



CYNGOR  
monmouthshire  
COUNTY COUNCIL  
*sir fynywy*

**Policy for the Licensing of Houses in Multiple Occupation**

**February 2017**

## 1. Background

The Housing Act 2004 radically overhauled the way local authorities regulate standards in private rented housing. The Act introduces compulsory licensing of certain houses in multiple occupation (HMO) and a new system for deciding on the suitability for occupation of any dwelling, the Housing Health and Safety Rating System (HHSRS). These changes came into force on 30<sup>th</sup> June 2006

This document sets out a framework for the fair and equitable application of HMO licensing in Monmouthshire. **Policy decisions are highlighted in bold.**

The enforcement of the Housing Health and Safety Rating System is covered under a separate policy with which, this document must be read.

Monmouthshire recognizes that HMO lettings play an important role in affordable housing. Through this policy and the HHSRS policy the Council aims to ensure that these dwellings are of a decent standard to protect the health and safety of tenants.

## 2. Houses in Multiple Occupation

A HMO is a building occupied by more than one household and includes houses containing bedsits, hostels, older self contained flats and shared houses. The Housing Act 2004 includes a new definition of households, which is families, including single persons and cohabiting couples (whether or not of opposite sex). This has clarified past confusion and means that shared houses (e.g. student houses) will always be HMOs.

However, the Act also excludes a large number of properties previously considered HMOs from the new definition including those buildings that are converted to entirely self contained flats compliant with the 1991 Building Regulations or later. Also, Social housing and HMOs owned by the police, health authorities, universities and some other listed organisations are exempt.

Self contained conversions pre 1991 and smaller shared houses make up the majority of HMOs in Monmouthshire and very few properties have been identified as falling into the very narrow band that require licensing.

## 3. HMO Licensing

Only HMOs of three or more stories, with five or more occupiers will need to be licensed. The obligation is on the property owner/person responsible to apply for a licence not for the Council to identify properties first and then the owners apply.

The Council will maintain a register of licensed HMOs for the public to view.

A HMO will only require a licence if **all** three of the following apply:

- it is three or more storeys high
- it has five or more people in more than one household, and
- the occupants share amenities such as bathrooms, toilets or cooking facilities.
-

The following properties are exempt:

- where the whole property is in self-contained flats
- where the basement is in commercial use and there are only two residential stories above
- where it is owned or managed by a housing association, local authority, education authority, police or health services.

The full definitions regarding licensing can be found in the Housing Act 2004 section 55.

#### **4. Suitability for occupation**

Licences **must** be granted if the Council is satisfied that:

- the HMO is reasonably suitable for occupation by the number of persons permitted under the licence (as set out in Schedule 3 of the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) Regulations 2006)
- the licence holder is a fit and proper person
- the proposed licence holder is the most appropriate person to hold the licence
- the proposed manager, if not the licence holder, is fit and proper and
- the proposed management arrangements are satisfactory, including that the person involved in the management of the house is competent and the funding for management is suitable.

If these criteria are met a licence cannot be refused but a conditional licence can be granted if there are other problems to resolve.

#### **5. Fit and proper person**

The Council is required to assess whether the applicant and any manager or person associated with them or formerly associated with them are fit and proper people to own or manage an HMO. In making this assessment the LA must have regard to

- any previous convictions relating to offences involving violence, sexual offences, drugs or fraud
- whether the proposed licence holder has contravened any laws relating to housing or landlord and tenant issues
- whether the person has been found guilty of unlawful discrimination practices
- whether the person has managed HMOs otherwise than in accordance with any approved code of practice.

LAs can take other relevant matters into account, and the Council's assessment will consider whether the applicant has:

- been refused an HMO licence or been convicted of breaching the conditions of a licence in our or any other authority
- been in control of a property subject to an HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO)
- been in control of a property where work in default was carried out by a local authority and the debt is outstanding
- been convicted of Housing Benefit fraud or subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation;
- any outstanding debt with the Council in relation to Housing Services
- unsuitable management arrangements (e.g. long distance)
- not been deemed fit and proper by another LA or
- not been compliant with the Tenancy Deposit scheme (national scheme).

