

**CITY AND COUNTY OF SWANSEA**

**HOUSES IN MULTIPLE OCCUPATION  
(HMO)**

**LICENSING POLICY 2016**

**including**

**DESIGNATION OF AN AREA FOR ADDITIONAL LICENSING**

**Effective date 9 March 2016**

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# 1 Introduction

- 1.1 This policy replaces the HMO Licensing Policy 2011 and sets out the way Swansea implements the requirements of the Housing Act 2004 in relation to HMO licensing and health and safety hazards. It also outlines how the Council intends to continue to use the discretionary powers in the Act to ensure fair and equitable enforcement.
- 1.2 The total number of HMOs in Swansea is estimated to be between 1,700 and 2,000. All HMOs that are three storeys or more with five or more occupants must be licensed. This is a statutory requirement and is known as 'mandatory' licensing. Council must license all HMOs meeting this criterion. Mandatory licensing applies to HMOs in all areas of the city.
- 1.3 Discretionary powers are available to Council to license smaller HMOs not subject to mandatory licensing. Section 4 contains further details on this. Of the total estimated number of HMOs in Swansea, 1,600 are estimated to be in the Castle and Uplands electoral divisions. An 'Additional' HMO licensing scheme is in force in these two areas incorporating smaller HMOs with less than two storeys and those with three or more occupants, including certain converted self-contained flats.
- 1.4 This means that all HMOs in the Castle and Uplands electoral divisions are subject to licensing with the exception of some properties that are specifically exempted under the provisions of the Housing Act 2004 e.g. HMOs which are owned and managed by a university.
- 1.5 Additional HMO licensing schemes are time-limited to five years. This policy includes the re-designation of the Castle and Uplands scheme for five years from 9<sup>th</sup> March 2016.
- 1.6 The exact number of HMOs in Swansea varies over time as properties come in and out of multiple occupation. The detail below gives an indication of the number and geographical distribution of HMOs across the city.

There was a total of 1,580 HMOs licensed under both the mandatory and additional schemes in Swansea on 31<sup>st</sup> August 2015. These were distributed in the following wards:

|             |       |
|-------------|-------|
| Castle      | 496   |
| Landore     | 1     |
| Oystermouth | 1     |
| St Thomas   | 5     |
| Sketty      | 15    |
| Uplands     | 1,062 |

- 1.7 Around 60% of HMOs in Swansea are occupied by students, but HMO accommodation in general provides an important source of affordable housing

for people across our communities. Community cohesion and sustainability issues are linked with high concentrations of HMOs in the Castle and Uplands Wards. Both have high and increasing proportions of single person and multi-adult households. In contrast, traditional family households are on the decline in these areas.

- 1.8 There are currently no other areas in Swansea that meet the criteria set down by Welsh Government for an Additional HMO Licensing scheme. The impact of Swansea University's Bay Campus and the University of Wales Trinity St David's growth in SA1, in terms of HMO numbers and how these are managed, will be kept under review in the relevant geographical areas and dealt with in accordance with this policy.
- 1.9 HMOs are a frequent source of complaints about housing conditions, refuse and the impact of HMOs on neighbours. Complaints are concentrated in Castle and Uplands, reflecting high numbers of HMOs in the area. The enforcement of licence conditions is a significant factor in bringing about improvements in HMO condition and management.
- 1.10 The HMO Team is responsible for inspecting HMOs and processing new applications, progress and management visits, reactive service requests, advice and enforcement including prosecutions. Since the introduction of the 2011 HMO Licensing Policy the Council has taken 33 prosecutions and issued 26 Simple Cautions. Licensing Committee has found three landlords not fit and proper and has subsequently revoked six licences and refused three applications.
- 1.11 There are concerns from many quarters that the number and density of HMOs in certain areas is adversely affecting the sustainability of communities. This policy, based around the application of functions under Part 2, Housing Act 2004, deals with licensing, condition and management of HMOs. It cannot address HMO density issues which are a Planning matter. Welsh Government is currently reviewing Planning legislation and Council may give consideration to the application of any future changes in relation to HMOs in local planning policy in due course.
- 1.12 This Policy will be reviewed prior to the expiry of the Additional HMO Licensing Scheme for Castle and Uplands Wards.

## **2 Aims and Objectives**

- 2.1 The aim of the policy is to improve housing and management standards in the private rented sector specifically Houses in Multiple Occupation.

2.2 The objectives of the policy are to:

- Meet the statutory obligations of the Housing Act 2004 and regulations made pursuant to it.
- Eliminate poor property conditions and management standards through regulation and enforcement.
- Promote high standards across the HMO sector.

