

Title of meeting:	Cabinet
Date of meeting:	5 th September 2023
Subject:	Mandatory Licensing of Houses in Multiple Occupation
Report by:	James Hill - Director for Housing, Neighbourhood and Building Services
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Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

- 1.1 Cabinet made a decision on 22nd November 2022 to introduce Additional licensing of all houses in multiple occupation (HMOs) in Portsmouth occupied by 3 or 4 people. This decision included agreement to a new approach to licensing properties, where licence holders will be given different licence terms based upon compliance criteria, a new fee structure to reflect this, and new licence conditions. Through the November 2022 decision report, cabinet instructed officers to present a further report to Cabinet before September 2023 with proposals to alter the Mandatory HMO Licensing model, fee structure and Licence conditions to create consistency between Mandatory and Additional Licensing of HMOs.
- 1.2 On 25th July 2023 Cabinet considered a report outlining the proposal to align the two schemes, and instructed officers to conduct a non-statutory consultation with existing HMO licence holders on the proposal to align Mandatory Licensing to the same approach as additional licensing.
- 1.3 The purpose of this report is to present the outcome of this consultation along with the proposed changes to the current Mandatory HMO licensing scheme, for Cabinet to decide on whether to adopt these changes.

2. Recommendations

- 2.1 Cabinet notes the outcome of the non-statutory consultation which was undertaken from 26th July 2023 and closed on 16th August 2023, as summarised in section 4 of this report, the full summary of which is in Appendix 1.



- 2.2 In light of the consultation results it is recommended that Cabinet change the Mandatory HMO Licensing scheme as outlined in this report. This includes agreeing to a new approach to administering licences for different terms as outlined in Appendix 2, a new Licensing fee structure as outlined in Appendix 3, and new licence conditions as outlined in Appendix 4.
- 2.3 Cabinet agrees that the changes agreed in 2.2 above will be implemented from 1st December 2023. Any licences due to expire on or after 1st December 2023, or any new licence applications received on or after 1st December 2023, will be administered through the new Mandatory Licensing criteria outlined in this report.
- 2.4 Cabinet instructs officers to conduct an annual review of the fee structure for Mandatory Licensing alongside the annual review already agreed for additional licensing fees, and present proposals for any required fee adjustments accordingly to the cabinet member for Community Safety for approval.

3. Background

- 3.1 The definition of whether a property is considered an HMO, and whether it requires a licence, are laid out in Section 254 of the Housing Act 2004, and through The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. Properties occupied by three or more people forming more than one household, where basic amenities such as a kitchen or bathroom are shared, are considered to be a HMO. HMOs which are occupied by 5 or more people require a mandatory HMO. Council also have discretion to introduce Additional Licensing of HMOs in the local area if there is sufficient evidence that this is required.
- 3.2 The Council currently licences approximately 1200 HMOs in Portsmouth consisting of approximately 665 licence holders, under the current mandatory licensing criteria.
- 3.3 Every HMO that meets the national Mandatory licensing criteria must be licensed, unless subject to either a temporary exemption notice or an interim or final management order (under Chapter 1 of Part 4 of the Housing Act 2004). Licence holders are required to adhere to several conditions applied to their licence, based around the safety and proper management of the HMO. Council Officers administer the scheme, which includes the processing of applications, issuing of licences, monitoring compliance through certification and carrying out proactive inspections of the property to ensure they are well managed and free from serious hazards. The Council has a legal duty to effectively implement a licensing regime that covers mandatory licensable HMOs in their area, along with discretionary powers to introduce further licensing of HMOs.
- 3.4 In November 2022, following a statutory consultation process, Cabinet made the decision to implement an Additional Licensing scheme for HMOs, approving a city-wide designation of every class of HMO, including converted buildings that are mainly or wholly tenanted (known as Section 257 HMOs). This scheme will commence from 1st September 2023. The approved Additional Licensing scheme

includes several elements that differ from the way that current Mandatory Licensing scheme run by the council.

