



Private Sector Housing Team

HOUSES OF MULTIPLE OCCUPATION (HMO) LICENSING POLICY

2021 - 2026

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Introduction

The main function of local government enforcement is to protect the public and the environment, promote health, safety and welfare and enhance the quality of life of all residents, workers and visitors to the City. This Policy sets out Stoke on Trent City Council's approach to the licensing of Houses of Multiple Occupation under Part 2 of the Housing Act 2004. In securing compliance with legal regulatory requirements, this policy aims to ensure that all actions will be undertaken in a fair, equitable and consistent manner.

Scope

This policy covers how Stoke on Trent City Council will apply the relevant legislation to applications for licences for Houses of Multiple Occupation (HMO). For the context of this policy a HMO is that as defined by the Housing Act 2004 and subsequent legislation relating to the description of licensable HMOs.

This policy covers the following aspects in relation to HMOs:

Licensing under Part 2 of the Housing Act 2004

Stoke-on-Trent City Council's approach to determine "fit and proper person" status

The fees and charges applicable to licensable HMOs

Whenever the Private Sector Housing Team interact with clients or other stakeholders in relation to any of the above, or other relevant functions, they will do so clearly and with suitable regard to all relevant information relating to this specific function, including the reason for any intervention and any proposed future actions.

This policy is intended to provide information for officers, businesses, consumers and the public. It does not affect the discretion of Stoke-on-Trent City Council to take legal proceedings where this is considered to be in the public interest. Any legislation requiring a specific published policy will be published in a separate document.

The overarching approach to enforcement by the Private Sector Housing Team is laid out in the Private Sector Housing Enforcement Policy 2021-2023 and this policy is intended to be used in conjunction with that policy and the principles contained therein. It is not to be used as a stand-alone policy and regard must always be had to the Private Sector Housing Enforcement Policy 2021-2023.

Policy Framework

The Legislative and Regulatory Reform Act 2006 requires regulators including Stoke-on-Trent City Council to have regard to the Regulators' Code, published by the Department for Business Innovation and Skills Better Regulation Delivery Office. At the time of publication, this Code was available online at www.gov.uk. This policy and all associated documents have regard to this Code.

The HMO Policy supports the following Corporate Priorities:

1. Work with our communities to make them healthier, safer and more sustainable
2. Support vulnerable people in our communities to live their lives well.

A list of legislation enforced by Stoke-on-Trent City Council can be found in the Stoke-on-Trent City Council Constitution. These are published online at www.stoke.gov.uk

Human Rights and Equality

The Human Rights Act 1998 places an obligation on enforcement bodies to apply the principles of the European Convention of Human Rights in accordance with the Act. The policy reflects the provisions of this Act in general terms as officers are required to follow agreed policies and procedures and work within their legal powers.

All enforcement decisions and actions relating to HMOs will be made with due regard to the provisions of:

- The Human Rights Act 1998
- Equal rights and anti-discrimination legislation
- Service specific legislation
- All other relevant legislation
- Crown Prosecution Service guidelines

Stoke-on-Trent City Council values equality and diversity, and to that end this policy has been considered to ensure that there would be no adverse effect to any particular group. A stage one equality impact assessment indicates that no such adverse effects are considered likely, and that conversely the implementation of this policy is likely to have a positive impact on some of the most vulnerable citizens living in poor privately rented properties that are HMOs. This will be achieved by ensuring that minimum standards are achieved in these properties, hopefully by co-operation with landlords, but ultimately through enforcement should this prove necessary.

Information Sharing and Data Protection

If it is in the public interest, matters concerning non-compliance may be shared, where appropriate, with other enforcement agencies. This could include situations where there is a shared or complementary enforcement role with other agencies such as the Police, Fire & Rescue, Health & Safety Executive and other Stoke-on-Trent City Council departments. Any such action will be undertaken in compliance with current data protection regulations.

Personal data will be collected, used, processed, stored, handled and retained in accordance with the provisions of the General Data Protection Regulations and the Data Protection Act 2018.

In accordance with s.232 Housing Act 2004, Stoke-on-Trent City Council will maintain a register of all Licences granted under parts 2 and 3 which are in force. The register will be available for public inspection.

Other requests for information will be considered having regard to the Freedom of Information Act 2000 and current data protection regulations. All data held will be subject to our 'Retention and Disposal Policy'.

Training and Authorisation

Only duly authorised officers may undertake enforcement duties in accordance with Stoke-on-Trent City Council's scheme of delegation. Officers will only be authorised where their level of qualification, training and experience are considered acceptable. Newly appointed officers will also be assessed for competency and referred for training where necessary. Officers will also undergo any training necessary with regard to newly adopted legislation.