The proposed licence holder and manager will be required to provide a declaration to confirm their status with regard to criminal offences. **To satisfy this requirement a basic disclosure statement will be required from Disclosure Scotland.**

In gathering evidence in relation to the fit and proper person test, authorised officers will have complete discretion to undertake police enquiries or to request information on criminal convictions, where, having regard to the guidance, information is available to suggest this may be needed.

**Authorised officers should normally have sufficient information to decide a person's fitness based on the application and where no relevant issues come to light the Authorised Officer may determine that the fit and proper person test has been met.**

**Where one or more relevant issues come to light the matter will be deferred to the Licensing and Regulatory Committee for consideration and decision.**

## **6. Management arrangements**

Satisfactory management arrangements under section 4 above will be expected to include:

- a system for tenants to report defects (including emergencies) and arrangements for responding
- a system of periodic inspections to identify repair or maintenance matters
- a declaration from the owner, where he is not the manager, that adequate funding will be provided to the manager to deal with repairs
- compliance with The Management of Houses in Multiple Occupation (Wales) Regulations 2006 which include a requirement to for HMOs to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept clean and in a reasonable state of decoration.

## **7. Duration of licences**

Licences will usually be valid for five years. Licences may be granted for shorter periods where there are concerns about the property or the manager.

## **8. Mandatory licence conditions**

A HMO licence will specify the maximum number of occupants or households who may occupy an HMO. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities.

The licence will also include conditions requiring the licence holder to:

- produce gas safety certificates obtained within the last year and on an annual basis

- keep electrical installations and appliances in a safe condition and supply on demand, a declaration to that effect
- keep furniture made available by the licence holder in a safe condition and supply on demand, a declaration to that effect
- ensure that smoke alarms and any other early warning system/detection system are installed and keep them in proper working order and supply on demand, a declaration as to the condition and positioning of such alarms
- supply the occupiers with a written statement of the terms on which they occupy the property.

## 9. Discretionary licence conditions

In addition to the mandatory licensing conditions set out above, the Council is empowered, by the Act to apply discretionary conditions. This Council will apply the following discretionary conditions to all licences;

- HMOs will comply with the Management of Houses in Multiple Occupation (Wales) Regulations 2006
- owners or managers must provide copies of up to date reports of fire detection, alarm system and emergency lighting to the Council annually
- a requirement for regular maintenance of the property and facilities
- the name, address and telephone number of licensee or manager is to be displayed in the common parts of the HMO
- a copy of the licence must be displayed in the common parts
- the building must be adequately insured
- tenancy agreements must set out how owners or managers intend to deal with anti social behaviour from tenants or visitors
- any anti-social behaviour arising in the HMO is dealt with under the terms of the tenancy agreement.

## 10. Specific conditions

Specific conditions relevant to particular properties may also be applied such as restrictions or prohibitions pertaining to parts of the property, requirements for facilities or equipment at the property, or works to be undertaken within a particular timescale.

## 11. HMO Space Standards

The standards for sharing of kitchen and bathroom facilities in licensable HMOs are set out in The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006. To comply with the regulations, each unit of living accommodation and all bathrooms must have adequate heating. One separate WC and at least one bathroom are required for every five sharing occupiers. Kitchen facilities are also required for each unit of accommodation or with adequate facilities for the number of occupiers sharing. This policy requires a set of kitchen facilities for every five sharing occupiers.

The Council will determine the number of people a HMO is licensed for in accordance with the recommended space standards as follows. These standards relate to all HMOs, not just licensable properties.