4 Consultation with current licence holders

- 4.1 On 25th July 2023 Cabinet instructed officers to conduct a non-statutory consultation on the proposal to align Mandatory Licensing to the same criteria and principles as Additional Licensing. This consultation commenced on 26th July 2023 and concluded on 16th August 2023. All current licence holders through the mandatory licensing scheme were contacted on 26th July 2023 (via email or letter) to invite them to participate in the survey. This included 695 licence holders.
- 4.2 Responses were received from 143 current licence holders (1 respondent stated that they are not a current licence holder) which represents a response rate of over 20% of all current licence holders. Of the 137 participants in the survey, 121 responded to the question *"Do you agree or disagree that these changes should be applied to the council's existing mandatory licensing scheme?"* with the vast majority (73%) agreeing with the proposed change. A full summary of the consultation can be found in Appendix 1.
- 4.3 Those that did not agree with the proposals were asked to provide further information. The responses to this generally showed a lack of understanding regarding the proposals. For example some respondents indicated that they thought this proposal was related to Additional HMO licensing rather than an amendment to the current mandatory licensing scheme *"This is another way to drive out the smaller landlords in favour of your own accommodation blocks and the larger landlords who are in favour with Portsmouth City Council"* or *"The change from 5 to 3 people who are unrelated was changed back in the noughties when council struggled for money, then it was changed back to 5 or more and now times are hard again it has been re-introduced. It obviously was not done for safety or it would never have changed back the last time!"*.
- 4.4 There was also indication from some respondents that they were unaware of the legislative framework that the council has to work to. For example that the Housing Act 2004 states that a HMO licence can be issued for a maximum period of 5 years, but one respondent said *"I think there are plenty of ways you could reward better performing landlords. - 7 year licences for example please."* which we would not be able to do. There were also several respondents that believed the proposed changes were designed to make more money for the council, despite the introduction to the survey explaining that all fees charged are on a cost recovery basis and cannot create a profit for the council, for example one respondent said *"Because looking at the new costs of renewing the licences this isn't at all about 'rewarding' good landlords, it is just about finding excuses to be able to bring in more money for the council."*
- 4.5 Some respondents indicated that they felt the current approach to licensing (where 5 year licences are issued as standard) is fair and does not need to be changed, with one person saying *"Same fair standards need to be applied to all landlords without discrimination of one is better than another"*.

- 4.6 Some respondents indicated that they incorrectly thought this scheme would cost more for "good" landlords (the information supplied to the licence holders when asking them to participate in the survey stated that a 5 year licence under the new scheme would be cheaper than a 5 year licence under the current mandatory licensing fee structure and provided a link to more detailed information about the scheme) for example one respondent said *"As is always you are punishing those that do it correctly , just another bill to get a certificate to say we are doing what we always do , I note you are not reducing the fee for "good Landlords""*
- 4.7 Other respondents indicated that that they had not read the information provided which outlines the criteria that would be used to determine each licence term, for example one licence holder said *"There is no definition of what is a good landlord and what is a poor landlord. Therefore, how can a landlord meet the good Landlord criteria?"* another said *"The definitions for allocating landlords to one length licence or another need to be very clear, and not dependent upon one officer's assessment. There should also be a right of appeal, particularly if the additional costs for under-performing landlords are substantial. It should also be made clear how a landlord can progress to becoming a longer licence holder."* The criteria is outlined (Appendix 2) and is not subjective, a link to this information was provided with the survey, it is also possible for licence holders to appeal decisions made, and the exact details of this appeals process are available online and also provided to licence holders at the time they are issued with a licence.
- 4.8 There were concerns raised about those that try to evade licensing all together with one responder saying " another comment raised concern that enforcement action should be taken when appropriate saying *"I think that it is a fair scheme. My only comment would be that if an HMO is not up to standard, the Landlord is given an appropriate timeframe to remedy the problems. If they do not make the required improvements, then they should be penalised."* This is exactly what the licensing team would do and the approach to this is outlined in the councils Private Sector Housing Enforcement policy.
- 4.9 Some respondents indicated that they did not have faith in their views actually being taken on board with one saying *"Not sure why I bother responding to surveys and consultations, they are always ignored in favour of the pre-decided outcome."* Another said *"what is the point of this survey - one question and 99% will answer the same i guess"*.
- 4.10 There was also a clear theme from respondents talking about landlords in terms of "good" and "bad" despite none of the council's literature using this language. The criteria set out for the different licence terms seeks to differentiate licence holders needing different levels of intervention and input by the Councils housing regulation team by assessing their compliance, their ability to manage properties well, and to keep up to date with changing legislation and industry best practice. The proposed scheme does not seek to label landlords or agents as "good" or "bad".

