

## **Powers available to the local authority to control HMOs in the city**

Officers have considered the legislative framework around the licencing of Houses in Multiple Occupation (HMOs) and identified within this appendix.

The following powers already exist for the Local Authority to control HMOs in the City:

### **Houses in Multiple Occupation (HMO) Licencing**

Houses in Multiple Occupation are properties rented out by at least three people not from one household (such as a family) but share facilities such as a bathroom or kitchen.

Planning permission is often required for an HMO and this is handled by the council's Planning Service. Therefore it, through the application of the HMO Supplementary Planning Document (SPD) and related guidance, can determine if a property can become a HMO and therefore, in effect, how many HMOs are in an area (planning permission is not required retrospectively, meaning that long-established HMOs do not require planning permission). The City Council's Private Sector Housing (PSH) Service is responsible for ensuring that HMOs meet the relevant standards, including space standards.

Some HMOs are already required to be part of a mandatory licencing scheme through the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018

HMO Licencing is intended to ensure that:

- the landlord of an HMO is a fit and proper person (or employs a manager who is).
- each HMO is suitable for occupation by the number of people allowed under the licence (overcrowding is eliminated).
- the standard of management of the HMO is acceptable.
- vulnerable tenants are protected.
- high-risk HMOs can be identified and targeted for improvement (such as fire safety).

In 2013, the City Council's brought in an additional licencing scheme for all qualifying HMOs. Such a scheme could only be introduced for a maximum period of 5 years and evidence had to show a need for additional controls over HMOs locally, and that suitable alternative options have been explored. Consultation with local landlords, tenants and residents would be required as part of this process.

Licence conditions could be used to stipulate the condition of a property, but the inspections of licensed properties can allow for any poor conditions to be identified and acted upon by the inspecting officer. It required all HMOs with three or more occupants to be licensed in postcode areas PO1, PO4 & PO5 (the areas of the city with the highest concentrations of HMOs at the time). In the five years of the additional licencing scheme the council had issued licences to 2184 properties in the PO1, PO4 & PO5 areas.

Under the relevant legislation any renewal of additional licensing required evidence that it had failed to deal with the problem that led to its introduction in the first place. That evidence was not available, therefore the scheme ceased in August 2018.

However, in October 2018 the government introduced changes to the mandatory HMO licensing criteria, meaning that all HMOs occupied by five or more tenants now require a mandatory license, whereas previously only HMOs with five or more tenants and consisting of three more storeys did so. This change in criteria meant that the number of HMOs in the City which required a mandatory HMO license rose from 552 properties, to 1220 properties on 1<sup>st</sup> October 2018.

Currently HMOs with three or four tenants in the city do not require a license; any potential reintroduction of additional licensing would therefore focus on the licensing of some or all of those properties not currently covered by mandatory HMO licensing criteria. Licensing is required to be cost-neutral by setting the licensing fees to cover the cost of running the scheme.

### **Powers under the Housing Act 2004 to target small geographic areas for proactive inspection**

Local authorities can use their powers under the Housing Act 2004 to select small geographical areas where they have reason to believe (based upon evidence) that, for example, there may be poor property conditions or Anti-Social Behaviour (ASB). All privately owned properties could be inspected in the area, with a particular focus on private rented sector (PRS) but with an opportunity to also include working with owner/occupiers and empty property owners to make improvement to their properties also. This would need to be funded and resourced by the City Council's general fund, rather than through licensing fees, but any enforcement charges levied against poor landlords identified in this way could be used to offset the cost of the resources required to undertake this element work.

This approach would only be suitable if there is evidence that problems with HMOs is specific to only very small geographical areas of the city, such as a few selected roads.

### **The Management of Houses in Multiple Occupation (England) Regulations 2006**

Management Regulations apply to all HMOs under Part 1 of the Housing Act 2004, whether they are licensable or non-licensable. These regulations mean that a manager (landlord, letting agent or similar) is responsible for the health and safety of the HMO: including areas such as fire safety, maintenance and repair, gas and electric, buildings structure and installations. The Management Regulations also include providing adequate waste facilities and collection.

### **HMO governance Board**

The City Council agreed the creation of the Houses of Multiple Occupation (HMOs) Governance Board in 2018 which consists of representatives from the University,

Students Union, local landlord association, Council officers, Cabinet member for housing and Preventing Homelessness and opposition spokespeople on housing and it has met to understand issues surrounding HMOs. Some of the learning of this group has been used in this information report.

In October 2021 this HMO governance board was extended to include the whole Private Rental sector in response to the City Council's Private Rental Sector Strategy which was agreed in January 2021.

Whilst this Governance Board will continue to examine the impact of HMOs in the city, the scope is now much wider and the focus is no longer purely on HMOs.

### **Other Methods of Management Available to Portsmouth City Council**

When considering a designation of Additional Licensing, section 57 of the Housing Act 2004 asks local authorities to consider what other means of management regarding HMOs is available.

