with them to eliminate anti-social behaviour.
4. Maintenance reports must be supplied to the Council annually with regards to emergency lighting, fire detection and alarm systems.
5. The following documents must be clearly displayed within the common parts:
  - i) Copy of the Licence
  - ii) Copy of the current Gas Safety Certificate
  - iii) Name, address, telephone number and emergency contact of the Licence Holder or Manager of the property.

6. The Licence Holder or Manager will provide, to any Authorised Officer of the Council, access into the licensed premises as and when required to do so.
7. To undertake all works contained in any Schedule of Works issued by the Council within **Six Months**, unless otherwise stated, notwithstanding any rights of appeal.
8. The Licence Holder must inform the Council of any changes in circumstances relating to ownership, usage, layout or increase in the number of occupants which will result in exceeding the number of permitted occupants for the licensed premises.

#### **9. Gas Supply and Appliances**

To provide to the Council annually a gas safety certificate obtained in respect of the property within the last 12 months carried out on the gas supply and all gas appliances by a Gas Safe Registered gas engineer. To ensure that all recommendations outlined in the landlord Gas Safety Record are complied with.

#### **10. Electrical Installations**

To ensure that the fixed electrical installation of the premises is inspected and tested at intervals not exceeding 5 years by a person qualified to undertake such inspection and testing and must provide to the Council, on demand, a current periodic electrical inspection certificate for the premises in accordance with British Standard 7671. All recommendations for urgent attention and improvement (codes 1 and 2) should be carried out within a reasonable period of time and in any case not less than 3 months.

#### **11. Electrical Appliances**

To keep all electrical appliances provided within the property by the licence holder (or on his/her behalf) in a safe condition. To provide to the local

housing authority, on demand, a declaration as to the safety of such electrical appliances.

## **12. Furniture**

Keep all furniture provided within the property by the licence holder (or on his/her behalf) in a safe condition. To this extent all such furnishings should comply with the Furnishings (Fire Safety) Regulations 1988. To provide to the local housing authority, on demand, a declaration as to the safety of such furniture.

## **13. Provision of Standard Amenities**

The premises must be provided with sufficient and adequate standard amenities for use by the maximum number of occupants (as specified in the licence) according to the type of accommodation offered in accordance with the Council's amenity standards and 'The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006'. All standard amenities and equipment provided for use by the occupiers of the premises are maintained in good repair and proper working order.

## **14. Provision and Maintenance of Heating**

Each unit of accommodation within the premises plus all bathrooms, whether shared or for exclusive use are adequately heated and capable of maintaining an indoor temperature of at least 18 degrees Celsius in habitable rooms when the outdoor temperature is -1 degree Celsius. Heating should be controllable by the tenants and safely and properly installed and maintained. Where the system is centrally controlled, the tenants should be provided with thermostatic controls within their individual unit. Where this condition is not met at the time of issuing the licence, this condition must be met within 3 months of the licence issue date.

## **15. Fire Precautions**

To adopt the Homestamp 'A Guide to Fire Protection in Multi-Occupied Residential Properties' standard within the property. To ensure that smoke alarms are installed in the house and kept in proper working order. To provide the local authority, on demand, a declaration as to the position and condition of the smoke alarms. This information may be provided either in written form or in detailed plan (not to scale).

## **16. Information to Tenants**

To supply to the occupiers of the house a written statement of the terms of their tenancy/occupancy agreement.

To have a written complaints procedure – available on request.

To supply the tenant with receipt on payment of rent.

## **17. Deposits**

If a deposit is taken, to register said deposits with either scheme outlined by the Government under the Act, informing the tenant of which scheme is being used.

## **Other Information**

All valid applications will be logged onto a HMO database. This database is compatible with Central Government's mandatory monitoring requirements.

Hard copies of licences that have been issued will be kept at the council offices for the use of public documents. Members of the public may request and must be granted permission to see these documents.

On receipt of a valid application form a notice of intention to grant a licence must be served on all interested parties allowing at least fourteen days for representations before granting the actual licence.

The Private Housing Enforcement Team aims to serve notice of intentions within 14 days of a full valid application. Any representations received within that time will be reviewed and investigated where appropriate.

### **Temporary Exemption Notice**

A Temporary Exemption Notice (TEN) will be served where an owner of an HMO requiring a licence states in writing that he/she is taking steps to make a HMO non-licensable. The TEN exempts that property from being licensed for a period of 3 months (from the date the Notice is served). In exceptional circumstances, Tamworth Borough Council may serve a second TEN that lasts a further 3 months and that takes effect when the first TEN ends. No further TENs can be served after the expiry of the second TEN.

The Private Housing Enforcement Team will not use these notices routinely, and therefore, a second notice will only be used in exceptional and unforeseen circumstances agreed by the Assistant Director of Housing.

### **HMO Declaration**

Where it is unclear whether the households are occupying the building as their only or main residence, Tamworth Borough Council can declare the building to be a HMO to remove any doubt. Tamworth Borough Council must serve a Notice on the person managing or controlling the property within 7 days of deciding to make the declaration stating:

- The date of the Council's decision to serve the Notice
- The date on which the Notice will come into force (which must not be less than 28 days from the date the Notice is served.)
- The recipient's right to appeal to the Residential Property Tribunal within 28 days of the Council's decision.

If no appeal is made to the residential property tribunal within 28 days, the Notice comes into force on the date stated in the Notice and the person managing or controlling the premises will have to apply for a licence if the dwelling is of the type where a mandatory licence is required.

### **Regulatory Reform (Fire Safety) Order 2005**

The Staffordshire Fire & Rescue Service has powers under the Regulatory Reform (Fire Safety) Order 2005 to ensure the common areas in HMOs, purpose built flats and workplace accommodation are safe in terms of fire. The Order does not apply to private single family dwellings.

### **Licensing Enforcement Tools**

The following highlight the enforcement tools that Tamworth Borough Council can utilise where conditions are such that an application for a licence has been refused.

### **Management orders**

Where there is no prospect of an HMO being licensed, the Act requires under section 102 and 113 that the Council use their interim management powers if it is satisfied that:-

- There is no reasonable prospect of the property being licensed in the near future; or
- The health and safety condition applies.

The health and safety condition applies when an Interim Management Order (IMO) is necessary to protect the health, safety and welfare of the occupiers of the property and/or residents and/or owners of properties in the vicinity.

An IMO is in force for 12 months and the Council must:

- Take immediate steps to protect health, safety and welfare (if appropriate) and;
- Take steps to manage the property pending the grant of a licence, the making of a Final Management Order or the ending of the IMO.

The IMO allows Tamworth Borough Council to manage the property with all rights of a landlord and to collect rent and expend it on works to the property. Any residual balance must be paid to the landlord. However, Tamworth Borough Council cannot create any interests (e.g. grant tenancies) without the written permission of the owner. The IMO must contain the date upon which it ceases to be in force (being no more than 12 months from its creation) and there are provisions to vary, revoke and appeal against an IMO.

The IMO ceases to have effect if a licence is granted within its duration. Before such action can be taken, Tamworth Borough Council needs to put in place arrangements to manage HMOs subject to management orders. Tamworth Borough Council operate a Private Sector Leasing Scheme, any HMO subject to a management order will be operated under the conditions of this property management scheme.