- 4.11 Comments in support of the scheme included *"This is a good idea, and a welcome move. For a long time it has felt like, by pro-actively keeping on top of licensing, maintenance and accreditation, we are actually at a financial disadvantage to those landlords who try and avoid detection. This is a step in the right direction towards making the bad landlords pay more towards HMO regulation, rather than keep targetting the good ones."* another respondent said *"I believe this will incentivise landlords to make sure the property is fully compliant with current hmo guidelines and believe it is a great idea going forward"* another respondent said *"I am totally in favour of introducing measures that make the life of non-compliant landlords more difficult and expensive"* and another said *"Your idea is a fantastic initiative for professional landlords who keep their properties in the best condition possible. To be in the same band as poor landlords who do not actively maintain their rentals is unfair so to create this system is effective, efficient and rewarding. Many thanks"*.
- 4.12 Based upon the feedback received through the consultation, which showed that the majority of current licence holders would be in support of the proposed changes, Cabinet is now asked to consider whether to proceed with the proposed changes, as outlined in the following sections of this report.

5 Licensing Model

- 5.1 The Council's current mandatory licensing scheme operates a traditional licensing model, whereby licences are typically granted on a 5-year basis, with the option to grant a licence for a shorter duration where Council Officers believe there are justified reasons to do so, such as poor management identified or safety concerns that should be assessed more regularly. Officers may also award a licence for a shorter duration where the property is deemed unsuitable for the number of occupants, due to space and amenity provided, and a reasonable period of time is required to allow the licence holder to lawfully restrict the number of occupants. Currently there is no set criteria for assessing licence durations, and decisions to award a shorter licence term are based on individual circumstances and Officers professional judgement. As a proportion of licences granted in the mandatory licensing scheme, very few are currently granted for less than 5 years.
- 5.2 In making the decision to designate a city-wide Additional Licensing scheme, Cabinet considered and agreed to a new approach to licensing for the additional licensing scheme, in response to feedback through the statutory consultation, particularly by landlords. One of the main concerns raised by landlord respondents to the consultation, including the local landlord association (the PDPLA), was that 'good' landlords would be penalised by the scheme, while 'bad' landlords are not differentiated, and may manage to evade licensing all together. They expressed concerns that well performing landlords would in effect be funding a scheme through licensing fees that would resource dealing with poorly performing landlords. They felt this traditional licensing approach does not recognise that there are a significant number of well performing HMO landlords operating in the city who should be differentiated from those that a not performing as they should.



- 5.3 In response to this Cabinet agreed to adopt an alternative approach to licensing whereby well performing landlords are recognised with longer licence terms, and poor performing landlords kept under close review with short licence terms. In accordance with Section 68 of the Housing Act 2004 the maximum period a licence can be issued for is 5 years, however Local Authorities have discretion to issue licences for shorter periods if they are satisfied that in the circumstance of the particular property a shorter period is appropriate. Oxford City Council and Coventry City Council run HMO licensing schemes which follow a similar licensing model.
- 5.4 The additional licensing scheme will require all owners of HMOs that are occupied by three or four tenants and all converted self-contained flats that are wholly tenanted to apply to the Council for an HMO licence. Once a valid application is received the Council will determine which type of licence is appropriate using the criteria outlined in Appendix 2 when processing the application. This will include, amongst other things, an assessment of the landlord and manager's ability to comply with the licensing requirements and management practices. Licences will be issued for a period of 1 year, 2.5 years, or 5 years based upon the eligibility of the landlord or agent.
- 5.5 The principles of this approach are that landlords who have demonstrated a history of compliance, safety and well managed properties, will be given a longer licence term compared with those with a history of non-compliance. Over the term of their licence those with a 5 year licence, based on good practice, will pay less than those either on a 1 year or 2.5 year licence. More information about the scheme is available on the council's website [Applying for an additional HMO licence - Portsmouth City Council](#).
- 5.6 The Council has considered the learning outcomes from other Local Authorities that have introduced similar schemes and has structured the scheme in such a way that benefits those landlords and agents that are compliant and provides incentives to improve compliance, whilst focusing resources and support to the non-compliant landlords through shorter licences.
- 5.7 This is reflected in the fees and charges structure and the eligibility for licences, which sees well performing landlords issued lower cost licences for the maximum 5 year licence term. The Council would inspect each licenced property at least once during the licence term, therefore a well performing landlord issued with a 5 year licence can typically expect an inspection once over that period, whereas a landlord issued with an annual licence because there are concerns identified with their management or compliance will receive an annual inspection, and will consequently pay more for their licence to cover the additional costs of council resources in doing so. This is in line with the Council's Private Rental Sector Strategy 2021-26 which seeks to encourage good landlord practice, and take decisive action to address poorly performing landlords.