### CATEGORY 'A' – BEDSITS

#### One person accommodation

One room unit	
13m <sup>2</sup> including kitchen facilities	
10m <sup>2</sup> where provided with separate shared kitchen*	

#### Two or more person accommodation

One room unit	
18m <sup>2</sup> including kitchen facilities	
13m <sup>2</sup> where provided with separate shared kitchen*	

\*where a separate shared kitchen is provided it must be a minimum of 2.5m<sup>2</sup> per person using the facilities

Two or more roomed units (within the bedsit)	
Each kitchen	3m <sup>2</sup>
Each living room/kitchen	10m <sup>2</sup>
Each living room/bedroom	10m <sup>2</sup>
Each living room	8.5m <sup>2</sup>
Each bedroom	6.5m <sup>2</sup>

Two or more roomed units (within the bedsit)	
Each kitchen	5m <sup>2</sup>
Each living room/kitchen	13m <sup>2</sup>
Each living room/bedroom	13m <sup>2</sup>
Each living room	10m <sup>2</sup>
Each bedroom	10m <sup>2</sup>

## **CATEGORY 'B' AND 'C' – SHARED HOUSES AND LODGERS**

### **One person accommodation**

<b>One room unit</b>	
Bedroom	6.5m <sup>2</sup>

### **Two person accommodation**

<b>One room unit</b>	
Bedroom	11m <sup>2</sup>

<b>Communal rooms</b>	<b>Up to 5 persons</b>	<b>6 to 10 persons</b>
Kitchens	7m <sup>2</sup>	10m <sup>2</sup>
Living rooms	10m <sup>2</sup>	2m <sup>2</sup> per person

## **CATEGORY 'D' – HOSTELS, GUEST HOUSES, BED AND BREAKFAST**

The standards for these premises will depend on the nature of the occupation and the appropriate standards would be applied from one of the other Categories. Please contact the Environmental Health Team for further information.

## **CATEGORY 'E' – RESIDENTIAL CARE HOMES**

The standards for this category of premises are primarily determined by the conditions imposed by the Registered Care Home Regulation. The standards for premises that are not required to register under these regulations will depend on the nature of the occupation and the appropriate standards would be applied from one of the other Categories. Please contact the Environmental Health Team for further information.

## **CATEGORY 'F' – SELF-CONTAINED FLATS**

### **One person accommodation**

<b>One room unit</b>
13m <sup>2</sup> including living room, kitchen and bedroom

### **Two or more person accommodation**

<b>One room unit</b>
18m <sup>2</sup> including living room, kitchen and bedroom

<b>Two or more roomed units</b>	
Each kitchen	3m <sup>2</sup>
Each living room/kitchen	10m <sup>2</sup>
Each living room/bedroom	10m <sup>2</sup>
Each living room	8.5m <sup>2</sup>
Each bedroom	6.5m <sup>2</sup>

<b>Two or more roomed units</b>	
Each kitchen	5m <sup>2</sup>
Each living room/kitchen	13m <sup>2</sup>
Each living room/bedroom	13m <sup>2</sup>
Each living room	10m <sup>2</sup>
First bedroom	10m <sup>2</sup>
Additional bedroom	6.5m <sup>2</sup>

## **12. HMO Amenity Standards**

The following table provides a guide to the facilities required in kitchens.

	<b>Up to 5 persons</b>	<b>6 or more persons</b>
Sinks	Bedsits - each separate household provided with cooking facilities must have a sink provided with a constant and adequate supply of hot and cold water	
	There must be a suitably sized sink and drainer, provided with a satisfactory supply of cold and constant hot water which is properly connected to the drainage system	An additional sink or dishwasher must be provided for every additional 5 persons

