

Regulatory Committee

9.30am, Monday, 8 March 2021

Houses in Multiple Occupation – Derogation from Conditions

Executive/routine Wards Council Commitments	Executive All
---	------------------

1. Recommendations

- 1.1 Regulatory Committee is asked to note the contents of the report and to agree that:
 - 1.1.1 For Houses in Multiple Occupation (HMO), renewal application applicants may submit a temporary variation request with their application, as set out in paragraphs 4.9 to 4.12; and
 - 1.1.2 The Licensing Service will grant a HMO renewal licence on the basis of a temporary variation for a maximum period of three years, subject to all other application requirements being met and no objections having been received.

Paul Lawrence

Executive Director of Place

Contact: Andrew Mitchell, Regulatory Services Manager

E-mail: Andrew.mitchell@edinburgh.gov.uk | Tel: 0131 529 4208

Houses in Multiple Occupation – Derogation from Conditions

2. Executive Summary

- 2.1 This report updates the Committee on the current situation with respect to House in Multiple Accommodation (HMO) licence holders who would normally be required to produce safety certification for HMO properties as part of their licence renewal application and proposes a temporary variation to address concerns raised by license holders.

3. Background

- 3.1 The Council is required to license HMOs, where three or more individuals live in a property. The Council charges a fee to cover the costs of operating and enforcing the licensing scheme. HMO licence fees are based on occupancy capacity, with an option of a one or a three year licence. New HMO licences are typically granted for one year, with a minimum period of six months.
- 3.2 Regulatory Committee previously adopted a policy that granting of a three year licence would only be considered for suitable properties on a case by case basis. The period of licence would normally be restricted to a one year licence based on the following assessment criteria:
- 3.2.1 Premises or landlords that are subject to ongoing monitoring where issues have been identified by officers;
 - 3.2.2 Premises or landlords that are subject to enforcement action;
 - 3.2.3 Premises or landlords where previous complaints have been upheld;
 - 3.2.4 Premises that have failed to complete remedial work identified on inspection within four weeks from the first inspection date, without prior consent from the Council;
 - 3.2.5 Premises where the Licensing Sub-Committee has chosen to restrict the period of licence due to concerns raised; and

3.2.6 Premises where the landlord is unable to provide evidence of continuous safety certificates for the property, during the term of the licence.

4. Main report

- 4.1 The Council operates a robust and consistent licence application, enforcement and inspection regime. Properties are inspected to ensure that the current conditions of licence are met and the physical standards for HMO are satisfied. The current licence conditions deal with safety certification for gas and electrical equipment. In particular:
- 4.1.1 HMO1 states – ‘The licence holder must take steps to ensure that the property, fittings and furniture, including fire precautions, plumbing, drainage, gas and electrical installations are maintained throughout the period of the licence to the standard required. The HMO owner should have a system in place which provides for continuity of safety certification’.
- 4.2 A copy of the guidance contained in an HMO application pack, which refers to the types of safety certificates required, is attached at Appendix 1.
- 4.3 Lockdown arrangements have been in place since 26 December 2020 and the guidance from the Scottish Government has been to stay at home, except for essential purposes. There had previously been similar lockdown measures in the first half of 2020.
- 4.4 The service has been made aware of concerns from some HMO licence holders in relation to providing evidence of continuous safety certification, which must accompany their licence renewal application in order to comply with standard condition HMO1.
- 4.5 In order for some forms of safety certification to be obtained, properties have to be visited by an appropriately qualified engineer or other such tradesperson. A number of HMO licence holders have been reluctant to allow individuals from outwith their tenant’s home or support bubble to enter their property to carry out this work while lockdown restrictions remain in place, as it could put them at unnecessary risk.
- 4.6 Additionally, landlords will be aware that some tenants may be anxious about allowing tradespeople to enter their home, particularly if they are shielding. Finally, there has also been practical difficulties with significant numbers of businesses furloughing their staff, and this has also affected the provision of the checks necessary. This situation will not affect all landlords, as some HMOs will have been vacant and therefore safety checks could have been carried out in those properties.
- 4.7 This is, however, likely to result in gaps in continuous safety certification for some properties. Normally such gaps in certification could lead to a property only being licensed for one year, instead of three years, or an application being refused or returned to an applicant as incomplete as per the policy

- 4.8 Having considered the concerns raised by landlords while recognising that the safety of tenants is paramount, the service accepts that it might be disproportionate to restrict the period of licence in circumstances where landlords have been unable to comply with condition HMO1 due to the public health restrictions.
- 4.9 It is therefore recommended that the Committee agree that those licence holders submitting a renewal application, who declare that they have been unable to provide the required continuous safety certification due to reasons related to the COVID-19 lockdown restrictions, will have their applications accepted with a temporary exemption from compliance with condition HMO1 for a maximum period of six months from the date the application is lodged with the Council.
- 4.10 The exemption would cover the period for which there was no certification in place and afford licence holders an opportunity to obtain the relevant documentation. This amendment to the licensing process will allow licence holders to continue to submit renewal applications and to be granted the appropriate licence, whilst avoiding being disadvantaged due to circumstances outwith their control. All other application processes, such as Police Scotland background checks, will be carried out as normal. It remains the licence holder's duty to ensure that their property remains safe, and nothing in this report alters their statutory duties in that regard.
- 4.11 If a licence holder is still unable to provide the relevant safety certificates at the expiration of the six month period after a licence had been granted, the licence holder will be referred to the Licensing Sub-Committee for consideration. In such circumstances licence holders would be expected to submit a further exemption request with supporting documentation and to demonstrate why a property could not be visited.
- 4.12 This temporary change to the licensing process will apply to renewal applications only and will be kept under review. In the event that any further exemptions are required, a subsequent report will be brought to Committee.
- 4.13 It is proposed that this change to policy will be in effect until 31 December 2021 and will apply to HMO renewal applications lodged with the Council during 2020 and 2021.

5. Next Steps

- 5.1 If Committee agree to this approach, the service will make the required internal changes to the licensing process to ensure that HMO licence holders can continue to submit renewal applications. Officers will communicate this change through the Council's website, email communications, e-newsletters and social media streams.

6. Financial impact

- 6.1 There will be no financial impact arising from this change as the current HMO fee structure will remain unchanged.

7. Stakeholder/Community Impact

- 7.1 The Licensing Service will ensure that any change to the current HMO process is widely communicated to HMO licence holders and agents, as set out in paragraph 5.1.

8. Background reading/external references

- 8.1 [HMO Standard Conditions](#)
- 8.2 [Housing \(Scotland\) Act 2006](#)
- 8.3 [HMO Licence Application Pack](#)
- 8.4 [Licensing Multiple Occupied Houses: Statutory Guidance for Local Authorities](#)

9. Appendices

- 9.1 Appendix 1 – [HMO Application Form with guidance](#)