5.8 Accreditation of Landlords and Agents will be used as a way to distinguish those landlords and agents who are experienced, knowledgeable in their profession and are committed to following good industry practice ([Accreditation scheme information - Portsmouth City Council](#)). To align both schemes, the existing mandatory licensing scheme should adopt the same criteria laid out in Appendix 2 when processing licence applications for Mandatory licences to determine the term of the licence, and fee charged, for each licence issued. More information on the scheme can be found on the Council's website ([Additional licensing information for landlords - FAQs - Portsmouth City Council](#)).

5.9 Cabinet in this report are being asked to consider introducing the same model for Mandatory Licensing, whereby applications for mandatory licences will be processed using the criteria in Appendix 2, and licences issued for 1 year, 2.5 years, or 5 years based on this criteria.

6. Licence Fees

6.1 Implementing the change described in section 4 above to the licensing model for mandatory licensing in line with the additional licensing scheme, would also require a similar fee structure to the one applied to additional licensing. The proposed fee structure for mandatory licensing is outlined in Appendix 3. This follows the same principles as the Additional Licensing fee structure.

6.2 All HMO licensing schemes require a fee payable by the licence holder to cover the Council's costs for operating the scheme. This fee will take into account all costs incurred by the authority in carrying out their functions, as outlined in the Housing Act 2004.

6.3 When setting the fees and charges structure for a licensing scheme, the Council must consider the costs incurred in adequately resourcing and administering such a scheme, including staff costs for administration, inspections and enforcement, training, and publicity and other costs such as office requirements and management support.

6.4 Any fee structure should be regularly reviewed to understand if it is achieving full cost recovery and if any changes have occurred that may impact this. Examples include changes to the national rate of inflation, changes to staffing costs, or further changes regarding the number of HMOs in the city or how many licences are given a 1 year, 2.5 year or 5 year licence.

6.5 The fee structure adopted under additional licensing has been developed to provide incentives for compliant landlords whilst providing sufficient resources to ensure that the scheme can be delivered effectively, and every property can be inspected at least once during the licence term. There is variation in cost based on licence duration due to the fact licences issued for a shorter duration require more resources to administer, such as carrying out more property inspections compared with a compliant property. It is proposed the same structure is adopted within mandatory licensing for these same reasons.

- 6.6 The proposed licence fee for mandatory licensing would range from £1,525 for a 1 year licence (£127 per month), £1,138 for a 2.5 year licence (£38 per month), and £1,100 for a 5 year licence (£18 per month), depending on the applicant meeting the criteria for the different terms of licences (detailed in Appendix 2). Most notably each property will be inspected at least once during their licence term, so licences issued for 1 year where concerns have been identified with their management or compliance will require an annual inspection, whereas licences issued for 2.5 or 5 years will require less inspections and administration. It is also anticipated that fewer issues will be identified in compliant properties on a longer licence duration, so will require less Officer intervention.
- 6.7 The Council has no way of accurately identifying how many licences will be issued for each licence term in advance. Officers estimate the vast majority of current licence holders will likely meet the level of compliance necessary to achieve a 2.5 or 5 yearly licence. However, there is limited data to predict the number of licence holders who would be willing to join a suitable accreditation scheme or produce to the Council a valid Energy Performance Certificate (EPC) as per the criteria for a 5-year licence.
- 6.8 It should be noted that although the proposed licensing fee structure for Mandatory Licensing outlined in Appendix 3 is based upon the same principles as those already agreed for the Additional Licensing fee structure, the fees are not directly comparable between the two schemes. This is because the Mandatory Licensing scheme is smaller (estimated to be 20% of HMOs in the city) than the anticipated size of the additional licensing scheme (estimated to be 80% of HMOs in the city), and therefore the fees charged need to recover fixed costs of running the scheme from a smaller number of licences. The resources required, mainly in staffing, is also proportionately greater when considering that the properties are larger and more complex in nature. Comparatively therefore, the fee for a mandatory licence is higher than that of an additional licence. To give this context, the fee for a new application for a 4-bedroom HMO for 5 years for additional licensing is £776, whereas the fee for a new application for a 5-bedroom HMO for 5 years in the new proposed mandatory licensing structure is £1,100. This is however a lower cost than the existing mandatory fee of £1,209 for a 5-bedroom HMO for 5 years.