All officers are responsible for ensuring they have regard to relevant guidance documents and procedures.

Enforcement Options

Enforcement decisions shall be consistent, balanced, fair, and relate to common standards. In order to achieve and maintain consistency of enforcement, officers will have regard to official guidance, codes of practice and the general enforcement policy.

Factors to be considered in reaching an enforcement decision include;

- the seriousness of the offence;
- the past history of the offender;
- the confidence in management and the degree of wilfulness involved;
- the consequence of non-compliance;

- mandatory / discretionary duties;
- public interest / benefit.

There are a suite of HMO regulations under the Housing Act 2004, including management regulations. The management regulations cover all HMOs and place specific requirements on property managers in relation to management and safety of HMOs. Enforcement action for non-compliance with HMO regulations, in particular the HMO Management regulations will be considered in each case in accordance with this policy and the Private Sector Housing Enforcement Policy 2021-2023.

Licenses of houses in multiple occupation (HMOS)

Part 2 of the Housing Act 2004 require certain HMOs to have a licence to operate. When an application is made, Stoke-on-Trent City Council must either grant a licence to the applicant or another person if both agree, or refuse to grant a licence¹.

In order for a licence to be granted the Stoke-on-Trent City Council must be satisfied that the requirements of s.64(3) Housing Act 2004 are made out.

All licences will come with conditions that the Stoke-on-Trent City Council consider appropriate for regulating the management, use and occupation of the house and its condition and contents. All conditions must be complied with during the period of the licence.

A fee will be charged for all licence applications as detailed in the Private Sector Housing fees and charges.

Licences may be issued for up to a maximum of 5 years². Stoke-on-Trent City Council will consider making a grant of a licence for periods of 2 or 5 years from the date of decision to grant a licence.

The Stoke-on-Trent City Council will consider issuing 2 year licences in the following circumstances:

- First time proposed HMO licence holders who have no experience or do not hold an existing licence within Stoke-on-Trent or any other Local Authority within England. This includes both mandatory HMO licences and additional HMO licence schemes but excludes selective licensing schemes.
- Existing HMO licence holders on renewal who have had enforcement action taken upon them during their current licence period. This action may include but is not limited to the following, and additional factors may be considered at Stoke-on-Trent City Council's discretion;
 - Service of Enforcement notices under the Housing Act 2004
 - Breaches of the licence conditions attached to existing licences
 - Breaches of Management of Houses in Multiple Occupation (England) Regulations 2006
 - Breaches of any other associated regulation relating to property management.
- Where a number of complaints relating to property conditions and management practices such as antisocial behaviour have been received and are merited, but may not have resulted in formal enforcement.

When considering breaches it may not be necessary for a conviction for the offence or a civil penalty to have been issued as it may not be suitable to have taken such action in all circumstances.

¹ Section 64(1) Housing Act 2004

² Section 68(4) Housing Act 2004

5 year licences will be issued in the following circumstances,

- Renewal following an existing 5 year licence or 2 year licence where no enforcement action has been taken (no regular complaints relating to property conditions and management practices such as antisocial behaviour have been received)
- Proposed HMO licence holders who are applying for the first time within Stoke-on-Trent who can demonstrate experience of managing HMOs and/or currently or have recently been a licence holder in any other Local Authority within England, this includes both mandatory HMO licences and additional HMO licence schemes but excludes selective licensing schemes.
- Proposed HMO licence holders who are a current member of the North Staffordshire Landlord Accreditation Scheme.

Alternative licence lengths may be applicable in certain circumstances. When the proposed HMO property is subject to a lease, the length of the licence may be restricted to the length of the lease agreement if less than 5 years. Consideration to the type of lease and whether it is appropriate to restrict the licence length to the lease will be had, when determining the appropriate length of licence.

Fit and Proper person

As part of the HMO licensing process Stoke-on-Trent City Council is required to ensure that the proposed licence holders and those involved in the management are fit and proper persons³.

Part 2 of the Housing Act 2004 specifies that when deciding whether to grant a licence Stoke-on-Trent City Council is required to look at whether the following conditions are met⁴:

- The proposed licence holder is a fit and proper person
- The proposed manager is a fit and proper person
- The proposed management arrangements are satisfactory

If the above are deemed satisfactory and the property is suitable for the proposed maximum occupation; and there is no Banning Order in force, then the licence must be granted.

Upon receipt of a valid application and payment of the relevant fee, the application will be processed and checked to determine whether:

- The proposed licence holder is a fit and proper person to be the licence holder and is, out of all the persons reasonably available to be the licence holder in respect of the property, is the most appropriate person to be the licence holder.
- The proposed manager is a fit and proper person to be the manager of the HMO and in this context the manager is, the person having control of the house, or a person who is an agent or employee of the person having control of the HMO.
- The proposed management arrangements for the HMO are satisfactory.