Food Storage	0.4 cubic metres dry goods per person (1 average cupboard). 0.1 cubic metres (100 litres) (3.5 cubic feet) combination of refrigerated and frozen food storage per person (this would normally mean one shelf in a fridge and one shelf in the freezer, per person).	
Refrigerator	A refrigerator must be provided for each kitchen	An additional refrigerator per kitchen must be provided for every additional 5 persons (irrespective of their age)
Food Preparation	Each separate occupancy and shared kitchen shall be provided with suitable and adequate impervious work tops. A preparation surface of 1.5 linear meters should be provided, part of which must be adjacent to the cooking facilities	An additional preparation surface of 1.5 linear meters should be provided for every additional 5 persons
Cooking	Bedsits - each separate household shall be provided with a proper cooking appliance (Minimum acceptable being 2 rings or hot plates together with either a grill or an oven).	
	Shared kitchens, a cooker consisting of 4 rings or hot plates together with a grill and oven	An additional cooker consisting of 4 rings or hot plates together with a grill and oven should be provided for every additional 5 persons. A microwave oven can be provided for up to 7 persons.
Electrical Sockets	Electrical sockets must be sufficient to facilitate the use of each fixed appliance (i.e. washing machine, fridge) plus an additional two double socket outlets	
Refuse	A suitable bin must be provided for the storage of refuse prior to disposal	

The following table provides a guide to the minimum requirements for bathroom/shower rooms and water closet facilities.

No. of Persons	Definitions		
	Combined Bathroom or Combined Shower Room - a room containing a bath or shower, water closet <u>and</u> wash hand basin	Bathroom or Shower Room - a room containing a bath or shower <u>and</u> wash hand basin only	Water Closet - a room containing a water closet <u>and</u> wash hand basin only
Minimum Requirements			
1 to 4	1 Combined Bathroom or 1 Combined Shower Room		
5	1 Bathroom or 1 Shower Room      +      1 Separate Water Closet		
6	2 Combined Bathrooms or 2 Combined Shower Rooms		



7 to 9	1 Combined Bathroom or 1 Combined Shower Room	+	1 Bathroom or 1 Shower Room	+	1 Separate Water Closet
10			2 Bathrooms or 2 Shower Rooms	+	2 Separate Water Closets
11 to 14	1 Combined Bathroom or 1 Combined Shower Room	+	2 Bathrooms or 2 Shower Rooms	+	2 Separate Water Closets
15			3 Bathrooms or 3 Shower Rooms	+	3 Separate Water Closets

**Acceptable alternatives will be taken into consideration**

- Baths or showers shall not be permitted in kitchens in shared accommodation
- Each bath or shower must be provided with a constant and adequate supply of hot and cold water
- Each wash hand basin must be provided with a tiled splash back with a constant and adequate supply of hot and cold water
- A suitable locking mechanism must be fitted to the access door to ensure privacy.
- A proper system of drainage shall be provided to all houses and all above and below ground drainage shall comply with the requirements of the Building Regulations currently in force

**13. Bed and Breakfast Properties**

The Council will regard bed and breakfast properties as HMOs if they are housing any people who use the hotel as their main residence for more than 30 consecutive days. 30 days is a widely accepted point at which temporary accommodation should then be considered to be long term accommodation.

We believe that where B & B accommodation is used as a main residence, the same standards as for other HMOs should be met.

**14. Inspection Policy**

**Because our numbers of licensable HMOs are so small, officers will always visit HMOs when an application is received. Each application will be risk assessed on receipt and high risk HMOs and properties not previously known to the Council will be visited as priority.**

Inspections will be carried out with regard to licensing requirements. If additional licence conditions are required after an inspection of an HMO, the licence will be varied to include such conditions.

An inspection of each HMO will also be carried out under the Housing Health and Safety Rating System (HHSRS), which is set out in the Housing Act 2004 and replaced the housing fitness standard. This will include a risk assessment of the effect of housing conditions on the health and safety of occupiers. The HHSRS involves the assessment of 29 potential hazards and scoring their severity to decide whether improvements are needed. If more serious “category 1” hazards are found the Council has a duty to require the owner to remedy the defect. If less serious “category 2” hazards are found, the Council has discretionary power to require action.