7. Licence Conditions

- 7.1 On 22nd November 2022 Cabinet agreed to introduce new licence conditions for additional licensing. This was agreed in response to the statutory consultation feedback received, several new conditions will be included in licences issued through the additional licensing scheme. All licence conditions are detailed in Appendix 4, including the following as a direct result of the consultation:
- More detail regarding the requirements for waste management
 - Reference requests for prospective tenants
 - Provision of rent receipts (where rent is paid in cash)



- Supply of EPC certificates where required to demonstrate compliance with Minimum Energy Efficiency standards
- Have arrangements in place for tenants to report emergencies where the licence holder is out of the country for over one month
- Provide contact details for neighbouring property owners in case of emergencies
- Written procedure for dealing with complaints of nuisance, noise or antisocial behaviour.

7.2 Should the recommendations in this report be approved to align mandatory HMO licensing with the principles agreed for additional licensing, the licence conditions which will be applied as standard to all licences issued through the Mandatory Licensing Scheme are contained within Appendix 4 and summarised within this report, to ensure that all HMO licences are administered in the same way.

7.3 A licence holder will be required to adhere with these conditions when operating a licensable HMO. Breaches of licence conditions are an offence which can lead to prosecution or a civil penalty of up to £30,000 (any such action would be undertaken in accordance with the Council's Private Sector Housing Enforcement Policy). The purpose of these conditions is to ensure the suitable management and health and safety of the HMO is in place.

7.4 The city council, through its private sector housing team, will administrate each licence application and may include additional "special conditions" on a licence based on the management or property requirements. These could be, for example, a condition that requests additional facilities or amenities be provided within the HMO, such as an additional toilet or cooking facilities if the existing amenities are insufficient.

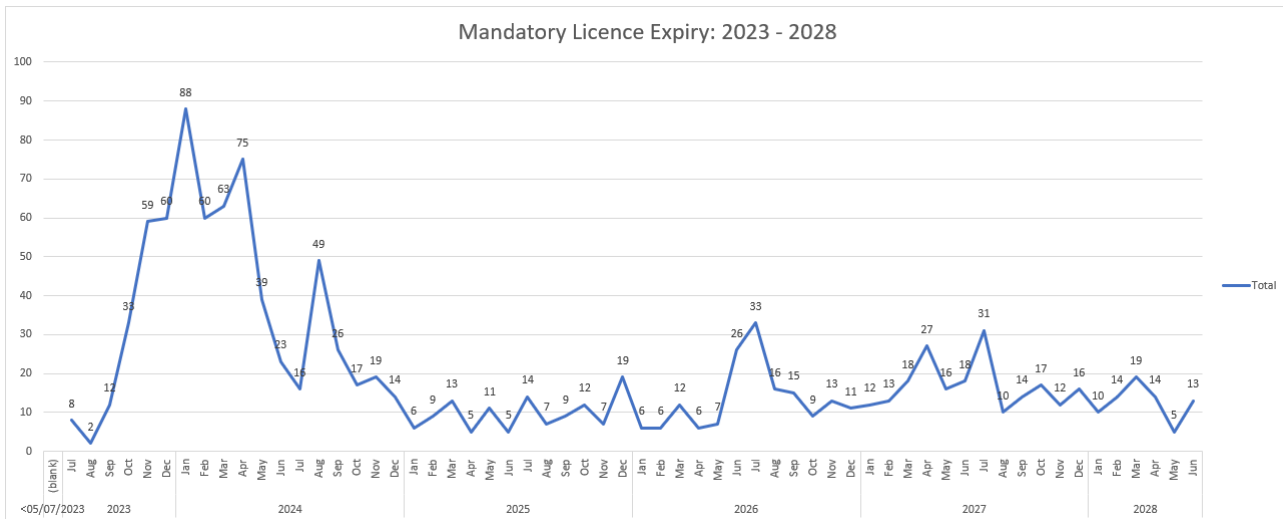
7.5 The licence holder may contest any licence conditions applied by the city council within 21 days of the draft licence being provided (or such other time period as stipulated by the council on issuing the draft licence), the council will then give consideration to these representations and respond to the licence holder. Once a full licence is granted, the licence holder can appeal to the first-tier property tribunal if they still do not agree with the conditions of the licence.

8. Implementation

8.1 It is recommended that if cabinet agree to align the two HMO licensing schemes, they implement this change to Mandatory licensing from 1st December 2023 to allow adequate notice for affected landlords to be made aware of the changes the Mandatory Licensing. Any licences due to expire on or after 1st December 2023, or any new licence applications received on or after 1st December 2023 will be administered through the new Mandatory Licensing criteria. This means that any current Mandatory HMO licences would continue to run until their expiry date on their existing terms.