Since Additional Licencing was last introduced in Portsmouth a number of changes, such as new legislation and a restructure of the PSH Service have been brought in which aim to support the private rented sector, including HMOs.

The PSH Service employ a full time Landlord and Tenant Support Officer. The main elements of this role include -

- Arranging and facilitating targeted and proactive resident groups in areas where there are high levels of impact from HMO's, or other types of privately rented properties.
- Arranging and facilitating educational workshops for both landlords & tenants, to advise them of their responsibilities and how to seek further support
- Advising residents of the correct procedures to follow to make noise or rubbish complaints, sign posting to the relevant services
- Co-ordinating and organising events such as student housing events, to proactively educate tenants on what to look for when choosing a property, as well as how to have a positive impact on the local community
- Co-ordinating and organising events such as resident engagement events in HMO 'hotspot' areas, to improve street scenes and initiate community bonds
- Decide if issues raised by residents require further involvement from agencies, and organise and facilitate multi-agency meetings where appropriate
- Updating the Portsmouth City Council website with useful and relevant information for tenants and landlords
- Producing a landlord newsletter, which includes key updates in legislation as well as seasonally relevant information which may help them and their tenants meet their obligations

The PSH Service are currently undergoing a pilot scheme with Portsmouth Mediation Service (PMS), whereby tenants, landlords and residents can be referred to mediation to help resolve issues.

PMS already provide a restorative service for residents who get caught up in disagreements and disputes. This independent and impartial service is envisioned to become the future gateway for any landlord/tenant problems in the city. The service already receives referrals from the police and local authority housing officers, as well as self-referrals from residents seeking community mediation to work through conflicts they are facing.

Several landlords from the Portsmouth and District Property Landlords Association (PDPLA), many of whom manage Houses in Multiple Occupation (HMO's), have recently collaborated with PMS to undergo restorative training. The collaboration equips landlords with a personal restorative tool kit to help conversations to continue when problems arise, with an aim to prevent homelessness and stressful legal action.

It is intended that this training will also be rolled out to tenant and resident groups, as well as other landlords. This independent and impartial service will help facilitate communication and defuse escalating problems, enabling compromise and agreement instead of entrenchment and anxiety.

Source - <https://portsmouthmediationservice.org.uk/2021/07/new-restorative-scheme-is-plain-sailing-for-portsmouth-property-landlords/>

PSH's Housing Regulation Team receive and act upon complaints about housing conditions from various stakeholders, including but not limited to

- Adult and Children's Social Care
- Police
- Hampshire Fire and Rescue Service
- Planning Enforcement
- The NHS Mental Health Team
- Housing Needs, Advice and Support
- Advice Portsmouth
- Councillors
- Solicitors
- Members of the public

Residents can make reports to the service via telephone, email, or using 'Report It' forms on the City Council's website. The team will adapt their approach depending on the individual circumstances of the case, use the various pieces of legislation at their disposal when needed, and work to educate and support landlords and tenants to understand their respective obligations.

## **Requirements for introduction of an Additional Licencing scheme**

Under the terms of the Housing Act 2004, the Council could license more HMOs than captured by the current Mandatory Licencing scheme. This is called Additional Licencing and can be introduced by a local authority in England if significant evidence is available showing that a large proportion of HMOs are poorly managed and are having a significant adverse impact on members of the public.

As per sections 56 - 60 Housing Act 2004, to introduce such a scheme the Council must consider whether a significant proportion of the HMOs are being managed ineffectively, based on evidence it receives. Section 57 of the Act asks that local authorities consider whether there are any other courses of action available to them that might provide an effective method of dealing with the problem or problems in question. The current courses of action were outlined in a report to the Housing and Preventing Homelessness decision meeting on 20 September 2021.

To do this the Council must produce evidence on the extent of problems attributed to non-licensable HMOs and give detail on why existing measures are ineffective at managing these. Any Additional Licencing scheme will be required to be reviewed on a regular basis and can be revoked at any time by the Council. A designation of additional licencing must cease to have effect no later than five years after the date it came into force.

Under "general consent" approved by Government in 2015, councils are able to make a designation for Additional Licencing without the need to seek approval from the Secretary of State. Councils are still required to follow the evidential requirements and consultation process prior to making a designation.

The Council, through its Private Sector Housing Service, would be required to assess the properties management and health and safety of the property. The licence holder would be required to undergo a fit and proper person test and the management of the property would be reviewed.

Each licence would require supporting documents to be submitted when these are due, such as gas and electrical safety certificates. The licence holder would be required to adhere to licence conditions and may face enforcement action if they fail to do so.

[The Licencing of Houses in Multiple Occupation \(Mandatory Conditions of Licences\) \(England\) Regulations 2018 \(legislation.gov.uk\)](#)