The person having 'control'⁵ in this context is that as defined in the Housing Act 2004.

When determining "fit and proper" each case will be determined on its own merits; and each specific offence, incident or issue will be considered in terms of its relevance to the holding of a licence or to management and will take into account the date and gravity of the offence, the risk of reoccurrence and any risk to tenants.

³ Section 66 Housing Act 2004

⁴ Section 64(3) Housing Act 2004

⁵ Section 263 Housing Act 2004

Therefore a conviction, caution, reprimand or warning will not necessarily mean that a HMO licence will be refused.

Where the proposed licence holder or proposed manager has made a declaration which may affect the suitability to be a HMO licence holder, or the information within the application is insufficient Stoke-on-Trent City Council may contact the applicant for further information or permission to make further enquiries. Where no other information is available or forthcoming, Stoke-on-Trent City Council can refuse to grant the licence on grounds of insufficient evidence to satisfy the fit and proper requirement.

Where a Limited Company or Body Corporate applies for a licence in this context the company will be treated as “a person” for the fit and proper person and the licence may be issued to the company. In these circumstances it requires the appropriate person within the company such as a Director or person of sufficient position to be able to provide the relevant information on behalf of the company.

In these circumstances the person of sufficient position will be determined on a case by case basis as they are answering the fit and proper person declaration on behalf of the company to declare in effect that all persons employed by the company who will have direct involvement with the HMO to be licenced are fit and proper.

The application may be refused on the grounds that the applicant is not the person of sufficient position to apply on behalf of the company of Body Corporate.

Fit and Proper Person Criteria

In determining whether a person is a fit and proper person to be a licence holder or manager of a HMO, Section 66(2) Housing Act 2004) requires that the authority must have regard to any evidence which shows that the licence holder, manager or any person associated or formerly associated with them has:

- Committed any offences involving fraud or other dishonesty, or violence or drugs, or any offences listed in Schedule 3 to the Sexual Offences Act 2003,
- Practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connect with, the carrying on of any business:
- Contravened any provision of the law relating to housing or of landlord and tenant law
- Acted otherwise in accordance with any applicable code of practice approved under section 233.

When determining whether a person is fit and proper, Stoke-on-Trent City Council will have regard to:

- any relevant convictions, cautions, reprimands or warnings in relation but not limited to offences listed in Appendix 1 to the policy.
- If involved in the management of the HMO, whether the person has the necessary experience and/or managerial skills and competence to manage the HMO in accordance with the satisfactory provisions and relevant legislation.
- The person is aware of, and sensitive to, the needs of all sections of society. This means that their property and arrangements are promoted and accessible to all, without discriminating on grounds of any characteristic protected under the Equality Act 2010 including race, colour, gender, religion, ethnic or national origin, disability (where appropriate) or sexual preference.

Consideration will also be had to whether the proposed licence holder resides within the UK. If resident outside of the UK, suitable management arrangements will need to be demonstrated within the UK.

Stoke-on-Trent City Council may have regard to any other facts or matters which it considers to be relevant to the application.

A person subject to a Banning Order under section 16 of the Housing and Planning Act 2016 is not a fit and proper person whilst the order is in force.⁶

Suitability for Multiple Occupation

When determining the suitability of properties for occupation as HMOs the authority will apply relevant statutory prescribed standards⁷ where possible in addition to having regard to its own amenity standards.

Current statutory standards exist in relation to minimum bedroom sizes for use by a number of persons and these have been incorporated into Stoke-on-Trent City Council's own amenity standards.

The maximum number of occupants ultimately is determined by Stoke-on-Trent City Council and will be based upon either the number requested within the application if the property standards permit this number, or alternatively Stoke-on-Trent City Council will set the maximum based upon the provisions of facilities and the permissible maximum number of persons as specified within the Stoke-on-Trent City Council's amenity standards.

⁶ Section 64(3)(aa) Housing Act 2004

⁷ Section 65 Housing Act 2004

Fees

As part of a valid application Stoke-on-Trent City Council can set a fee payable to cover the costs in administering a licence. Without the applicable fee being paid any application is deemed incomplete and will not be processed.

The fees are set outside of this policy and reviewed periodically. The fees set in relation to the licensing of HMOs reflect the actual cost of this process.

The applicable fee for all applications is divided into two parts.

- Payment 1 – This is payable at the time of submitting the application and covers the costs of processing the application, checking the application and the fit and proper person checks.
- Payment 2 – This is payable once the inspection of the property has occurred and the authority has determined that the property is suitable for licensing in addition to the proposed licence holder/manager passing the fit and proper person check.