### **3 The Legal Framework**

#### **3.1 Housing Health & Safety Rating System**

The Housing Health and Safety Rating System (HHSRS) applies to all housing including HMOs regardless of type or tenure. It involves a risk assessment of the effect of housing conditions on the health of occupiers and an assessment of 29 potential hazards. If Category 1 hazards (i.e. the more serious hazards) are found the Council has a duty to require the owner to take appropriate action. If Category 2 hazards (i.e. less serious hazards) are found the Council may take appropriate action as provided for within its enforcement policies. Councils are required to assess licensable HMOs to ensure that there are no functions under Part 1 of the Act (HHSRS) that ought to be exercised by them. This has to be done within five years of a licence being issued and in practice requires an inspection to be carried out.

#### **3.2 HMO Definition**

A house is in multiple occupation where three or more people forming more than one household share amenities, such as a kitchen or bathroom, occupy the house as their only or main residence and where a rent is payable for their occupation.

The Act defines a building as an HMO if it meets one of the following tests:

- the Standard Test – any building in which three or more people forming more than one household share basic amenities;
- the Self-contained Flat Test – any flat in which three or more people forming more than one household share basic amenities;
- the Converted Building Test – any converted building with one or more units that are not self-contained and which is occupied by three or more people forming more than one household;
- certain Converted Blocks of Flats – any converted building comprising self-contained flats that do not meet the 1991 Building Regulations Standards and more than one third of the flats are occupied on short

tenancies and where there are three or more people in total forming more than one household.

Certain buildings are exempt from HMO legislation:

- buildings managed by a local council, housing association, police, fire or health authority;
- registered care homes;
- halls of residence that are managed by the university;
- buildings occupied by religious communities;
- buildings, predominantly owner-occupied, including resident landlords where the owner-occupier occupies the building (of flat) with no more than two other persons (lodgers);
- buildings occupied by only two persons who do not form a single household.

### **3.3 Mandatory HMO Licensing**

Mandatory licensing applies to HMOs where there is an occupation of five (or more) persons in properties of three (or more) storeys. HMOs consisting entirely of fully self-contained flats, which are not occupied as flats in multiple occupation, are exempt, except for where the flat itself is arranged on three storeys. When assessing the number of storeys account will be taken of all storeys of residential accommodation, whether above or below adjoining ground level, including habitable attics.

All residential parts of the building will be subject to these provisions where the property as a whole is eligible for licensing, except for any parts of the property that are solely occupied by a landlord.

### **3.4 Public Register**

It is a requirement for the Council to make a public register of HMO licences available which includes prescribed information. This will include, amongst other things: the name and address of the licence holder, property details and the duration and start of the licence term.

## **4 Additional HMO Licensing**

- 4.1 The Council may adopt an Additional HMO Licensing Scheme which may include the smaller, lower risk HMOs that fall outside mandatory licensing. The Additional scheme may be based on an area, or areas, or may apply to the entire Council area. The scheme will need to meet other criteria set down by Welsh Government and may only be applied where there are management problems with existing HMOs within the area.

4.2 Between April 2011 and June 2015, of 771 complaints received about housing conditions in HMOs and the impact of HMOs on neighbours, 697 of those were in Castle and Uplands. There were also 1,475 complaints about refuse within the boundaries of properties in Castle and Uplands, 1,175 of which related to HMOs. The ability to deal with these issues is linked to conditions applied as a result of the area being subject to Additional HMO Licensing.

#### 4.3 **General Consent**

The National Assembly for Wales gave general approval on 13<sup>th</sup> March 2007 for designated areas made subject to additional licensing by the Council under the Housing Act 2004 (Additional HMO Licensing) (Wales) General Approval 2007.

#### 4.4 **Consultation and Publication**

A designation of an area subject to additional licensing ceases to have effect five years after the date it comes into force. The designation under the terms of the General Consent Order included in this policy replaces the designation made in 2011 in respect of Castle and Uplands Electoral divisions. The prescribed requirements for consultation have been applied and the requirements for publication of a designation of an Additional HMO Licensing scheme will be applied to enable the Castle and Uplands wards to be re-designated an Additional HMO Licensing area from 9<sup>th</sup> March 2016 subject to the terms of this policy.

This Additional HMO Licensing scheme specifically applies to those HMOs which do not come within the remit of mandatory licensing within the Castle and Uplands wards including HMOs defined under Section 257, Housing Act 2004 i.e. 'poorly converted' blocks of self-contained flats.

## 5 **HMO Licensing Process**

5.1 The HMO licensing process applies to all HMOs requiring a licence whether under the mandatory or additional licensing scheme.

#### 5.2 **Applications**

The licensing process and duration will start from the date of receipt of the application form. Where there are incorrect or incomplete forms the licence may be granted for a reduced period to take account of those delays.

Applications for the renewal of an existing licence by the same applicant will not be accepted earlier than two months prior to the expiry date of the existing licence.

Inspection priority will be in order of the date applications are received.

Properties will be inspected prior to issuing a licence. The inspection will also address any Part 1 issues relating to the Housing Health and Safety Rating System.

### 5.3 **Granting of a Licence**

In order to grant a licence the Council must be satisfied that:

The property is (or can be made) **reasonable suitable for occupation** for the maximum number of occupants, in that it:

- meets the amenity standards set out in Appendix A
- has satisfactory means of escape in case of fire and other fire precautions. Any remedial works will be risk assessed for each property using the schedule in Appendix B as a basis.

The licence applicant is a **fit and proper person**

- The Council will issue a licence to an owner or manager of an HMO provided they self-certify that they meet the criteria for Fit and Proper Person as set out in Appendix C.
- In cases where applicants do not meet this criteria the Council will exercise its discretion to issue a licence. These cases will be considered by the Licensing Committee.
- The Council may prosecute and may revoke a licence if significant false information is provided on the application form which influences the decision to issue a licence.

There are satisfactory **management arrangements** in place

The Council may issue a licence if satisfied that there are satisfactory management arrangements in place. These must include, but are not limited to:

- Management competency (assessed at the Council's discretion)
- Fit and proper person criteria of any person involved in the management of the house (see Appendix C)
- Suitable management structures (assessed at the Council's discretion)
- Appropriate funding arrangements (assessed at the Council's discretion)

And may include other matters such as:



- The ability to meet the licence conditions (assessed at the Council's discretion)
- Any unsatisfactory history relating to the management of the property (assessed at the Council's discretion).

The details of the manager, if appointed, will be included in a licence issued by the Council. The Council will provide advice to applicants on how to demonstrate satisfactory management arrangements.

#### **5.4 Approval and Duration of Licence**

The Council will normally grant a licence for a period of five years from the date of application, but may grant a licence for a shorter period in some circumstances as described below.

In the case of a renewal of a licence to the same licence holder the Council will normally grant a new licence for a period of five years from the date of expiry of the previous licence.

As an enforcement sanction the Council may issue a licence for a reduced period. The circumstances for this sanction include, but are not limited to:

- Delays in submitting a complete application form
- The issuing of a Simple Caution to the licence applicant
- Considerations of the Licensing Committee.

#### **5.5 Refusal**

Refusal will be the decision of the Licensing Committee.

The Committee may refuse an application if:

- the property is not capable of being made suitable for occupation
- the licence holder or manager is not a fit and proper person
- the management arrangements are not satisfactory.

When considering if the licence holder or manager is a fit and proper person the Committee must have regard to:

- whether there have been breaches of the matters set out in Appendix C
- any other matters which include, amongst other things, previous history relating to unsatisfactory management of the property.

#### **5.6 Revocation**

Licensing Committee may revoke a licence if:

- there has been a breach of licence conditions

- the licence holder or manager is no longer a fit and proper person.

## 5.7 Licence Conditions

The Housing Act 2004 lays down mandatory licence conditions relating to:

- provision of annual gas safety certificates
- safety of electrical appliances and furniture
- provision and maintenance of smoke alarms
- provision of written statement of terms for tenants.

In addition the Council can impose its own discretionary conditions. By imposing more demanding conditions the Council is able to have more effective regulatory control over both the physical standards of HMOs and their standards of management.

The Council will grant a licence subject to conditions set out in Appendix D. These conditions may be varied for specific property requirements by the Director of Place or Officers authorised to act on his behalf.

## 5.8 Fees

The Council will charge a fee for HMO licence applications. Fees will be set to cover costs incurred in administering the licensing schemes.

Fees are not refundable unless in exceptional circumstances and at the discretion of the Director of Place or Officers authorised to act on his behalf.

## 5.9 Temporary Exemption Notices (TEN)

These are used when a landlord of an HMO, which should be licensed, notifies the Council of his intention to take steps to ensure that the HMO is no longer required to be licensed.

The Council may grant a TEN where:

- the owner of a licensable HMO states in writing that he is asking to make it non-licensable and
- the Council is satisfied that it will be non-licensable within three months of the date of receiving the notice.

The Council will not normally grant more than one TEN per property and in doing so will have regard to the proposals for the property, any planning considerations and the arrangements for meeting the needs of the occupiers including those likely to be displaced.

The Council will only grant a second TEN in exceptional circumstances.