Tamworth Borough Council also has the discretion under section 102 of the Act to apply to the Residential Property Tribunal for an IMO in other circumstances. The power is available if the property concerned is an HMO, which does not come within the mandatory licensing remit. The tribunal can only grant this IMO if it is satisfied that the health and safety condition applies and must take into account any past compliance on the part of the landlord with any codes of practice (the Management Regulations).

The conditions in which discretionary IMO's will be available can be used to tackle isolated problems of anti-social behaviour. The aim is to allow Tamworth Borough Council to tackle individual problems without having to draw up a full Additional Licensing Scheme.

### **Final Management Order**

In extreme cases under section 113 of the Act, management orders can be extended to five years, with Tamworth Borough Council also having the power to grant tenancies. Final management orders (FMO) are designed to secure the proper management of a house in the longer term and as a replacement for the short term IMO. In order to do this Tamworth Borough Council must put in place a management scheme.

### **Prosecution action**

Section 72 of the Housing Act 2004 deals with offences related to HMO licensing. A person commits an offence if;

- They are the person having control of or managing an HMO required to be licensed but it is not so licensed.
- The person having control permits more persons than is authorised by the licence to occupy the HMO.
- Failure to comply with the conditions of the licence.

Tamworth Borough Council will investigate and take the appropriate action in accordance with the Private Housing Enforcement Team's Enforcement Policy when dealing with offences committed under this section.

### **Rent Repayment Orders**

A tenant living in an HMO that should have been licensed, but was not, can apply to the Residential Property Tribunal to claim back any rent they have paid during the unlicensed period (up to a limit of 12 months). The Residential property tribunal must make such an order if the landlord has been found guilty of the offence of failing to obtain a licence.

Where a landlord is convicted for failure to licence and the rent is paid as Housing Benefit, Tamworth Borough Council will apply to the RPT for a Rent Repayment Order requiring that up to 12 months' rent is repaid to Tamworth Borough Council.

Tamworth Borough Council will advise tenants of landlords convicted of failure to licence their HMO of how to apply for a rent repayment order.

### **Management Regulations**

Section 234 of the Housing Act 2004 details the regulations in respect of **all** HMOs.

The Management of Houses in Multiple Occupation (England) Regulations 2006 must be adhered to by managers of HMOs at all times. A person commits an offence if they fail to comply with a regulation under this section. If convicted of an offence they are liable to a fine not exceeding level 5 on the standard scale.

Tamworth Borough Council will investigate breaches of these regulations and take the appropriate action in accordance with the Private Housing Enforcement Team's Enforcement Policy.

### **Powers of Entry**

Under Section 239 of the Act a person authorised by Tamworth Borough Council may enter an HMO at any reasonable time and without giving any prior notice if it considers that any premises need to be entered for the purpose of ascertaining whether any of the following offences have been committed:

- failing to comply with a regulation under the Management of Houses in Multiple Occupation (England) Regulations 2006

- if a person having control of or managing an HMO which is required to be licensed but is not so licensed
- if a person having control of or managing an HMO knowingly permits another person to occupy the house, and;
- if a person having control of or managing an HMO fails to comply with any condition of the licence.

The power of entry will be used where an officer suspects that any of the above offences are being committed. However, in most cases the person having control or managing the HMO will be contacted for the purpose of inspection of the premises.

This power will only be used where owners have ignored an invitation from the council to submit an application.

Where the council have identified an HMO that requires a licence they will invite the owner to apply in accordance with the Tamworth Borough Council licensing procedures. However, if an offence has already been committed under the licensing provisions, legal services will be consulted regarding prosecution proceedings.

### **Appeals to the Residential Property Tribunal**

A landlord may appeal to the Residential Property Tribunal (RPT) in certain cases, such as:

- Where it is believed a legal Notice has been served on them incorrectly or where they believed that works were over specified or;
- Where it is believed that a licence has been refused without adequate justification

The RPT is an independent body, and appeal panels consist of three people, a legal expert, a technical expert and a lay member. The function of the RPT is to

consider the appeal and it may accept the appeal, dismiss the appeal or vary the requirements of a Notice or Order.

The RPT is also responsible for authorising Rent Repayment Orders on behalf of the Council, and where an application is made, authorising Interim and Final Management Orders.

### **Tamworth Borough Council required Standards for Houses in multiple Occupation.**

Tamworth Borough Council has set a local minimum standard for HMOs. Setting a local minimum standard for HMOs will enable officers to provide a consistent approach across the borough when dealing with such accommodation. It will also allow officers to easily advise landlords regarding the requirements the council expect to find at their properties. The standards will address such issues as room sizes and the bathroom and kitchen facilities that are acceptable for the number of occupants.

The local area standards for HMOs in Tamworth are appended as **Appendix 3 of this policy.**

### **Future Policy**

Tamworth Borough Council's Private Housing Enforcement team are in the process of assessing HMOs with regards to the management standards and the impact that HMOs have within the borough on the immediate neighbouring properties and wider communities. Quite often occurrences of anti social behaviour are associated with HMOs and this can contribute to an increased rise in complaints to Tamworth Borough Council and the Police. The Private Housing Enforcement Team is setting up working partnerships with other agencies to tackle these issues. This will allow us to share data and enable the correct action to be targeted at the most problematic properties and areas. Partnership

working between the relevant Tamworth Borough Council internal departments and the local Police and Fire Authority will contribute towards identifying if the borough would benefit from extending the current mandatory HMO licensing scheme. An extended scheme would include a selective or additional licensing scheme which would require owners to licence other types of HMOs and enable the Council to improve the management of HMOs in Tamworth. This would improve the quality of life of residents living in the HMOs and within the vicinity of such properties. New planning legislation that introduced in April 2010 means that all new HMOs are now subject to planning consent. As part of the new powers Tamworth Borough Council may consider setting limits for the number of HMOs permitted in any one street or area to minimise any negative impact on the surrounding neighbourhood. Following further consultation with partners an action plan and report will be produced with recommendations of the best way to move forward and effectively regulate HMOs within Tamworth to ensure that a good standard of affordable accommodation is provided.

### **Policy Revision**

The Policy will be reviewed regularly and will take account of any changes to Legislation, Guidance and Procedure. Minor changes to policy delivery may be required from time to time, and will be undertaken with the agreement of the Deputy Director of Housing.

# Appendix 1

## Mandatory House in Multiple Occupation (HMO) Licensing Procedure Notes

### Licensing of HMO's for Tamworth Borough Council

#### 1.0 Background

- 1.1 In April 2006 the Government introduced Mandatory Licensing of certain Houses In Multiple Occupation (HMO's). This means that every HMO to which Part 2 (licensing of HMO's) of the Housing Act 2004 applies, must now be licensed, unless the following apply:-
- i) A Temporary Exemption Notice (TEN) is in force.
  - ii) An Interim or Final Management Order (IMO or FMO), is in force.
- 1.2 The Council must grant a licence provided it is satisfied of the following:-
- The HMO is reasonably suitable for occupation by the number of people specified on the licence.
  - The proposed licence holder and/or proposed manager (if applicable) is a Fit and Proper Person.
  - The proposed licence holder is the most appropriate person to hold the licence.
  - The proposed management arrangements are satisfactory.
  - The financial structures for the management are suitable.
- 1.3 If the above requirements are not satisfied, the Council can refuse to issue a licence.
- 1.4 The licence will last for a period of five years and will state on it the maximum number of households and people who may occupy the house. The licence will also include certain mandatory conditions and may include certain discretionary conditions. Landlords will be charged a fee for issue of the licence, the fee is set locally by the Licensing Authority.

#### 2.0 Introduction

- 2.1 The purpose of this procedure note is to determine the processes that will be followed to undertake that licensing operation.
- 2.2 The document aims to provide transparent procedures that will be followed when assessing and processing licence applications.
- 2.3 **Note: this procedure note does not include for any variation or revocation procedures of a licence *that is in place*.**

2.4 This procedure document includes:-

- Processing an Application for a Licence (Section 3.0);
- Refusal of a Licence (Section 4.0);
- Fit and Proper Person Assessment (section 5.0) and
- Appendix 1 – Further Investigations

### **3.0 Processing an Application for a Licence**

3.1 It is strongly recommended that a copy of all correspondence, notices, Orders, notes/minutes from case meetings/Case Review Panel meetings, notes on relevant discussions including telephone calls should be retained on a case file at least until such time that a licence is issued and the appeal period has lapsed. The reason for this is to enable the safe recovery of original documents in the event that an appeal is lodged. Thereafter the file can either be retained or scanned and saved electronically. The Council may *also* decide to operate an electronic case management system to run alongside the licensing process.

3.2 The Council identifies potentially licensable HMO's, this may be done in the following ways:-

- Approaches made to the Council from landlords wishing to licence properties.
- Approaches to the Council from tenants or members of the public, identifying potentially licensable properties.
- The Council proactively looks for licensable HMO's

3.3 The Council will undertake a search of the Land Registry to identify the owner/persons with an interest in the property.

#### **Initial Correspondence – Council Instigates Proceedings**

3.4 The Council will send a standard letter (let 01) explaining HMO licensing together with a useful information booklet for landlords and managers of HMO's that has been produced by the Government (Communities and Local Government – 'the CLG guide') and a copy of the Staffordshire summary guide. The letter will include a short questionnaire that will help determine if the property is either:-  
-not licensable; or  
-if there is a case for the Council considering a short temporary exemption to licensing.

3.5 Let 01 requires the landlord to return the questionnaire within 10 days.

3.6 If after 10 days have elapsed from the date of the date of Let 01, the questionnaire has not been returned, the Council will send a reminder (let 02) providing a further 7 days to respond. If the Council still hasn't

received a response after that time then we should assume that we will not receive one in which case the Council should instigate an investigation regarding the possible offence of operating a licensable HMO without a licence. Go to "Further Investigations" (See Appendix 1).

- 3.7 Where the Council receives a completed questionnaire and there is **NO** request for consideration of a temporary exemption or claim that the property is not licensable the Council will invite the landlord to make an application for a HMO licence, by writing to landlord (Let 03) enclosing a licence application form and associated guidance.

### **Initial Response – the Landlord instigates proceedings**

- 3.8 Alternatively, at the request of the landlord, the Council will send out an licensing pack which will include the questionnaire, an application form and associated guidance the CLG Guide and Staffordshire Guide together with a standard letter (let 04). The Landlord must submit an application OR a questionnaire within 28 days.

### **Request for temporary exemption received or Landlord claims the property does not require a licence**

- 3.9 Where a landlord returns a questionnaire claiming that a property is not licensable, the case Officer will consider the claim and advise the Council accordingly. A visit may be necessary to verify the claim.
- 3.10 Where a landlord requests a temporary exemption from licensing, the case officer will consider the merits and validity of the request and will advise the Council accordingly. Further information may be requested from the landlord regarding their request. The case Officer will prepare any subsequent Notices for the Council to serve.

### **Next Stages *after sending out the application form***

- 3.11 **If the application form is correctly completed proceed to paragraph 3.20**
- 3.12 **If the application form is returned incorrectly/incomplete proceed to paragraph 3.17.**
- 3.13 **If the application form is not returned following sending out let 03 (see para 3.7 above) proceed to paragraph 3.15 below.**
- 3.14 **If neither the application form or the questionnaire have been completed following sending out let 04 (see para 3.8 above) go to 3.16**

### **Application form not returned to the Council after 28 days**

- 3.15 If the Council has not received a completed application form back from the landlord after 28 days (following the sending of Let 03 see para 3.7 above), another form should be sent to the landlord with a letter (let 05a) explaining the consequences of not licensing etc. If after a further 10 days the Council have still not received back a completed application form the Council should instigate an investigation regarding the possible offence of operating a licensable HMO without a licence. Go to “Further Investigations” (See Appendix 1).
- 3.16 If the Council has not received a completed application form OR a questionnaire back from the landlord after 28 days (following the sending of let 04 see para 3.8 above) another form and a copy of the questionnaire should be sent to the landlord with a letter (let 05) explaining the consequences of not licensing etc. If after a further 10 days the Council have still not received back a completed application form the Council should instigate an investigation regarding the possible offence of operating a licensable HMO without a licence. Go to “Further Investigations” (See Appendix 1).

### **Application form returned to the Council within 28 days, but incomplete or incorrect**

- 3.17 If an application form is returned to the Council incomplete or incorrect the case officer will complete let 06 to be sent by the Council to the landlord. The letter will identify the missing parts or errors and return the form with the letter. The Council should retain a copy of the form on the file. The applicant will be invited to respond within 10 days. If there is no response go to paragraph 3.18.
- 3.18 If an amended, complete application form/queries have not been returned/answered after 10 days, let 07 should be sent reminding the landlord to do so. The letter will provide a further 10 days to submit the completed form/information. If after 10 days have elapsed, the form/information are not received the Council should instigate an investigation regarding the possible offence of operating a licensable HMO without a licence. Go to “Further Investigations” (See Appendix 1).
- 3.19 If the application form/information required is returned correctly completed proceed to 3.20 below.

### **Application form returned to the Council correctly completed**

- 3.20 If the application form has been returned to the Council correctly completed, carry out the following processes:-

- Details of the form and date it was returned should be recorded on the case management system if one is operating. The accompanying cheque should be paid in to Finance and an acknowledgement letter (let 08) and receipt should be sent to the Landlord/agent.
- The application must then be assessed to ensure the following:-
  - If it is an HMO.
  - If it is a licensable property.
  - The proposed licence holder is the most appropriate person to hold the licence.
  - The proposed licence holder is a fit and proper person.
  - The management arrangements in place are adequate.
  - The property meets any discretionary conditions for licensing imposed by the Council (if applicable).
  - The property is reasonably suitable for occupation by the number of occupants specified.
  - Check all certificates provided with application.
  - Check that names and contact details for all “relevant People” are known.

- 3.21 If the Case officer recommends to grant a licence proceed to paragraph 3.23.
- 3.22 If the Case officer recommends not to grant a licence refer to 4.0 “Refusal of a Licence”.
- 3.23 If the Council decides to grant a licence, the draft licence document along with a notice must be served by the Council on the licence applicant and all other relevant people.
- 3.24 It is recommended that all notices and orders should have a unique reference number identifying that document.
- 3.25 The notice must set out the following:-
- The reasons for granting the licence
  - The main terms of the licence.
  - The end of the consultation period, (at least 14 days after the service of the notice).
- 3.26 If representations are made, the Council must determine if they are reasonable and materially affect the Licence. The Case officer will advise the Council accordingly.
- 3.27 **If representations are made and modifications to the licence are accepted, proceed to paragraph 3.29.**
- 3.28 If no representations are made to the Council, or any representations that are made, have no material impact on upon the terms of the licence, then proceed to paragraph 3.35.

## **Representations made and modifications to the licence are accepted**

- 3.29 If representations are made and modifications to the licence are acceptable the Case officer will recommend that the Council grant the licence with the modifications.
- 3.30 To do this the Council must serve a notice on the licence applicant and all other relevant people as specified in 3.23.
- 3.31 The officer will prepare the notice.
- 3.32 The notice must set out the following:-
- The proposed modifications
  - The reasons for them
  - The end of the consultation period (at least 7 days after service of the notice).
- 3.33 If no further representations are made proceed to paragraph 3.35.
- 3.34 If further representations are made and variations to the licence are required, repeat the procedure in paragraph 3.29.
- 3.35 If no further representations are made, or any representations have no material impact upon the terms of the licence, the Council should issue the licence.
- 3.36 To do this the Council must serve on the applicant for the licence and if different, the licence holder, and each relevant person, a copy of the licence and a notice prepared under schedule 5, paragraph 7, setting out the following ;
- The reasons for deciding to grant the licence and the date on which the decision was made.
  - The right of appeal against the decision under Part 3 of schedule 5.
  - The period within which an appeal may be made (28 days beginning with the date specified in the notice, as the date on which the decision was made).
- 3.37 The licence document and notice are required to be served within 7 days beginning with the day on which the decision is made.
- 3.38 **If no appeal is made, proceed to paragraph 3.39. If an appeal is made, proceed to paragraph 3.43.**

### **No appeal made to the Residential Property Tribunal Service (RPTS)**

- 3.39 If no appeal is made, details of the licence must be entered onto the public register in accordance with S232 of the Housing Act 2004. Many Authorities use their Case Management System for holding the public register electronically.
- 3.40 The case file may be electronically archived and/or filed.
- 3.41 A review date should be identified where the licence is checked.
- 3.42 The review must include the following:-
- Check certificates
  - Check conditions of the licence (breaches etc).

### **Appeal made to RPTS**

- 3.43 If an appeal is made to RPTS the Case officer will provide information as necessary to assist the Council to prepare the Council's response. The Council is responsible for compiling and submitting its response to the RPTS and attending a hearing.
- 3.44 The RPTS has the power to confirm, reverse or vary the Council's decision.
- 3.45 The Council may have to re issue the licence in accordance with the direction of the RPTS.

### **4.0 Refusal of a Licence**

- 4.1 If the Case officer determines that the Council should refuse to grant a licence, the grounds for that recommendation will be put in writing to the Council.
- 4.2 *At this point the Council may decide to inspect the property to investigate the recommendation and to assess for Cat 1 hazards.*
- 4.3 The Council will convene a Case Review Panel in accordance with paragraph 5.9 below to consider the recommendation to refuse a licence.
- 4.4 Where the Case Review Panel agrees that a licence should be refused, the Council must serve a notice on the licence applicant and each relevant person. The notice (prepared by the case officer) must state the following:-
- That the Council are proposing to refuse to grant the licence
  - The reasons for refusing to grant the licence

- The end of the consultation period (minimum 14 days).
- 4.5 The Council must consider any representations made in accordance with the notice and not withdrawn.
- 4.6 If representations are made that support a case that a licence should be issued, a case conference with the Case Review Panel will be convened. If the outcome is that the Council will issue a licence, the conditions under which the licence will be issued should be agreed and the procedure notes for grant of a licence should be followed.
- 4.7 If following any representations that are made, the Case Review Panel continues its recommendation not to grant a licence, or if no representations are made, proceed paragraph 4.8.
- 4.8 If no representations are made, or any representations that are made, do not affect the Council's decision not to issue a licence, the Council must serve on the applicant for the licence and each relevant person a notice. The notice must include the following:-
- The authority's decision not to grant a licence.
  - The reasons for the decision and the date on which it was made.
  - The right of appeal against the decision under Part 3 of this schedule.
  - The period within which an appeal may be made (not more than 28 days from the date of the decision)
- 4.9 This notice must be served within the period of 7 days beginning with the day on which the decision is made.
- 4.10 **If no appeal is made proceed to paragraph 4.16.**
- 4.11 If an appeal is made proceed to paragraph 4.12.
- 4.12 If an appeal against the decision to issue a licence is made to the RPTS, the Council must then prepare a defence for the RPTS. The Case officer will provide information to assist the Council to prepare its submission in the event of an appeal. The Council is responsible for compiling and submitting its response to the RPTS and attending a hearing.
- 4.13 The RPTS has the power to confirm, or reverse the Council's decision.
- 4.14 If following the appeal, the RPTS confirm the Council's decision to refuse to grant the licence, proceed to paragraph 4.16.
- 4.15 If following the appeal the RPTS reverse the Council's decision and decide that a licence should be issued, they may direct the authority to grant a licence to the applicant on such terms as the tribunal determine.

- 4.16 If no appeal is made to the RPTS, or if the RPTS confirm the Council's decision to refuse a licence, consider the following:-
- The case file must be updated and details entered on to any case management system.
  - If the house is still considered to be a licensable property, the Council must then consider pursuing an Interim Management Order.
  - If the house is not considered to be a licensable house under the Act, any cat 1 hazards must be considered and acted upon accordingly.

## **5.0 Fit and Proper Person**

- 5.1 The Fit and Proper Person assessment is to be carried out only when a fully completed application has been returned.
- 5.2 When a complete application for a licence has been received **the Council** should immediately instigate the following checks:-

- Check the proposed licence holder and any associate with all other Local Authorities in the region.
- Send let 09 to the following:-

Building Control – email to **bchotline@lichfielddc.gov.uk'**

Town Planning Service – email to **planning admin**

Benefits Fraud – email to **Karen Taylor**

Housing and Advice – email to **Rachel Ashford**

to check if they are aware of any intelligence on the proposed licence holder that should be considered.

- Check if there is any intelligence on the property file or case management system that should be introduced for consideration.

- 5.3 Allow 7 days for the above agencies to reply with any concerns.
- 5.4 If any concerns have been raised from the above checks, the case should automatically be referred to the Case Review Panel.
- 5.5 If '**yes**' has been answered to any of the questions in the 'Fit and Proper Person' section of the application form, the officer will prepare a letter (let 10) that the Council should send to the applicant along with a second questionnaire inviting further information to be provided within 10 days.
- 5.6 Check the proposed licence holder and any associate on Disclosure Scotland (to be provided by applicants)
- 5.7 When the response is received a Case Review Panel must consider it along with any intelligence provided by other agencies.

## **Case Review Panel**

- 5.8 The purpose of the Case Review Panel is to ensure potentially controversial recommendations are not left to any one officer.
- 5.9 The Panel should aim to convene within 7 days of the completion of all the additional checks/response by the applicant (whichever is received last).
- 5.10 As a minimum, the Panel should comprise the following:-
- The Housing Advice Manager (the Chair of the Panel);
  - One independent Officer with enforcement experience - preferably with knowledge of the subject area;
  - One independent Officer with Legal experience (a solicitor or Legal Assistant).
- 5.11 The Case officer will advise the panel but will not sit on the panel.
- 5.12 The Chair *may* also wish to invite any Consultee who has provided information that the Panel intends to consider, to attend to address the panel and to take questions. The Consultee must retire from the meeting after doing so to allow the panel to deliberate information provided.
- 5.13 The Chair *may* also consider inviting the applicant to address the panel with regard to any information provided in their application or subsequent questionnaire. In this case, the applicant should be provided the opportunity to explain previous offences and to take questions from the panel regarding that submission. They should then be excused from proceedings to allow the panel deliberate information available.
- 5.14 Any decision made by the Panel must be formally recorded on the case file and on the case management system if applicable.
- 5.15 If the Panel's recommendation is that the proposed licence holder or associate does not meet the Fit and Proper Person criteria, the case should be referred to the Deputy Director Housing for a final decision.
- 5.16 Any proposal to refuse to grant a licence or refusal to grant a licence notices should also only be served by the Deputy Director.
- 5.17 Any decision to refuse to grant a licence can be appealed by the licence applicant / proposed licence holder. The appeal must be made to the Residential Property Tribunal Service. The Council is responsible for compiling and submitting its response to the RPTS and attending a hearing.

## **6.0 Further Investigation\***

- 6.1 This process is intended to gather evidence that may be used to compile a case against a landlord for none return of a Section 16 Notice and also for operating a HMO without a licence. Note NO prosecution should be considered for the none return of a Section 16 Notice unless the property is a licensable HMO.
- 6.2 Having failed to elicit either a response to a Section 16 Request for Information or where a completed application has not been made, **the Housing Advice Manager should raise a case to undertake further investigations.**
- 6.3 Initial investigations should include checking the landlords contact details through Land Registry and Council Tax (even where this has been done previously). If this identifies a new landlord then the HMO licensing process should be recommenced from the initial stages.
- 6.4 Assuming that there is no new evidence of incorrect ownership information or an ownership change, an inspection of the property to confirm that it is licensable should be arranged.
- 6.5 If after initial attempts, access is denied or not forthcoming, the Council should consider utilising powers of entry under Section 239 of the Housing Act 2004. Where access continues to be denied an offence has been committed for which the Council should consider prosecution or issuing a Caution. A case conference with officers with delegated authority to instigate further legal proceedings should be undertaken.
- 6.6 Where access continues to be denied OR where seeking access is likely to defeat the purpose of gaining entry (for example if the Council believes that a landlord may illegally evict a tenant(s) to avoid mandatory licensing), the Council may obtain a warrant from a Justice to access the property. The warrant remains in force until the purpose of it (ie entry to undertake the investigation) is concluded.
- 6.7 If the inspection reveals that a property should be subject to a HMO licence, then an offence(s) may have been committed.
- 6.8 Since there are defences available under Section 72 of the Act, the landlord should be invited in to the Council to be interviewed under caution regarding the offence. This interview should be undertaken by a person who is familiar with the requirements for undertaking such interviews and who is familiar with the defences in the Act.
- 6.9 A case conference with officers with delegated authority to instigate further legal proceedings should be undertaken to review the case. Options that should be considered include:

- Do nothing – consider this option in the context of likelihood that the landlord is now likely to cooperate and property will become licensed in the near future;
- Prosecute – consider whether there are any public benefits to this option, and the quality of the evidence to secure a conviction;
- Issue a Caution – an alternative to a prosecution – evidence must be as valid to secure a conviction. Consider that a Caution remains on a person's criminal record and can be raised for sentencing purposes if that person is subsequently convicted of similar offences. Also, in accepting a Caution the Council can still publicise the case. Also consider public benefit for example does the risk that occupiers have been exposed to as a result of the offence warrant prosecution as an alternative option?

6.10 In addition the Council should also consider making an application for a Rent Repayment Order for the recovery of Housing Benefits Payments made while the offence was being committed – see Section 73 of the Housing Act 2004 for parameters and limitations in respect of Rent Repayment Orders.

## Appendix 2

Activity	EHO Time (hrs)	EHO Time (hrs)	carried out by
	Property 5 bed spaces	Each additional bed space	
Initial contact with landlord	0.25		Admin
Send out information pack and enter details on to database	0.125		Admin
Log application receipt Complete receipt for payment Enter details onto database Send out acknowledgement letter Make up file	1		Admin
Check application details Check certificates submitted Check plans submitted	2	0.25	Technical
Risk assessment of property	3	0.25	Technical
Fit & proper person check Check self declaration Check Housing Benefit records Check Housing Enforcement Records Check Council Tax Records Check Planning records	1.5		Admin
Prepare and send out draft licence with conditions	2.5		Technical
Prepare licence for applicant and relevant persons	1		Technical
Enter details on public register	0.125		Admin
2 x property inspections throughout term of licence	2.5	0.5	Technical
Yearly update of certificates	2.5		Technical
<b>Total Hours</b>	<b>16.5</b>	<b>1</b>	

Item	Per HMO Licence	Cost (5 bed spaces)	Cost each additional bed space
Admin Functions	3hrs x £16 .98	50.00	0
Technical Functions	13.5hrs x £37.79	510.00	37.79
Costs	Transport	4.00	
	Preparation	3.00	
	Postage	3.80	
	Land search	4.00	
<b>Total cost of a HMO Licence</b>		<b>£574.80</b>	<b>£37.79</b>

## **Appendix 3**

### **WHAT IS A HOUSE IN MULTIPLE OCCUPATION?**

#### **CATEGORIES OF HMOs**

Category A Houses occupied as individual rooms where there is some exclusive occupation (usually bedroom/living room) and some sharing of amenities (bathroom and/or toilet and/or kitchen). Each occupant lives otherwise independently of all others.

Category B Houses occupied on a shared basis. These would normally be occupied by members of a defined social group e.g. students or a group of young single adults. The occupiers each enjoy exclusive use of a bedroom but would share other facilities including a communal living space.

#### **STANDARDS**

Where dimensions and areas are specified below they shall, unless the context requires otherwise, be regarded as *recommended minima*. Irrespective of such recommendations however, consideration should be given to the shape and usable living space of any room in determining whether and by how many people it is suitable for occupation. This is a matter, of course, of functionality; whether given its shape and size the particular room is reasonably capable in fact of performing the role assigned to it for the number of persons who need to use it. It is difficult without becoming over-prescriptive to give more explicit guidance on this.

Standards throughout should be applied irrespective of the ages of the occupants.



kitchen facilities are provided within other rooms, as a guide, a minimum additional floor area of 3.7m<sup>2</sup> should be required.

The obligate sharing of rooms by persons of the opposite sex over the age of 12 and who do not live as partners shall not be permitted.

No staircase or landing nor any room which has been appointed as a kitchen or bathroom shall be deemed suitable for sleeping accommodation.

## **2. Natural and Artificial Lighting**

All habitable rooms shall have an adequate level of natural lighting, provided via a clear glazed window or windows and/or door(s), the glazed area to be equivalent to at least one-tenth of the floor area and to extend normally to a point 1.75m above floor level.

Basement rooms used for human habitation should, in addition to the requirement in the first paragraph, have sufficient natural lighting for their purpose.

Adequate electric lighting points are to be provided to all habitable rooms, staircases, landings, passages, kitchens, bathrooms and water closets. All lighting to common parts to be provided maintained and paid for by the landlord or their agent. Lighting to staircases, landings and passages may be controlled by time switches or other devices having a similar effect.

## **3. Ventilation**

All habitable rooms, kitchens, bathrooms, and water closet compartments shall have a minimum floor to ceiling height 2.14m, except in the case of existing attic rooms, which shall have a minimum height of 2.14m over an area of the floor equal to not less than three-quarters of the area of the room, measured on a plane 1.5m above the floor. Any floor area above which the ceiling height is less than 1.53 metres shall additionally be disregarded.

#### **4. Space Heating**

Each unit of accommodation in an HMO must be equipped with adequate means of space heating. The principal living room of each occupancy shall be provided with a fixed heating appliance capable of heating the room to a temperature of 18 degrees centigrade when the outside temperature is -1 degree centigrade. This provision should be efficient, safety designed and be so sited and guarded as to minimise the risks to health and safety.

All such appliances shall be maintained annually by a competent person.

All additional living rooms shall be provided with suitable number of sockets which could reasonably be dedicated for a fixed heating appliance. Such sockets shall not be positioned on the same wall. Alternatively a suitable supply pipe for gas shall be provided, where it is possible to properly site a gas appliance in the room.

#### **5. Facilities for the Storage, Preparation and Cooking of Food and the Disposal of Waste Water**

- a) Each occupancy shall have a separate kitchen not more than one floor distant from the living accommodation. Where in the case of any occupancy this is not practicable, that occupancy shall have its own kitchen facilities within the unit of accommodation. In cases of rooms let to more than one person this will be the minimum standard.

The facilities shall comprise:

Cooking - A gas or electric cooker with a minimum of two burners/hobs (four burners/hobs if provided for more than one person), an oven and grill. Alternatively a microwave oven may be substituted for one or two of the burners/hobs respectively.

Storage - A gas or electric refrigerator of minimum capacity 0.15m<sup>3</sup> plus a storage cupboard of minimum capacity 0.16m<sup>3</sup>. Space also required for crockery, pans and cutlery.

Preparation

- A worktop or table of smooth and impervious material of minimum size 500 1000 mm. 1.5m x 0.5m per 2 persons.

- two twin outlet power sockets in addition to any serving major appliances set a convenient height and safe position.

Sink - A metal or ceramic sink and drainer in good condition and of minimum dimensions 500 x 600 mm and 180mm deep set on a stable base with a constant supply of hot and (potable) cold water. Where practicable, a two course tiled splashback shall be provided. The sink shall be connected to the drainage system via a suitable trap.

A wash-hand basin shall not be used in place of a sink.

Kettle - A suitable kettle should be provided.

b) In the case of single occupiers and where the Local Authority is satisfied that the provision of kitchen facilities for exclusive use is not practicable or appropriate, facilities may be provided on a ratio of one set of each per five occupancies and not more than one floor distant from any individual letting.

Such kitchens shall meet the following minimum standard:-

- (i) there shall be no more than two sets of facilities in anyone room.
- (ii) be provided with a cooker with four burners, oven and grill for each group of five or any lesser number thereafter.
- (iii) be provided with a readily cleansable sink of minimum dimensions 500 mm x 600 mm set on a base unit with a constant supply of hot and cold water and a draining board. A two course tiled splashback shall be provided. The sink shall be connected to the drainage systems by a

suitable trap. The provision of sinks shall be on the ratio of one for each group of five or any lesser number thereafter.

- (iv) be provided with four 13 amp electric power outlets at a convenient height and safe position.
- (iv) be provided with an impervious work surface of minimum dimensions 500 mm x 1000 mm.
- (v) In general terms, kitchens must be laid out safely so as not to put users and others at risk.
- (vi) Walls and floor surfaces must be readily cleansable.
- (vii) Adequate means of ventilation and artificial lighting must be provided.
- (ix) Mechanical extract ventilation must be provided in communal kitchens.

In addition a refrigerator of minimum capacity 0.15m<sup>3</sup> with an adequate freezer compartment or, where the freezer compartment is not adequate, adequate separate freezers, together with a storage cupboard of minimum capacity of 0.16 cubic metres shall be provided within each occupancy.

Appropriate refuse disposal facilities

## **6. Drainage and Sanitary Conveniences**

One water closet shall be provided and maintained for every five persons or lesser number. Every such water closet shall be in a separate room within the building and where shared by two or more households, be entered from a common passageway or hallway and shall not be more than one floor distant from any individual letting. Each WC compartment shall also be provided with a suitable wash-hand basin supplied with both constant hot and cold water.

- > Adequate lighting and ventilation
- > Internal door lock must be provided
- > Must be fitted with mechanical extraction if opening into kitchen

External WCs shall be ignored. Fifty per cent of WCs shall be provided in separate compartments except that where a sole WC is provided and maintained for not more than four persons it may be within a bathroom. The walls and floor of any WC should be reasonably smooth and non- absorbent and capable of being readily cleansed.

The house shall be provided with an effective system, both above and below ground for the drainage of foul, waste and surface water.

## **7. Personal Washing Facilities**

Each separate occupancy shall be provided with a wash-hand basin measuring 1700mm x 760mm together with constant supplies of hot and cold running water sited within the unit of accommodation. A two course tiled splashback to the wash-hand basin is to be provided.

If a sink is provided in a single bedsit room a separate wash-hand basin will not be required.

Each property should be considered on its own merit when deciding whether it is “reasonably practicable” to install wash hand basins in each unit of living accommodation (see definition of unit below). The following questions may help the LHA to make a suitable judgement in this respect:

- Are the units of accommodation occupied by a group sharing living accommodation or by persons who live independently.
- Will long or impractical drainage runs be needed to install a wash hand basin in each unit?
- If the building is listed, does this mean it is not possible to install wash hand basins?
- How many shared wash hand basins are there in the house?
- Are the shared wash hand basins reasonably accessible i.e. are they in shared bathrooms, separate WCs and/or en-suite?

- Are the shared wash hand basins of an adequate size?
- Will the installation of wash hand basins cause major disruption to the existing occupiers and/or could the work be carried out during vacations or between lets?
- What are the views of the landlord and/or tenants?

Another important consideration for the LHA is whether the work is reasonably practicable “having regard to the age and character of the HMO...” On this basis, some LHAs may argue that if they have never required wash hand basins to be installed in certain shared house-type HMOs, then having regard to the age and character of HMOs within their local area, they do not need to start now.

Ultimately, it will be for the Residential Property Tribunal and/or the Courts to interpret this new terminology if a LHA is subject to legal challenge.

Each occupancy shall be provided where practicable with a bath or shower in a separate room. Otherwise, a readily accessible bath, of minimum dimensions 1700 mm x 760 mm, in a bathroom, or a shower of minimum dimensions 800 mm x 800 mm in a suitable shower room together with adequate drying and changing space where practicable shall be provided not more than one floor distant from any user on a ratio of one bath or shower to five persons. A two course tiled splashback to the bath is to be provided. The bath/shower room shall be accessible at all times.

Any shower cubicles provided should have fully tiled walls or be complete self standing cubicles. The hot and cold water supplies shall be adequate, constant and available at all times or hot water at a suitably controlled temperature.

Amenities intended to be shared by two or more households are to be accessible from a common area.

Lights must be operated by pull cord switches within bathrooms and shower rooms.

- > Artificial lighting must be provided.
- > Natural or mechanical extract ventilation; the latter is desirable even if natural ventilation is present and is essential for shared facilities.
- > Bathrooms must be provided with an adequate fixed space-heating appliance.
- > Privacy door locks must be provided.

The walls and floor of any bathroom or shower room should be reasonably smooth and non absorbent and capable of being readily cleansed.

## **8. Means of Escape and Other Fire Precautions**

The property shall be provided with an adequate means of escape from fire, together with other fire precautions including so far as necessary a detection and warning system to the satisfaction of Tamworth Borough Council.

## **CATEGORY B HOUSES**

Houses occupied on a shared basis. These would normally be occupied by members of a defined social group, e.g. students or a group of young single adults. The occupiers each enjoy exclusive use of a bedroom but would share other facilities including a communal living space.

The anticipated duration of the occupancy will often be finite and occupiers may spend periods of it (e.g. vacations) away. Numbers of occupiers above about 6 are probably more suggestive of Category A accommodation. This standard is not intended to apply to purpose-built student accommodation.

### **1. Space Standards**

#### **One Person Units of Accommodation**

Each bedroom/study  $10\text{m}^2$  except where a separate living room is provided which is not a kitchen or a kitchen/dining room, in which case the bedroom shall be  $6.5\text{m}^2$ .

#### **Two Person Units of Accommodation**

Each bedroom/study  $15\text{m}^2$  except where a separate living room is provided which is not a kitchen or a kitchen/dining room, in which case the bedroom shall be  $11\text{m}^2$ .

#### **Common Rooms**

(i) Kitchens shall be of suitable size. The following is a guide:

Used by 3-5 persons	$5\text{m}^2$
Used by 6-10 persons	$9\text{m}^2$

Note: The above are minimum space standards based on optimum shape and layout. In practice, it may be necessary to have a larger space standard to ensure

that there is sufficient space to fit in all the facilities required and provide a circulation area which permits safe use of the kitchen for the number of users.

(ii) Dining/kitchens

Used by 3-5 persons 11.5m<sup>2</sup>

Used by 6-10 persons 15m<sup>2</sup>

(iii) Kitchen, Living, Dining Space

Used by 3-5 persons 16m<sup>2</sup>

Used by 6-10 persons 25.5m<sup>2</sup>

(iv) Living Rooms and Dining Rooms

Used by 1-3 persons 11m<sup>2</sup>

Used by 4-6 persons 16m<sup>2</sup>

## 2. Natural and Artificial Lighting

All habitable rooms shall have an adequate level of natural lighting, provided via a clear glazed window or windows, and/or door(s) the glazed area to be equivalent to at least one-tenth of the floor area and to extend normally to a point 1.75m above floor level.

Basement rooms used for human habitation should, in addition to the requirement in the first paragraph, have sufficient natural lighting for their purpose.

All staircases, landings, passages, kitchens, bathrooms and water closets are to be provided, where practicable, with a window. Windows to bathrooms and water closets are to be glazed with obscured glass.

Adequate electric lighting points are to be provided to all habitable rooms, staircases, landings, passages, kitchens, bathrooms and water closets. Lighting to staircases, landings and passages may be controlled by time switches or other devices having a similar effect.

### **3. Ventilation**

All habitable rooms, kitchens, bathrooms, and water closet compartments shall have a minimum floor to ceiling height 2.14m, except in the case of existing attic rooms, which shall have a minimum height of 2.14m over an area of the floor equal to not less than three-quarters of the area of the room, measured on a plane 1.5m above the floor. Any floor area above which the ceiling height is less than 1.53 metres shall additionally be disregarded.

All habitable rooms shall be ventilated directly to the external air by a window which has an openable area not less than 1/20th of the floor area.

All kitchens, bathrooms and water closet compartments shall be ventilated directly to the external air, either by a window the openable area of which shall be equivalent to at least 1/20th of the floor area of the room or by suitably sited mechanical ventilation providing a minimum of three air changes per hour operated from the lighting circuit of the room and fitted with a 20 minute overrun. For kitchens, mechanical ventilation providing one air change per hour will be deemed sufficient.

Basement rooms used as habitable rooms should be provided with natural ventilation direct to the external air. In addition, there should normally be an unobstructed space immediately outside the window opening which extends the entire width of the window or more and has a depth of not less than 0.6m measured from the external wall or not less than 0.3m in the case of a bay window with side lights.

Suitable and sufficient permanent ventilation shall be provided and maintained in any room in which there is a gas heating appliance.

Suitable and sufficient permanent means of ventilation shall be provided in all kitchens, dining/kitchens, bathrooms, or water closet compartments and other rooms containing cooking or washing facilities.

#### **4. Space Heating**

Each unit of accommodation in an HMO must be equipped with adequate means of space heating.

All habitable rooms shall be provided with a fixed heating appliance capable of heating the room to a temperature of 18 degrees centigrade when the outside temperature is -1 degree centigrade. This provision should be efficient, safely designed and be so sited and guarded as to minimise the risks to health and safety.

All such appliances shall be maintained annually by a competent person .

#### **5. Facilities for the Storage, Preparation and Cooking of Food and the Disposal of Waste Water**

Each occupancy shall have constant access to a shared kitchen no more than one floor distant from the large majority of users and, in any event, not more than two floor distant from any user. Where in the case of any occupancy this is not practicable, that occupancy shall have its own kitchen facilities within the unit of accommodation. Dining facilities for shared kitchen users shall be provided within a dining/kitchen or in a separate dining room adjacent to the kitchen.

No kitchen shall be required to be used by more than five person.

The facilities shall comprise:

Cooking - A gas or electric cooker with a minimum of four burners/hobs, an oven and a grill. Alternatively a microwave oven may be substituted for one or two of the burners/hobs respectively.

Storage - Each separate occupancy shall be provided with dry goods storage space and refrigerator space either within the kitchen or in an adjacent and readily accessible position. The scale of such provision shall be a minimum of 0.08m<sup>3</sup> dry goods storage space or 500 x 720 x 300mm shelf wall unit and 0.075m<sup>3</sup> (one shelf) refrigerator with freezer compartment within the shared refrigerator space per occupancy, although occupancies comprising of more than one individual will require some additional space. The space in a sink unit below the sink will not be accepted for the above purposes.

Appropriate refuse disposal facilities

#### Preparation

- A worktop or table of smooth and impervious material of minimum size 500 x 1500 mm plus 0.5m per additional person.
- Two twin outlet power sockets in addition to any serving major appliances set at a convenient height and safe position.

Sink - A metal or ceramic sink and drainer in good condition and of minimum dimensions 500 x 600 mm x 180mm deep set on a stable base with a constant supply of hot and (potable) cold water. Where practicable, a two course tiled splashback shall be provided. The sink(s) shall be connected to the drainage system via a suitable trap.

A wash-hand basin shall not be used in place of a sink.

Kettle - A suitable kettle should be provided.

Adequate provision for the storage of kitchen utensils shall be provided in the kitchen, in addition to the space provided for food storage.

- In general terms, kitchens must be laid out safely so as not to put users and others at risk
- Walls and floor surfaces must be readily cleansable
- Adequate means of ventilation and artificial lighting must be provided
- Mechanical extract ventilation must be provided in communal kitchens

## **6. Drainage and Sanitary Conveniences**

One water closet shall be provided and maintained for every five persons or lesser number. Every such water closet shall be in a separate room within the building and where shared by two or more households, be entered from a common passageway or hallway and shall not be more than one floor distant from any individual letting. Each WC compartment shall also be provided with a suitable wash-hand basin supplied with both constant hot and cold water.

- Adequate lighting and ventilation
- Internal door lock must be provided
- Must be fitted with mechanical extraction if opening into kitchen

External WCs shall be ignored. Fifty per cent of WCs shall be provided in separate compartments except that where a sole WC is provided and maintained for not more than four persons it may be within a bathroom. The walls and floor of any WC should be reasonably smooth and non-absorbent and capable of being readily cleansed.

The house shall be provided with an effective system, both above and below ground for the drainage of foul, waste and surface water.

## 7. Personal Washing Facilities

Preferably, each bedroom/study should be provided with a suitable wash-hand basin together with its own supplies of hot and cold running water. Where this is not practicable, and the room is on the same floor as a bathroom, provision of a wash-hand basin within the bathroom shall be accepted provided it need not be shared by more than five persons. If a sink is provided in a single bedroom/study a separate wash-hand basin will not be required.

Alternatively, a readily accessible bath of minimum dimensions 1700 mm x 760 mm, in a bathroom, or a shower of minimum dimensions 800 mm x 800 mm in a suitable shower room together with adequate drying and changing space where practicable shall be provided not more than one floor distant from any user on a ratio of one bath or shower to five persons. A two course tiled splashback to the bath is to be provided. The bath/shower room shall be accessible at all times.

Any shower cubicles provided should have fully tiled walls or be complete self standing cubicles. The hot and cold water supplies shall be adequate, constant and available at all times.

Amenities intended to be shared by two or more households are to be accessible from a common area.

The walls and floor of any bathroom or shower room should be reasonably smooth and non absorbent and capable of being readily cleansed.

- Artificial lighting must be provided
- Natural or mechanical extract ventilation; the latter is desirable even if natural ventilation is present and is essential for shared facilities

- Bathrooms must be provided with an adequate fixed space-heating appliance

Privacy door locks must be provided

## **8. Means of Escape and Other Fire Precautions**

The property shall be provided with an adequate means of escape from fire, together with other fire precautions including so far as necessary a detection and warning system to the satisfaction of Tamworth Borough Council.



# Equality Impact Assessment Template

Name of policy/ procedure/ practice to be assessed		HMO Enforcement Policy		Date of Assessment	02.06.2010
Is this a new or existing policy/ procedure/ practice?	New	Officer responsible for the Assessment	Helen Carpenter	Department	Private Housing Enforcement Team
1. Briefly describe the aims, objectives and purpose of the policy/ procedure/ practice?	To provide guidance and information for landlords and residents in private sector houses in multiple occupation.				
2. Are there any associated policy/ procedure/ practice which should be considered whilst carrying out this equality impact assessment?	Enforcement Policy HMO Licensing Procedures				
3. Who is intended to benefit from this policy/ procedure/ practice and in what way?	Enforcement officers Landlords for licensing Residents living in Tamworth				
4. What are the desired outcomes from this policy/ procedure/ practice?	To provide robust measures for undertaking enforcement action is necessary to ensure the health, safety and welfare of all residents				
5. What factors/ forces could contribute/ detract from the outcomes?	Lack of resources within the Private Housing Enforcement Team Changes in legislation				

<b>6. Who are the main stakeholders in relation to the policy/ procedure/ practice?</b>	<b>Landlords Residents Internal Council departments</b>
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8. Which individuals/ groups have been/ will be consulted with on this policy/ procedure/ practice?	Please explain	
9. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact on racial groups?	Y	<p data-bbox="424 371 536 1043">Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).</p> <p data-bbox="568 349 751 1043">No – Policy is not racially specific History of HMO accommodation being used by Migrant Workers but Corporate Translation Services are available to negate any negative impact.</p>
10. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact due to gender?	Y	<p data-bbox="788 304 863 1043">Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).</p> <p data-bbox="895 551 935 1043">No – Policy is not gender specific</p>
11. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact due to them being transgender or transsexual?	Y	<p data-bbox="999 304 1074 1043">Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).</p> <p data-bbox="1106 371 1177 1043">No – Policy is not transgender or transsexual specific</p>

12. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact due to disability?	Y	N	Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).  No
13. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact due to sexual orientation?	Y	N	Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).  No – policy has no different outcome due to sexual orientation
14. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact due to age?	Y	N	Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).  No – policy is not age specific
15. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact due to religious belief?	Y	N	Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).  No – policy is not specific to religion
16. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact on Gypsies/ Travellers?	Y	N	Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).  No

17. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact due to dependant/caring responsibilities?	Y	N	Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).  No
18. Are there concerns that the policy/ procedure/ practice <u>could</u> have a differential impact due to them having an offending past?	Y	N	Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).  Yes – landlords with an offending past may not be eligible to be awarded a licence for an HMO if they do not pass the ‘fit & proper person’ test. The legislation determines the offences that would prevent a landlord being a fit & proper person. If an HMO cannot be licensed, the Council has a duty to apply for an IMO and manage the property on behalf of the landlord.
19. Are there concerns that the policy/ procedure/ practice could have an impact on children or vulnerable adults?	Y	N	Please explain, your reasoning, giving details of existing evidence (either presumed or otherwise).  No
20. Does any of the differential impact identified cut across the equality strands (e.g. elder BME groups)?	Y	N	Please explain  No

21. Could the differential impact identified in 9 – 20 amount to there being the potential for adverse impact in this policy/ procedure/ practice?	Y	N	No – this policy is designed to protect the health and safety of residents
22. Can this adverse impact be justified: <ul style="list-style-type: none"> <li>• on the grounds of promoting equality of opportunity for one group?</li> <li>• For any other reason?</li> </ul>	Y	N	Please explain for each equality heading on a separate piece of paper (questions 9 – 20).  N/A
23. As a result of carrying out the equality impact assessment is there a requirement for further consultation?	Y	N	Yes. It has been identified that the policy will need to be explained to landlords in Tamworth. A question and answer session may be appropriate but some of their comments may not be acted upon as the policy is written according to statutory functions and duties. Annual monitoring will be carried out.
24. As a result of this EIA should this policy/ procedure/ practice be recommended for implementation in it's current state?	Y	N	Yes

PLEASE COMPLETE THE FOLLOWING ACTION PLAN FOR ALL IMPACT ASSESSMENTS

# Equality Impact Assessment Action Plan

Complete the action plan demonstrating the changes required in order to meet TBC's commitment to equality and diversity. The action plan must contain monitoring arrangements, the publishing of results and the review period required for this policy.

ACTION/ ACTIVITY	RESPONSIBILITY	TARGET	PROGRESS
Information session for landlords	Private Sector Enforcement Team	September 2010	
Monitoring arrangements:	To be reviewed annually	Data collected monthly	
Publication:	June 2010		
Review Period:	Annually	Reviewed 12 monthly unless otherwise stated	

Expand as appropriate

Signed (Completing Officer) ..... Date .....

Signed (Head of Department) ..... Date .....

Signed Corporate Diversity/ Equality ..... Date .....