Additional fees and discounts can be applied where the fee structure has specified any such additional fees or discounts.

The current fee structure includes a “finders fee” this may be applied in circumstances where Stoke-on-Trent City Council has identified HMOs operating without licence when a licence is required and no duly made application has been received.

Appeals against decisions

An applicant may appeal a decision of the Council. Any appeal must be made within 28 days of the decision to the First Tier Tribunal (Residential Property). Any right of appeal against a decision will be communicated to the applicant in the decision letter.

Complaints

The Private Sector Housing Team will aim to provide effective, timely complaint responses in accordance with Stoke-on-Trent City Council’s ‘Compliments, Comments and Complaints Policy’. This details how a complaint will be investigated and what Stoke-on-Trent City Council will do if the customer is unhappy with the result of the investigation.

If a customer is unhappy with any aspect of their dealings with the Private Sector Housing Team they should:

Contact the Private Sector Housing Team on 01782 233086 or write to
Private Sector Housing Team
Floor 2
Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1HH

Or email PrivateSectorHousing@stoke.gov.uk where the complaint will be passed to the relevant person for a response.

Alternatively, or if a customer is not satisfied with the previous course of action, they may make a formal complaint using the Stoke-on-Trent City Council’s official complaint form or via email at customerfeedback@stoke.gov.uk .

If a customer is still not satisfied with the response they may complain to the Local Government Ombudsman if they feel they have been unfairly treated. A leaflet about this is available on request.

Review

The Private Sector Housing Team is committed to improving the service it provides and welcomes feedback, both good and bad, from customers. If a customer has any comments on the policy or would like to discuss any matters relating HMO Licensing please ring 01782 233086, email privatesectorhousing@stoke.gov.uk or write to the address given above.

This Policy will reviewed periodically in the light of any significant changes in legislation, Codes of Practice, or other guidance.

HOUSES OF MULTIPLE OCCUPATION (HMO) POLICY Appendix 1

List of relevant offences to consider as part of the “fit and proper” person criteria. This is divided into three categories based upon severity.

Category 1 offences

A conviction/caution for these offences will usually result in the licence application being rejected.

<p>Offences and contraventions of the law relating to dishonesty:</p>	<p>Offences under the Fraud Act 2006 Benefit fraud Forgery Burglary Conspiracy to defraud Obtaining money or property by Deception Money laundering Blackmail Conspiracy to commit any of the above offences Criminal attempts in relation to the above offences</p>
<p>Offences and contraventions of the law relating to violence:</p>	<p>Murder Manslaughter Arson Malicious wounding (s20 Offences against the Person Act 1861) Possession of a firearm Possession of an offensive weapon Actual bodily harm (s47 Offences Against the Person Act 1861) Grievous bodily harm (s18 Offences Against the Person Act 1861) Robbery s.1 Riot s.2 Violent Disorder s.3 Affray Any racially aggravated offence (Crime and Disorder Act 1988) Conspiracy to commit the above offences Criminal attempts in relation to the above offences</p>
<p>Offences and contraventions of the law relating to drugs:</p>	<p>Importation of drugs Supply of drugs Possession with intent to supply drugs Conspiracy to commit the above offences</p>
<p>Offences and contraventions of the law relating to sex and indecency:</p>	<p>Any offence under Schedule 3 of the Sexual Offences Act 2003</p>
<p>Offences and contraventions of the law relating to Housing and Landlord and Tenant Law.</p>	<p>Protection from Harassment Act 1997 Protection from Eviction Act 1997 Any conviction for failure to comply with</p>

	the licensing regime as set out in the Housing Act 2004 s95 Provision of false or misleading information (s238 of Housing Act 2004) Obstruction (s241 of the Housing Act 2004) Failure to hold a relevant licence (s72 of the Housing Act 2004) Breach of Improvement Notices and Prohibition Orders (s35(6), s32(2)(b) of the Housing Act 2004) Housing and Planning Act 2016
Other offences	Human Trafficking

Category 2 offences

A conviction/ caution for these offences will be viewed seriously and, following further investigation, could result in the licence application being rejected:

Other offences and contraventions of the law relating to dishonesty:	Handling or receiving stolen goods Theft
Other offences and contraventions of the law relating to violence: -	Affray Assaulting a Police Officer

Category 3 offences

A conviction, caution, reprimand or warning for these offences may also be taken into account and further information will be requested in order to determine the relevance of these offences. If deemed to be relevant or sufficiently severe, these offences could result in the licence application being rejected:

Other offences and contraventions of the law relating to violence:	Common assault Criminal damage Obstruction of a Council Officer
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All other offences relating to dishonesty, drugs, sexual offences and indecency, offences and contraventions of the law relating to Housing and Landlord and Tenant Law.