## **6 Enforcement**

- 6.1 The Council may generally take any relevant enforcement action against a landlord who operates an HMO without a licence or fails to comply with HMO licence conditions or a landlord or manager who knowingly lets a property to more people than authorised by the licence.
- 6.2 The Council will take into account wilful non-compliance and avoidance and those circumstances where occupants or immediate neighbours are put at unnecessary risk.
- 6.3 The Council will exercise its powers in accordance with the Regulatory and Enforcement Policy Statement and Charter adopted by Council in February 2002 and will apply them in a consistent, transparent and proportionate manner.
- 6.4 The requirements for the registration of landlords and licensing of landlords and agents in the private rented sector in Wales under Part 1, Housing (Wales) Act 2014 will not impact on the application of this HMO Licensing Policy.
- 6.5 **Housing Act 2004, Part 1 – Housing Health and Safety Rating System**

The legal framework for HHSRS is described in section 3. In the case of Category 1 hazards encountered in HMOs the Council will exercise its statutory duty to intervene and take the appropriate enforcement option. In the case of Category 2 hazards the Council will exercise its discretionary power and consider the appropriate enforcement option.

The Council may serve a variety of enforcement notices including Improvement, Emergency Remedial, Prohibition and Hazard Awareness, all of which may be suspended or varied.

Additionally, the Council has powers under the Housing Act 1985 relating to demolition and declaration of Clearance Areas.

### **6.6 Rent Repayment Orders**

A landlord who is convicted of operating an unlicensed HMO can be made subject to a Rent Repayment Order (RRO) by a Residential Property Tribunal (RPT) (First Tier Tribunal).

Upon application by a tenant, an RRO may require the repayment of rent received by the landlord over a period of up to 12 months. Where the rent is paid as Housing Benefit, the Council may apply to the RPT for an RRO.

## 6.7 Interim and Final Management Orders

The Act gives Councils powers to serve notices and take action where there is no prospect of an HMO being licensed. In relevant circumstances Councils are under a duty to act. Where extreme circumstances require it, Councils must take over the management of an HMO, becoming responsible for running it, making necessary improvements and collecting rents.

The Council reserves the power to make an HMO Management Order in exceptional circumstances and having regard to the criteria included in the Act.

## 6.8 Management Regulations

The Management of Houses in Multiple Occupation (Wales) Regulations 2006 apply to all HMOs with the exception of some converted blocks of flats which are covered by the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007.

The Regulations impose certain duties on managers including the maintenance of fixtures and fittings, fire safety measures, gas and electricity supplies and waste disposal arrangements. The Regulations also impose duties on occupiers. A person who fails to comply with these Regulations commits an offence which carries a fine not exceeding Level 5 on the standard scale (currently £5,000) – see also 6.9 below.

Where there are breaches of these Regulations the Council will normally issue a warning letter to the relevant person specifying remedial measures and the consequences of failing to address them.

Where there are significant breaches of these Regulations the Council may move immediately to a prosecution.

## 6.9 Penalties

The Act lays down a number of licensing-related offences and corresponding penalties including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows: fine of up to £20,000
- Breach of a licence condition: fine not exceeding Level 5 on the standard scale (currently £5,000)
- Supplying incorrect information in a licence application: fine not exceeding Level 5 on the standard scale (currently £5,000).

The standard scale is a system whereby fines have maximum levels set against a standard scale.

It is a defence to any of the above if the accused person can demonstrate that they have reasonable excuse.

## **7 Delegation**

- 7.1 The enforcement options contained with Part 1 (Housing Health and Safety Rating System), Part 2 (HMO Licensing), Part 4 (Management Orders and Overcrowding Notices), Part 6 (Powers of Entry etc.) and the relevant Schedules of the Housing Act 2004 shall be delegated to the Director of Place or Officers authorised to act on his behalf.
- 7.2 Decisions relating to the refusal or revocation of a licence on grounds of fit and proper person and satisfactory management arrangements shall be delegated to the Licensing Committee.
- 7.3 Where, as an enforcement sanction, a licence is granted for a shorter period than five years, there will be a right of appeal to the Licensing Committee.
- 7.4 Changes to the technical specifications in Appendices A (Amenities) and B (Means of Escape and Other Fire Precautions) shall be delegated to the Director of Place or Officers authorised to act on his behalf.
- 7.5 Changes to licence conditions (Appendix D) shall be delegated to the Director of Place or Officers authorised to act on his behalf.

## **8 Non-Licensable HMOs**

- 8.1 HMOs that fall outside the licensing requirements will be subject to the Management of Houses in Multiple Occupation (Wales) Regulations 2006 or the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007.
- 8.2 Where they are inspected under Part 1 of the Act each property will be risk assessed. The remedial work for fire safety will be based on Appendix B.