Where category 1 or 2 hazards are found, action will be in accordance with the Act and our HHSRS enforcement policy.

**15. Licence fees**

The Council has powers to set a fee for licences which are usually issued for a five year period

The Council can license properties for shorter periods when there is concern about the property or the manager. However, the fee will not be reduced as the officer time to administer a shorter licence will be the same as that of a full licence.

**The fees, subject to member review as part of the annual review of fees and charges, are as follows:**

- **HMO Licence ‘first time’ application - £500**
- **HMO Licence renewal application (submitted before expiry of licence) - £450**

## **16. Interim and final management orders**

Where there is no prospect of an HMO being licensed, the Act requires the Council to make an Interim Management Order. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended as a Final Management Order to five years with the Council also having the power to grant tenancies.

We will only use these powers in exceptional circumstances. Any proposed action will have to be agreed by the Head of Public Protection. In addition Orders can only be made with the authorisation of the Residential Property Tribunal (see section 19 for details).

The Council will develop a procedure to manage such properties in house.

## **17. Temporary exemption notices**

Where a landlord is, or shortly will be, taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. A TEN will be served where an owner of a licensable HMO states in writing that she/he is taking steps to make an HMO non-licensable and states that the HMO will not be licensable within three months.

The Council does not wish these notices to be used routinely, and a second notice will only be allowed in exceptional and unforeseen circumstances. Any exception to the policy will be agreed by the Head of Public Protection

## **18. Penalties for non compliance**

The Housing Act 2004 makes it a criminal offence if a person controlling or managing an HMO does not have the required licence. A person found guilty of such an offence will be subject to a fine up to a maximum of £20,000. Breaching any condition of a licence is also an offence, punishable by a fine not exceeding level 5 on the present scale (£5,000 currently).

We will encourage owners to apply for licensing through advice and persuasion, but where they fail to apply as a result of such informal action we will take legal proceedings with a view to prosecution by the courts. Similarly any breach of conditions will initially be dealt with informally, but if the breach continues legal proceedings will be started.

## **19. Rent Repayment Orders**

The legislation allows applications to the Residential Property Tribunal (RPT) for a Rent Repayment Order (RRO), where a landlord is convicted for failure to license. If rents were paid through Housing Benefit, the Council will use its powers under the Act to seek RROs for repayment of twelve months' Housing Benefit or for the period since the landlord was required to license the HMO, if less. We will also provide tenants with information about how to apply for an RRO.

## **20. Discretionary HMO licensing**

We do not intend to apply for additional discretionary powers to extend the licensing of all HMOs in a specific area where HMOs are so badly managed as to give rise to particular problems from tenants or members of the public, such as anti social behaviour. Such powers are not necessary in Monmouthshire at present as there are no areas where several HMOs are linked to anti social behaviour.

Similarly we do not intend to apply for new powers to introduce selective licensing for all private sector housing (including non HMOs) in designated areas. These powers enable LAs to license properties in an area where there is low housing demand or anti-social behaviour. These additional powers are not necessary as there are no areas of low housing demand in the County and no problems with anti social behaviour associated with particular types or areas of housing at present.

## **21. Appeals**

The Council will enable licence applicants to make representation to the Head of Public Protection if they are aggrieved with an officer's decision to set particular conditions or to refuse, revoke or vary a licence. They will also be able to make representations against an intention to serve an IMO.

A landlord may appeal formally to the Residential Property Tribunal if the Council decides to:

- refuse a licence
- grant a licence with conditions
- revoke a licence
- vary a licence or
- refuse to vary a licence.

The Residential Property Tribunal has quasi-judicial status and is made up of housing lawyers, valuers, surveyors and lay people. Members qualified to chair committees and tribunals are appointed by the Lord Chancellor and other members are appointed by the ODPM. Three members usually sit on each committee or tribunal. An appeal against the decision of the RPT is to the Lands Tribunal and can only be made with the permission of the RPT or the Lands Tribunal.