8.2 Approximately 600 (around 50%) of current mandatory HMO licences are expected to be renewed between 1st December 2023 - 1st December 2024. Therefore, the transition from the existing way they are licenced to the proposed new criteria would take a full 5 years to fully implement, but the vast majority would be changed over within the first year or so of implementation, as shown in the graph below



8.3 If approved, information and advice will be published on the Council's website and through a variety of communication channels to key stakeholders, such as landlord and lettings/management agent groups and current Mandatory HMO licence holders.

9. Reasons for recommendations

9.1 The non-statutory consultation shows current mandatory licence holders are in favour of aligning the mandatory and additional licensing schemes.

9.2 Aligning the two schemes (mandatory and additional licensing) so that both schemes apply the same criteria when determining licence duration will provide a consistent approach for licence holders, whether they are applying for a licence for a property that falls under the additional licensing scheme (occupied by 3 or 4 people, or is a converted building mainly or wholly tenanted) or the Mandatory licensing scheme (occupied by 5 or more persons). It is common for landlords and managing agents to operate HMOs that span across these schemes. Adopting the same approach in both schemes will give clarity to those applying for a licence regarding how their application will be assessed and what criteria will be used to decide the length of licence.

9.3 Running two separate criteria across the mandatory licensing scheme and additional licensing scheme would likely lead to difficulty for the Council operationally. Examples include, administering different payment models, assessing different application types, and reviewing compliance with the schemes based on different criteria and licence conditions. Operating these schemes under



separate criteria and fee models will also likely lead to confusion for licence holders, who would receive a differing service between both schemes.

- 9.4 Applying the same set of conditions will assist in achieving the aims of both schemes, i.e., To protect private rented tenants of HMOs from poorly managed and maintained properties.

10. Integrated impact assessment

See Appendix 5

11. Legal implications

- 11.1 On 22 November 2022, Cabinet made the decision to introduce an Additional Licensing scheme as detailed in this report. This report details the proposal to be considered in aligning the current mandatory model with the new licencing model.
- 11.2 There is no statutory duty under the Housing Act 2004 to further consult on this matter. However, where there is no express duty to consult, the courts may imply a duty as part of the public authority's general duty to act fairly. Best practice would therefore suggest that there should be consultation in some form with those who will be affected by the decision, this would then discharge the duty of the local authority to act fairly and prevent any risk of challenge to the decision.
- 11.3 It is within the Cabinet's powers to make the recommendations set out within this report, in accordance with the Council's constitution.

12. Director of Finance's comments - to follow

- 12.1 The revised charging mechanism for the Mandatory Licencing scheme has been designed to be cost neutral for the local authority. This requires accuracy to ensure that the costs of running the scheme are recovered through the fees charged, whilst also ensuring that no surpluses are made once the costs of administering the scheme have been taken into account.
- 12.2 The Mandatory Licencing charges work on the basis that we have a certain level of expenditure divided by the number and type of licences. The number of licences that will be issued for each licence term can, at this stage, only be estimated. The consequence of this is that the Licence fee income may not be adequate to cover the costs, resulting in a budget pressure. However, if the charging mechanism makes a surplus, this would be remitted to a ring-fenced reserve and the Council would need to demonstrate that over a 5-year period the scheme breaks even.
- 12.3 It is recommended that officers conduct an annual review of the fee structure for Mandatory Licensing to take account of the prevailing rate of inflation, changes to staffing costs and any changes to the number of HMOs in the city. Proposals



for any required fee adjustments should be presented to the Cabinet Member for Safety in the Community for approval.

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Signed by: James Hill - Director of Housing, Neighbourhood and Building Services

Appendices:

- Appendix 1 - Consultation responses
- Appendix 2 - Criteria for different licence terms
- Appendix 3 - Mandatory Licensing fee structure 2023
- Appendix 4 - Licence Conditions
- Appendix 5 - Integrated Impact Assessment

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Housing Act 2004	Housing Act 2004 (legislation.gov.uk)
Cabinet report November 2022 - Additional Licensing Scheme for Houses in Multiple Occupation in Portsmouth	Additional Licensing of Houses in Multiple Occupation HMO.pdf (portsmouth.gov.uk)
The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018	The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (legislation.gov.uk)
Private Rental Sector Strategy 2021-2026	Private Rental Sector Strategy for Portsmouth 2021- 2026

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: