

Appendix A

1 Background

1.1 In Bristol, privately rented housing accounts for 28.9% (58,093) of the city's housing stock (Building Research Establishment (BRE) Bristol Housing Stock Report, August 2017¹) - a growth of 4% since the Census 2011 and just under 9% above the national average of 20%. 20 out of 34 wards in Bristol have a percentage of private rented sector dwellings in excess of the national average. The size of the sector continues to grow as fewer people are now able to buy their own home and social housing remains difficult to access due to demand far outstripping supply.

1.2 The private rented sector (PRS) offers flexibility in respect to tenure enabling people to move their accommodation to meet their requirements e.g. changes to employment, personal circumstances, access to schools and other facilities and moving closer to family and friends.

1.3 Although many landlords provide a good standard of accommodation and service to their tenants, there are a substantial number who do not. Given the demand for housing in the city, unscrupulous landlords take advantage of those who have least choice in the market due to their personal circumstances and offer substandard and poorly managed accommodation.

1.4 The Government recognises that problems of poor management and housing conditions are not just confined to larger HMOs (Houses in Multiple Occupation) and significant concerns still exist in other private rented property. For this reason they also introduced powers to Councils to declare areas where landlords are required to licence other rented properties in their areas, under the Housing Act 2004.

1.5 The BRE recently reported that "HMOs in the private rented sector in Bristol are generally in poorer condition than non-HMOs. The levels of category 1 hazards are notably higher for HMOs (22% compared to 13% for non-HMOs), especially for fall hazards (15% compared to 5%). Levels of disrepair are also higher for HMOs (9% compared to 6% for non-HMOs)".

2 Current working practices

2.1 Bristol City Council undertakes reactive work in all areas of the city and uses its statutory powers to tackle the problems in private rented properties. Over the last 5 years 34% of all complaints have been about HMOs, with 88% relating to poor management and 22% poor condition (NB some property complaints are about both issues). The majority of these complaints relate to properties in the proposed additional licensing area (see table 2 below). Bristol City Council has operated a mandatory

1.1 ¹

<https://www.bristol.gov.uk/documents/20182/2870395/Bristol+Intergrated+Housing+Stock+Modelling+Database+Report.pdf/422e4bd6-56d1-ff8b-640c-6a0f6698873e>

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licensing scheme since 2006, licensing ~1,500 larger HMOs every five years.

There is one discretionary licensing schemes in operation in Bristol:

- Eastville and St George Property Licensing scheme (approximately 3,500 properties).

The Stapleton Road property licensing scheme ended in April 2018 and covered approximately 1,550 properties.

3 Enforcement Action and Prosecutions

3.1 It is a legal requirement to apply for a licence in the designated licensing areas. Landlords that do not make the appropriate application or fail to meet housing standards required of them will be considered for enforcement action. This could be prosecution or, since late October 2017, we have the authority to consider the imposition of a Civil Penalty. Fines for prosecution are now unlimited and civil penalties can be applied up to a total of £30,000

4 Landlord Liaison Service

4.1 The council provides a free service providing information and guidance to landlords and agents who sign up to the service. In return they receive regular updates on changes in legislations and government initiatives. A quarterly newsletter is produced with both local and national articles.

4.2 A landlord manual is produced and available to landlords with everything they need to know about renting in the private sector including legal standards and conditions that they are expected to comply with. Further information is provided on a bespoke West of England Housing website. <http://www.privatehousinginformation.co.uk>

4.3 Every year the Landlord Liaison Officer and West of England colleagues organise a West of England Landlord Expo. The event is free to landlords and other visitors and guest speakers deliver topical sessions. Over one hundred stallholders come together to advise local landlords and agents on their services and products.

4.4 Bristol City Council together with local authorities across the West of England region have endeavoured to 'bridge-the-gap' and create lines of communication with landlords and managing/letting agents operating in the area. However there are only 5,000 landlords and agents, from across the West of England region and beyond, on the private landlords database. Although a number of those on the database are portfolio landlords, it should be recognised that there are there are 12,607 HMOs in Bristol. Many landlords therefore do not engage with the council or use the available tools to help them deliver services to their tenants.

5 Proposal

5.1 The Housing Act 2004 introduced property licensing (mandatory, additional and selective licensing) as a mechanism for tackling problems of poor management and housing conditions in privately rented properties. It helps tenants, residents and members of the public where landlords have failed to properly manage their tenancies.

5.2 Local authorities have the power to introduce additional licensing for HMOs not included in the mandatory scheme, in area(s) where the relevant criterion is met. If

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licensing is introduced by a Local Authority, it becomes a legal requirement for all landlords/agents who own or manage rented properties (subject to exemptions¹) in the designated area to apply for a licence depending on how their property is rented.

Section 56 of the Act states that an area can be designated where;

“A significant proportion of the HMOs ... are being managed sufficiently ineffectively as to give rise to, or likely to give rise to one or more particular problems either for those occupying the HMOs or for members of the public”.

5.3 Under this proposal most HMOs in the twelve wards of central Bristol namely Ashley, Bishopston & Ashley Down, Central, Clifton, Clifton Down, Cotham, Easton, Hotwells & Harbourside, Lawrence Hill, Redland, Southville and Windmill Hill (see map in Appendix 1) will need to be licensed as in our view HMOs in these wards meet the **Additional Licensing** criteria (Section 56, Housing Act 2004).

5.4 The definition of an HMO² is where houses or flats are let to three or more people who aren't related and who share some facilities like kitchens or bathrooms except those converted blocks of flats to which section 257³ of The Act applies.

5.5 Those HMOs already covered under the national mandatory licensing⁴ legislation (Part 2, Housing Act 2004) are not included in this proposal. A mandatory licensable HMO is a property occupied by 5 or more people, forming 2 or more households, who share facilities or lack an amenity like a toilet, bathroom or kitchen. Mandatory Licensing is a national scheme and these properties have been required to have a licence since 2006 (the three storey requirement was removed 1st October 2018).

5.6 If a property meets the Mandatory definition of HMO, it will require a Mandatory licence, rather than an Additional licence.

5.7 Property licensing enables a local authority to ensure private landlords meet reasonable standards of management, amenity and safety standards and to manage anti-social behaviour in their properties which in turn will help to improve living standards in the area. It will also benefit landlords who are currently compliant by forcing non-compliant landlords to operate to the same standards and competence as compliant landlords.

5.8 The council intends to inspect all HMOs in the proposed area with a view to assessing their condition and management practices and taking appropriate enforcement action to ensure they meet licensing standards and conditions. This action combined with other measures such as landlord training, working with partners and the availability of low cost loans to assist landlords with the cost of necessary improvements will contribute to improving the management and housing conditions of HMOs in the area.

6 Which HMOs would need a licence?

6.1 If this proposal is approved, most privately owned HMOs in the central Bristol area identified in the map in Appendix 1, will need an additional licence. HMOs that come under the national mandatory licensing criteria (current or revised) will not require an additional licence too.

6.2 It is important that owners of properties in the area establish whether their property(s) meets the HMO definition² and make an application for a licence or be liable

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for enforcement action.

7 Exemptions from HMO licensing¹

7.1 Certain types of buildings or parts of buildings are **not** HMOs for the purpose of Licensing. Schedule 14, of the Housing Act 2004, sets out the properties that are exempt in detail. These broadly speaking include:

- Buildings managed or owned by public sector bodies. (i.e. local authority housing, and properties managed or owned by registered social landlords, police authorities, Fire and Rescue authorities and the NHS);
- Buildings where the residential accommodation is ancillary to the principal use of the building i.e. caretaker accommodation
- Buildings occupied by religious communities;
- Student accommodation managed and controlled by educational establishments⁶;
- Buildings regulated otherwise than under the Act, such as care homes;
- Bail hostels;
- Hostels - the description of which are specified by law;
- Buildings entirely occupied by freeholders or long leaseholders;
- Buildings occupied by owners;
- Buildings occupied by no more than two, unrelated people;
- Buildings occupied by a resident landlord with no more than two lodgers;
- Buildings which are Housing Co-operatives.

8 ANUK registered properties

8.1 Before declaring an area subject to additional licensing the Council are legally required to consider whether organisations managing properties in the area which are subject to government approved codes of practice, are being complying with the requirements of the codes.

8.2 The relevant codes of practice are approved under s233 of the Housing Act and relate to larger developments of student accommodation NOT managed and controlled by educational establishments such as universities. E.g. Those properties signed up to the ANUK/Unipol National Code.

8.3 The definition of “larger development” is a development where 15 or more students live in one building in rooms off a central corridor, in cluster flats, or in self-contained flats.

8.4 As a result of the consultation earlier this year, the Private Housing Service do not propose to recommend to Cabinet that properties approved under s233 are required to have an Additional licence. This has the effect of reducing the total number of properties that require a licence.

8.5 In addition, under the Housing Act 2004, any House in Multiple Occupation which is owned and managed by Bristol University or University of the West of England are also legally exempt from the Additional Licensing Proposal.

9 The case for Additional Licensing

9.1 Before making an additional HMO licensing designation for a particular type of HMO, or for an area, a local authority must consider that a significant proportion of the HMOs

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of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.

9.2 The council commissioned a stock condition study by the Building Research Establishment (BRE) to establish the likely condition of the city's private rented stock and this is the general basis of our evidence.

10 Building Research Establishment (BRE) Stock Condition Report

10.1 The Housing Act 2004 requires local housing authorities to review housing information and statistics in their district. The council commissioned the BRE in 2017 to undertake a stock condition report with particular focus on the private rented sector. For the purposes of this proposal the report findings are focused on the condition of houses in multiple occupation. The primary tool to assess property condition is the Housing Health and Safety Rating System.

10.2 The Housing Health and Safety Rating System ⁷(HHSRS) is a risk-based evaluation tool to help local authorities identify potential risks and hazards to health and safety from any deficiencies identified in dwellings. It was introduced under the Housing Act 2004 and applies to residential properties in England and Wales.

10.3 The HHSRS assesses 29 categories of housing hazard. Each hazard has a weighting which will help determine whether the property is rated as having a category 1 (serious) hazard (Bands A-C) or category 2 hazards (Bands D-J). In Bristol Bands A-D are considered actionable hazards under Bristol's enforcement policy.

11 BRE Headline results for Bristol – HMOs and licensing

11.1 Overall the percentage of dwellings in the private rented sector across Bristol is 28.9% compared to the national average of 20%. The private rented sector is generally considered to be in the poorest physical condition and suffer from variable property management standards. The combination of a transient population with little or no connection with an area can lead to an increase in anti-social behaviour and crime.

11.2 There are an estimated 12,559 HMOs in Bristol. In terms of concentration of HMOs, 62% of all HMOs in Bristol are contained within the proposed new additional licensing area (see map in Appendix 1) and we believe there are around 5,500 HMOs that would meet local additional licensing criteria.

11.3 Approximately 2,034 HMOs in Bristol are licensable under the current national mandatory licensing scheme. The government proposal to change to the definition will mean the estimated number of HMOs in Bristol which must have a mandatory licence will increase the number of licenses to 2,831.

11.4 HMOs in the private rented sector in Bristol are generally in poorer condition than non-HMOs. The levels of category 1 hazards are notably higher for HMOs (22% compared to 13% for non-HMOs), especially for fall hazards where there are three times as many hazards in HMOs (15% compared to 5%).

11.5 Levels of disrepair are also 50% higher for HMOs (9% compared to 6% for non-HMOs).

11.6 Estimates of the percentage of dwellings meeting the key indicator criteria

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assessed by the Housing Stock Models and Database for HMOs in Bristol as shown in table 1.

11.7 Table 1

Indicator		Private Rented Stock			
		HMOs		Non HMOs	
		No	%	No	%
Number of dwellings		12,559	22%	45,480	78%
HHSRS Category 1 Hazards	All Hazards	2,738	22%	5,827	13%
	Excess Cold	500	4%	1,200	3%
	Fall Hazards	1,941	15%	2,111	5%
Disrepair		1,176	9%	2,793	6%
Fuel poverty (10%)		2,269	18%	5,704	13%
Fuel poverty (Low income / High costs)		2,066	16%	4,683	10%
Low income households		1,839	15%	6,743	15%

11.8 This table is taken from the BRE report. The information on hazards refers to the number of dwellings with a hazard of the stated type. Because of this there is likely to be some overlap – for example, some dwellings are likely to have excess cold and fall hazards but this dwelling would only be represented once under ‘all hazards’. The number of dwellings under ‘all hazards’ can therefore, be less than the sum of the excess cold plus fall hazards.

11.9 Given the numbers of category 1 hazards modelled in the areas specified, it is reasonable to assume that there will also be a significant percentage of high category 2 hazards present. The data in this report shows that there are therefore likely to be a significant number of properties in the areas specified that would require inspection to determine whether category 1 or 2 hazards are present.

11.11 The levels of management problems dealt with by the Private Housing Service are shown in the table below:

11.12 Table 2

Private Housing complaints received in the five-year period to 20 December 2017	Citywide Total	HMOs citywide	HMOs in Proposed area

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Private housing complaints received	8,244	2,768 (34%)	1,470 (18%)
Actions against poor management	1,678	1,481 (88%)	1,206 (72%)
Actions to resolve poor housing conditions	2,787	602 (22%)	427 (15%)

12 Summary of evidence

12.1 BRE recommendation: "Potential areas for investigation within Bristol – additional HMO licensing" identified that wards with high levels of HMOs and with high proportions of hazards or in disrepair may be a starting point when considering areas which could be suitable for Additional HMO licensing. These wards are mainly in the central Bristol wards as identified in the map Appendix 1.

12.2 Given the numbers of category 1 hazards modelled in the areas specified, it is reasonable to assume that there will also be a significant percentage of high category 2 hazards present. The report also shows that there are therefore likely to be a significant number of properties in the areas specified, that would require inspection to determine whether category 1 or 2 hazards are present.

12.3 Bristol City Council's evidence shows that in the last five years (see table 2 above) the area proposed for Additional Licensing received more than half of the Private Housing complaints than outside the area and 18% of these relate to HMOs.

13 What else do we have to take into consideration?

The Bristol Housing Strategy 2015-20 – 'More Than a Roof'

13.1 The Housing Strategy aims to tackle the range of housing issues that affect people who live in Bristol. Due to the economic situation in Bristol many people are increasingly relying on private rented sector accommodation when they would have previously purchased or would have rented social housing. This demand has pushed up rents and some landlords are capitalising on the need people have to find accommodation at a price they can afford by providing an inferior product.

13.2 In order to meet some of the demand within Bristol, it is important to work with the housing that we have, making sure that our current resource is optimised and that we are working towards increasing standards. There are three parts to optimising existing housing:

- Raise standards in the Private Rented Sector
- Deliver the best use of existing housing
- Reduce empty homes, particularly in the private sector

Raising Standards in the Private Rented Sector

13.3 Apart from our standard practice of reacting to complaints and taking enforcement action, we have already launched two discretionary licencing schemes - in the Stapleton Road area and Eastville/St George West wards, although the Stapleton Road scheme ended in April 2018. Under the additional powers that licensing gives Local Authorities it

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is considered that this will increase quality and management standards in the sector.

Reduce Empty Private Homes

13.4 Bristol has a very successful programme of reducing empty homes and bringing them back into use. Properties bought back into use have mainly gone into the private rented sector so it is important that these properties meet current property and management standards. We work with the Empty Property Unit to ensure where properties are bought back into use in the private rented sector that the landlord adheres to good management practices and meets minimum standards

Homelessness

13.5 The Bristol City Council Housing Strategy aims to use early intervention and prevention as a method to tackle problems before they become a crisis.

13.6 Shelter recently carried out research into homelessness in relation to Bristol's private rented sector. This piece of work identified that some private tenants who have previous experience of being homeless feel that they have no choice but to put up with poor conditions and harassment from their landlords. This is because they have nowhere else to go or their options are very limited given their financial or personal circumstances. Many tenants find it difficult to find somewhere to live in Bristol and were willing to go to great lengths to remain in their private rented accommodation despite there being serious problems with their accommodation. People who had children in the household or were receiving housing benefit found it particularly difficult to rent.

13.7 To sustain/increase the numbers of vulnerable tenants in licensable accommodation an incentive for private landlords is being developed with Housing Options. This will require private landlords to accept nominations from the Council in return for the re-imburement of the licence fee.

14 Other courses of action to be considered

14.1 The Local Authority must also consider whether there are any other courses of action available to them that may provide an effective method of dealing with the problem or problems in these types of HMO's. These include:

Private rented complaints service (city-wide reactive response)

14.2 Dealing with property complaints on a reactive basis does improve a number of properties across the city; however, this approach has limitations:

- This service is only available to those tenants who are aware of the service;
- Some tenants do not report the problems about poor property conditions and unsatisfactory property management because they are afraid it will jeopardise their tenancy and their home;
- Can only be used to enforce minimum legal standards (compared to licensing where more than just the legal minimum can be required as part of the licence conditions);
- There is no requirement for the landlord/agent/person involved in the management of the property to meet the 'Fit and Proper Person' test;
- Given the recent reductions in central government General Funded allocations to local authorities and the restrictions on the Bristol City Council budgets, there is not sufficient funding available to sustain an approach of just responding to complaints
- Although the council operates a 'triage' system to prioritise the worst cases the

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reactive nature of only operating a reactive complaints service is not cost effective as it is not possible to predict the level or severity of complaints coming into the service at any given time. A proactive area based approach such as that being proposed, tackling the issues and problems that have been identified and prioritised, is more efficient;

- NB. Individual complaints outside of licensing schemes will continue to be dealt with through this approach.
- Do we not need to include here protections for terminating tenancies under HA S21 which cannot be used in licensing areas if a property is unlicensed??

14.3 A reactive complaints service approach to tackle the issues in the proposed area, without the proposed additional licensing scheme, is not considered the most satisfactory course of action as it will not significantly improve the standards and management of HMOs in the proposed area.

Mandatory Licensing

14.4 A mandatory licensing scheme has been operating since 2006. Although there has been improvement in the standards of the HMOs covered by that scheme, based on the number of complaints that are still received about these properties there is still a problem with HMOs. The BRE report identified that in the region of 5,500 HMOs in the proposed area that could potentially require a license under Additional licensing criteria. The BRE predict that a further 800 HMOs in Bristol would be included in the extension of mandatory licensing. However this is still significantly less than the number of HMOs in the proposed area. A higher number than expected of applications were received when the mandatory licensing criteria changed and this has impacted on the numbers of properties licensable under this proposal to 4,300.

14.5 The council's view is that the existing and the proposed extension of mandatory licensing will not tackle the issues in the proposed area. Without the proposed additional licensing scheme, mandatory licensing alone is not considered the most satisfactory course of action as it will not significantly improve the standards and management of the other HMOs in the proposed area.

Self-Regulation – Rent with Confidence Scheme

14.6 Rent with Confidence is a voluntary scheme and does not attract those landlords who continue to mismanage their properties or do not seek to meet their legal obligations. Bristol City Council has for many years encouraged self-regulation through accreditation schemes. Self-regulation identifies landlords and agents who have signed up to meet at least minimum housing standards and good management practice. These types of initiatives are important and form part of an overall package of measures the council and its partners use to improve standards and conditions in private rented housing across the city.

14.7 The council along with the three other West of England (WoE) local authorities initially delivered accreditation schemes directly. However, a relatively small number of properties were accredited and the cost of the schemes could no longer be maintained. In 2016 the WoE Rent with Confidence scheme was launched to increase the number of properties signed up to reasonable standards by approving third party accrediting organisations who meet the [Rent with Confidence requirements](#).

14.8 As can be seen from the evidence in the BRE report, there are still problems with the private rented sector and with HMOs in particular. Self-regulation cannot deal with problems in the sector as effectively as licensing can, in particular, where landlords are

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not complying voluntarily. This is because Rent with Confidence helps landlords who want to comply but has no power to make landlords improve properties.

14.9 Accreditation and discretionary licensing are complementary tools and those landlords and managing agents who are accredited under the WoE Rent with Confidence scheme will be able to claim a reward which reduces their licensing fee.

14.10 A self-regulated approach to tackle the issues in the proposed area, without the proposed additional licensing scheme, is not considered the most satisfactory course of action as it will not significantly improve the standards and management of HMOs in the proposed area, as the City Council cannot force landlords to join the scheme.

Co-Regulation

14.11 Co-regulation is a relatively new, and in our view, and an unproven regulatory concept. In broad terms it is a voluntary scheme where the local authority works in partnership with an accreditation scheme/other organisation to establish a framework where responsibilities for the management of properties are shared with other organisations. This type of scheme has risks associated with it as:

- It is not compulsory;
- It will be dependent on landlords volunteering to join the scheme and complying with its conditions;
- If a landlord chooses not to comply with the scheme rules there are only limited sanctions that can be enforced. Depending on the particular scheme, the local council will then inspect the property(s) and take action, where appropriate. Therefore, not only would this introduce a further tier of administration but would require the authority to resource these inspections and any action that followed; and
- Can only be used to enforce minimum legal standards (compared to licensing where more than just the legal minimum can be required in the licence conditions).

14.12 The costs for operating a co-regulation scheme of 5,500 properties would be significant (estimated costs for the proposed area would be in the region of £180,000 per annum). Given the recent reductions in central government General Funded allocations to local authorities and the restrictions on the Bristol City Council budgets, there is no funding available to fund additional officers to carry out these inspections and run the scheme.

14.13 There are a number of risks to the safety of tenants in the PRS when taking a co-regulation approach:

- As a significant number of tenants who fear revenge/retaliatory eviction will not come forward to report problems;
- As a rule, the condition of the property is not always assessed by an inspection;
- There is no requirement for the landlord/agent/person involved in the management of the property to meet the 'Fit and Proper Person' test;
- Only minimum legal standards can be enforced.

14.14 As there is no mandatory requirement to be a member of the scheme there is no guarantee of good conditions or property management.

14.15 A co-regulation approach to tackle the issues in the proposed areas is not considered the most satisfactory course of action as it will not significantly improve the standards of management and condition of the HMOs within the proposed area.

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Rogue Landlords

14.16 Rogue Landlord initiatives identify and targets rogue landlords and agents in the city who exploit tenants, including recent arrivals into the UK. Enforcement action can be taken under a variety of legislation, including the Protection from Eviction Act, the Housing Acts and Trading Standards legislation. Officers work in partnership with the police and other organisations to identify incidences of slavery and trafficking.

14.17 In 2015 Bristol City Council was awarded funding from the Department of Communities and Local Government to carry out work, over a twelve month period targeting criminal landlords and agents.

14.18 The outputs are encouraging; however, this initiative only allows enforcement action to be limited to the current legal minimum standards (unless the properties concerned require a licence). Additional Licensing conditions cover gaps in the legal minimum standards to ensure a reasonable standard of management is achieved and works systematically through targeted areas.

14.19 In 2017 further government funding was made available to continue this type of action. The scheme will run for two years and will target all parts of the city, not only those areas that meet the requirements for property licensing. In particular, there are parts of the city where there are areas of poor-quality rented accommodation but otherwise low levels of rented houses and flats. The initiative will not be able to deal with properties at a sufficient scale to reduce a significant proportion of the problems of standard and management of HMOs we have identified.

14.20 A rogue landlord initiative to tackle the issues in the proposed area without the proposed additional licensing scheme is not considered the most satisfactory course of action as it will not significantly improve the standards and management of HMOs in the proposed area due to the limited size of the programme.

15 Additional Licensing

15.1 Additional licensing is the preferred option for these specific areas as it will have a significant impact on the management and condition of HMO's.

15.2 One of the major benefits of this scheme is that the council has the powers to investigate properties it believes need to be licensed. Therefore tenants, who may fear retaliatory eviction or harassment, do not have to come forward with problems in their homes.

15.3 Using the additional licensing powers under Housing Act 2004 will ensure that there are satisfactory management practices in place and that the licence holder/manager is 'Fit and Proper' to manage the HMO.

15.4 Licensing conditions will also enable the council to deal with issues where there are no other minimum legal powers available to tackle the issue.

15.5 Additional licensing will provide confidence and assurance to existing or prospective tenants that licensed properties are well managed and safe to occupy.

15.6 The council will require that HMOs meet certain standards and landlords will need to ensure that their properties are well managed and safe. If they don't meet the licensing conditions they will be breaking the law and could be prosecuted.

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² Definition of HMOs: Section 254, Housing Act 2004

³ Certain poorly converted blocks of flats: Section 257, Housing Act 2004

⁴ Definition of an HMO licensable under Mandatory licensing scheme: Statutory Instruments 2006, No.371, Housing, England: The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006

⁵ Additional Licensing Conditions: Section 67, Housing Act 2004

⁶ Educational Establishments: SI420 The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2016

⁷ HHSRS Part 1, Housing Act 2004

15.7 Through property licensing the council will be able to work with landlords/agents/owners and other organisations to deal with other issues in the area such as empty properties, overcrowding, anti-social behaviour and crime reduction

15.8 The council will work with landlords and agents in the designated area to offer training, advice and guidance on a wide range of issues affecting the private rented sector including a landlords and tenants legal requirements and responsibilities. The aim is to provide existing or potential private landlords the basic tools to ensure they meet requirements to competently manage their accommodation.

15.9 The council believe that licensing all HMOs in the proposed area will have a positive impact on private tenants living in these properties as it will raise standards of management and conditions of their homes through inspection and increased regulation. This will also benefit landlords who are already compliant and put at a competitive disadvantage by non-complaint landlords in the same area.

15.10 Having considered the issues and problems identified in the proposed areas and the resource restraints, the council believe an additional Licensing scheme (funded through Licence fees) means the Council will have the necessary resources to ensure HMOs in the proposed area meet the licensing standards.

Partnership Working

15.11 The introduction of an additional licensing scheme will enable the council to adopt a proactive, co-ordinated and holistic approach in connection with dealing with poor management practises and poor property conditions affecting the private rented sector in the designated area. A key component to the work carried out in the area will be the collaboration and engagement with partner agencies. These include Avon and Somerset Police, Trading Standards, Housing Benefits/Council Tax, Anti-Social Behaviour and the Neighbourhood Enforcement Team.

15.12 We acknowledge that many landlords are compliant and engage with the council through the various channels mentioned above; however, many do not. Working with both landlords and tenants the aim will be to improve relationships between parties that have, in some cases been adversarial.

15.13 Additional licensing powers will enable the council to increase standards in HMO accommodation and ensure effective management through more extensive control.

Additional Licensing Conditions

15.14 Regard has been had to the Regulators Code April 2014 when setting these conditions and our conditions are compliant with the Code. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

15.15 There are conditions that must be applied to all additional licences issued. These are contained in section 67 of the Housing Act 2004 and include, the provision of certificates for gas safety, safety of electrical appliances, smoke alarms/ fire detection and Energy Performance Certificates (where required). The Government has also recently confirmed that it will be mandatory condition for landlords to provide suitable facilities for the storage and disposal of refuse and recycling in accordance with the council's waste and recycling collection requirements.

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³ Certain poorly converted blocks of flats: Section 257, Housing Act 2004

⁴ Definition of an HMO licensable under Mandatory licensing scheme: Statutory Instruments 2006, No.371, Housing, England: The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006

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15.16 In addition, the local authority may apply other conditions to regulate the management, use or occupation of the property. These conditions can include measures to deal with the antisocial behaviour of tenants and their visitors in relation to the residential use of the property. Other conditions may relate to the maintenance of facilities and restrictions on the occupation of the property.

15.17 It is considered essential that conditions for additional licensing schemes should include provision to improve tenancy management as this will give reassurance to tenants with regard to their tenancy rights and conditions and should also contribute to a reduction in antisocial behaviour by tenants affecting local residents.

15.18 A condition requiring compliance with Bristol City Council's Code of Good Management Practice will be central to how these properties should be managed; this includes a section on good neighbourliness. This Code is also used in the existing HMO licensing schemes. Non-compliance with the conditions can be a criminal offence which can lead to the council using its enforcement powers where it is in the public interest to do so.

15.19 Persistent poor management and or non-compliance of licence conditions can also lead to the revocation of a licence as well as the consideration of removing a person's fit and proper person status from the Licence holder. This would result in the licence holder no longer being able to operate the HMO themselves.

15.20 Before granting an additional licence, a local authority must also consider the level of occupation in the HMO under section 63 of the Act. The council therefore must be satisfied that the house is reasonably suitable for occupation by not more than the maximum number of households or persons mentioned in subsection (4) or that it can be made so suitable by the imposition of conditions under section 67.

15.21 Licensing would require landlords and those involved in the management of the property(s), subject to additional licensing to be 'Fit and Proper Persons'. This, together with other tools available to the local authority, is seen as an important part of a strategic approach where there are concerns about poor property management. The Licensing Team will work with other Council teams such as the private rented team to ensure the properties that they use in the private sector to discharge the council's homelessness duty are licensed where applicable.

15.22 The council will continue working with the Police, Street Scene and the ASB team to deal with ASB issues associated with HMOs such as problems from overcrowding, rubbish, graffiti, noise and other nuisance.

15.23 Our experience in the both mandatory and discretionary licensing has proved that these joint working practices have proved to be very successful in resolving a multitude of issues affecting the local community.

Fit and Proper Person checks

15.24 Under the Housing Act 2004, if the council is to issue any property licence it must be satisfied that the proposed licence holder is a fit and proper person and the most appropriate person to hold the licence. It must also be satisfied that the proposed manager of the house is a fit and proper person to be the manager of the house. If not, the licence must be refused unless other arrangements can be agreed.

15.25 The licence may be revoked where the council no longer considers that the

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⁷ HHSRS Part 1, Housing Act 2004

licence holder is a fit and proper person to be the licence holder and where the council no longer considers that the management of the house is being carried out by persons who are not in each case fit and proper persons to be involved in its management.

15.26 These requirements are to ensure that those responsible for managing the property are of sufficient integrity and good character to be involved in the management of the particular residential property, and as such they do not pose a risk to the welfare or safety of persons occupying the property.

15.27 However where a property is not licensed, there is no control over persons who are not fit and proper managing property outside of the requirements of licensing.

16 Consultation

16.1 Before making a designation the authority must take reasonable steps to consult with persons who are likely to be affected by the designation and give them the opportunity to make their views known.

16.2 The initial consultation period ran for twelve weeks from 19th February 2018 to 13th May 2018. Feedback was received from people who may be directly affected and other members of the public. Its findings have been published on our website bristol.gov.uk/licensing scheme and the Consultation Report is included in Appendix B1 of this report. Over 2,700 responses were received to the initial consultation survey.

16.3 A communications plan was drawn up to enable the council to reach as many people as possible in a range of formats. The consultation was publicised as widely as is reasonable; however, there is no national register of private landlords and not all landlords are known to us and so cannot easily be contacted directly. The council used all permissible landlord/tenant data and information available to contact as many stakeholders as possible. The primary information source was Bristol City Council, Council Tax records (as at 1 September 2017).

16.4 Since we first consulted however a High Court case (*R Gaskin v Richmond-upon-Thames LBC* [2018]) has determined that this type of proposed HMO licensing scheme (Part 2, Housing Act 2004) is an authorisation scheme and is subject to European legislation (EU Services Directive 2006).

16.5 In order to comply with this directive the council was required to review the way it structures the proposed property licence fees and therefore a second consultation took place between 8th November 2018 and 20th December 2018 on a revised fee structure. We received 275 responses to this consultation. The findings from this consultation can be found in Appendix B.2.

16.4 All consultation responses have been considered, analysed and information regarding the findings made available. These findings have been taken into consideration before deciding whether or not to recommend to the council's Cabinet to declare a new scheme.

17 Fee proposal

17.1 In accordance with section 63, Housing Act 2004 the council proposes to charge a fee for licensing a HMO to cover the costs of running the scheme.

17.2 The original fee structure that formed part of the initial consultation was a one-off,

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overall payment covering all elements of licensing from beginning to end. However, after the High Court ruling (R Gaskin v Richmond-upon-Thames LBC [2018]) the property licence fee must now be split into two parts:

Part 1 - Processing the application: this part of the fee, payable upon application, only covers the cost of obtaining authorisation under the scheme, i.e. processing the licence application.

Part 2 - Enforcement and administration: this part of the fee is levied only on successful applicants, to cover the remaining costs of administration and enforcement.

17.3 In addition, in order to comply with the above directive the council will no longer be able to include a significantly increased fee for late applications. The effect is that the cost of licensing proposed is now spread more evenly across the whole of the fee structure.

17.4 There has also been a reduction in the numbers of properties now expected to require a licence in the area from 5,500 to **4,300** properties. The reduction is factored into the fee calculation.

17.5 A second consultation was therefore undertaken between 8th November 2018 and 20th December 2018 on a revised fee structure only (all other issues were covered in the first consultation). The findings from this consultation can be found in Appendix B.2.

17.6 As a result of this ruling and the comments from our consultation exercises the council has restructured its fee proposal.

18 New Fee Proposal

18.1 The overall predicted cost of the scheme over five years was at the time of publishing the proposal document for the first consultation (February 2018) was £5.9 million. This was based on approximately 5,500 HMOs being included in the proposal. However, there are now 4,400 properties in the area proposed to require a licence but only 4,300 attract a fee. This reduces the predicted cost to £4.9M.

The reduction is due to a number of factors including, a reduction in the number of HMOs expected to require a licence under this Additional Licensing proposal. The reductions are due to a higher than expected number of HMO's now requiring a licence under new mandatory licensing legislation in the area.

Also following the first consultation consideration was given to a number of issues raised by providers of HMOs which are approved under statutory based code of practices under the Housing Act 2004 (s233). These are known as (Non-educational establishment ANUK/UKLA approved larger HMOs). As a result the Council does not now include these types of HMOs within this proposal. This is due to council accepting that these organisations meet the statutory codes and they are being managed in line with the code.

It was further accepted that enforcement action taken through civil penalties will generate income arising from licensing related enforcement and therefore a reduction in the predicted costs has been included to reflect this.

18.2 The licence fee cost is broken down into £1.6M for Part 1 and £3.3M for Part 2. This equates to a split of 33% for part 1 and 67% for part 2. The fees have been apportioned using these percentages, see Table 1 below.

18.3 There is an additional fee of £100 for applicants who are found to be unlicensed.

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18.4 The council has retained the previously proposed discounts for landlords who provide valid safety certificates (£150) and who are members of the West of England Rent with Confidence scheme (£50) at the time of application.

18.5 If additional fee and discounts are due, any addition or reductions to the fee will be applied from when Part 2 of the fee is due. For example, if you have submitted the required certificates and met the Rent with Confidence discount conditions before your Part 2 fee payment request is sent out, the discount of £150 and £50 will be deducted from the Part 2 fee due.

18.6 If the council finds your property to be unlicensed the extra £100 due will be added to the Part 2 bill.

18.7 HMO's managed by registered charities that require an additional licence will need to submit an application by the designated deadline date; or where HMOs are newly rented after the deadline date, within 28 days of a property requiring a licence. In these circumstances no fee is payable. If the HMO requires a licence and an application is not submitted within the above deadlines, no fee exemption will be applied and the licence fee becomes payable.

18.8 Table 3: Fee split

Application Status/payment	Fee (% split) ³	New application ⁴	Renewal ⁴
Part 1 Processing the application ¹	33%	£414	£348
Part 2 Enforcement and administration ²	67%	£841	£707
Total	100%	£1255	£1055

¹payable when submitting the licence application

²payable upon successful application prior to the issuing of the proposed licence

³ the fee is split proportionately to reflect the costs of the relevant parts of the licensing function.

⁴ Less any rewards of up to £200, plus £100 if found to be unlicensed.

18.9 Table 4: Total Fee breakdown

Application Status	Discount or (Additional Fee) Amount	Fee for New Application	Fee for Renewal Application
Licence application - with no discount or additions applied	£0	£1,255	£1,055
Minus discount for Rent with Confidence membership only but no safety/EPC certificates	£50	£1,205	£1,005
Minus discount for satisfactory safety/EPC certificates but no Rent with Confidence membership	£150	£1,105	£905
Minus discount for both Rent with Confidence membership and satisfactory safety/EPC certificates	£200	£1,055	£855
Plus Investigation cost for finding unlicensed property	(£100)	£1,355	£1,155

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⁷ HHSRS Part 1, Housing Act 2004

19 Licence period

Licences are normally issued for five years. This can be reduced in certain circumstances where the council needs to do so for the purpose of ensuring good management and standard of the property are maintained.

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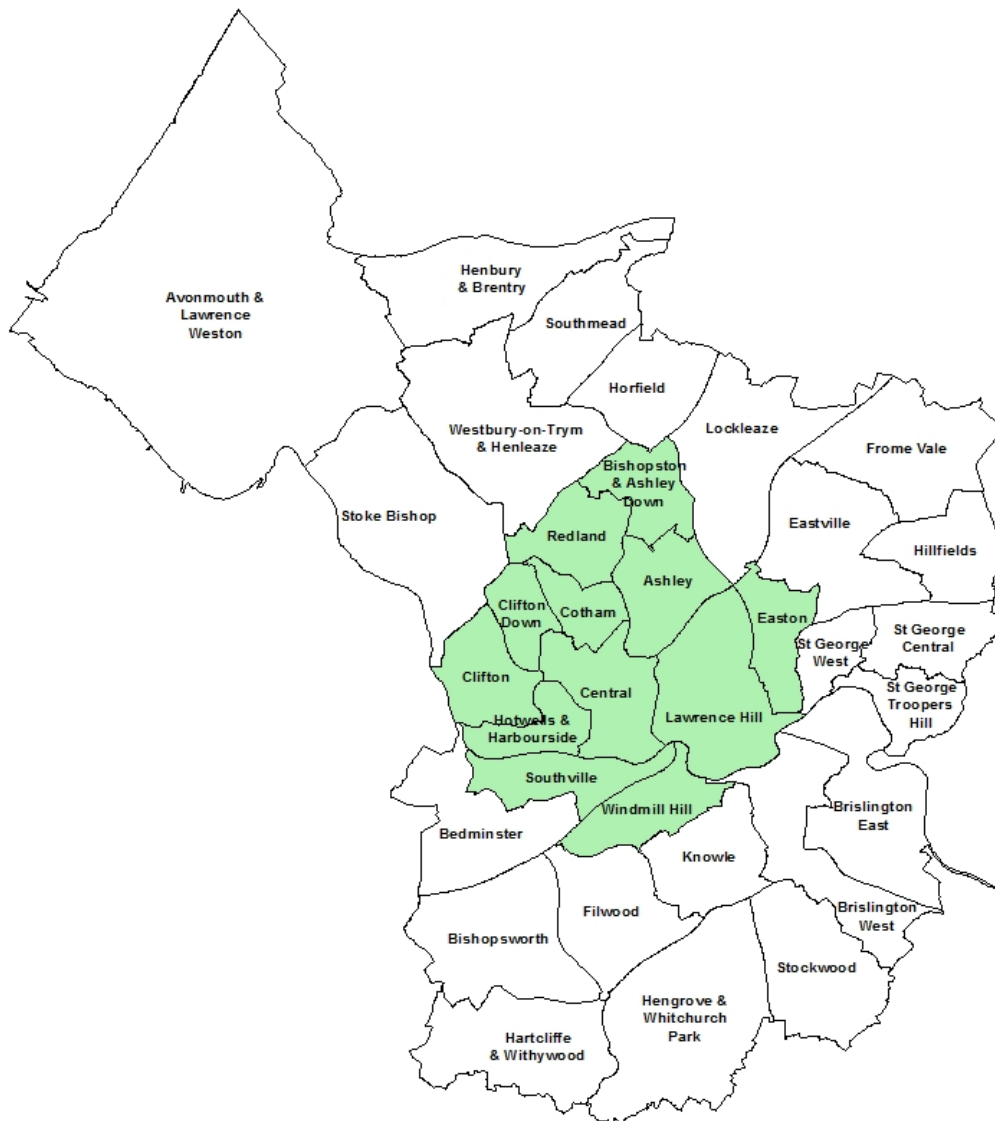
⁶ Educational Establishments: SI420 The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2016

⁷ HHSRS Part 1, Housing Act 2004

Appendix 1

To check which ward a property is located please got to our website
<https://www.bristol.gov.uk/voting-elections/polling-station-finder>

Proposed Additional Licensing Scheme 2018 Wards from May 2016



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Appendix 2 Licence Conditions

West of England - Bristol City Council's

Houses in Multiple Occupation - Licence Conditions

The licence holder and/or manager:

1. Must, if gas is supplied to the house, produce to the Council, annually, for their inspection a satisfactory gas safety certificate obtained in respect of the house within the last 2 months.
2. Must keep electrical appliances and furniture made available in the house in a safe condition and must supply to the Council, on demand a written declaration verifying the safety of the appliances and furniture.
3. Must supply to the occupiers of the house a written statement of the terms on which they occupy it.
4. Must request a reference for each new person wishing to occupy the house. The reference request should include questions about anti-social behaviour, acting in a non-tenant like manner and any problems in respect of non-payment of rent. References must be retained for a minimum of 6 months from the issuing of the licence and must supply to the Council on demand.
5. Must provide, on request from other landlords an honest, factual and accurate written reference relating to existing or past occupiers.
6. Must issue new tenants/occupiers with a tenancy/written agreement that include clauses that will allow the licence holder to take reasonable steps to tackle anti-social behaviour.
7. Must have facilities, such as a telephone number, email address or postal address, to receive and respond to initial complaints about the behaviour of tenants or their visitors.
8. Must take all reasonable steps to deal with anti-social behaviour perpetrated by occupiers and/or visitors to the property.
9. Must take all reasonable steps to ensure that the property is not used for illegal or immoral purposes.
10. Must complete the West of England Landlord Development Programme or otherwise have evidence of successfully completing equivalent training by a recognised landlord association on demand.
11. Must ensure that the property is inspected on a regular basis to assess if there is evidence of anti-social behaviour; this should be at least quarterly, but more frequently if anti-social behaviour has been established.
12. Must take all reasonable steps to keep the exterior of the property free from graffiti and fly posters.
13. Must ensure that tenants have 24hrs direct access to all toilet, personal washing and cooking facilities and equipment.

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14. Must ensure that there is no obligate sharing of bedrooms.
15. Must supply to the Council on demand the names of all occupants.
16. Must ensure that the West of England Code of Good Management Practice is to be complied with and a copy is to be permanently displayed so as to be visible to all tenants.
17. Must ensure any person involved in, or becoming involved in the management of the property after the licence date must be a fit and proper person and must supply the Council on demand with a completed 'declaration in respect of a fit and proper person' form for each person.
18. Must notify the Council in writing of any change to the name, address or any other contact details (including email address) of the licence holder, manager or any other person involved in the management of the property, within 14 days of that change.
19. Must comply with the Bristol City Council HMO licensing standards document. This document may be updated during the term of the licence and it is the responsibility of the licence holder and/or manager to ensure that they are aware of, and are complying with the latest version. The latest version of the licensing standards can be found at www.bristol.gov.uk/hmo.
20. Must ensure that the property is managed in such a way that it is maintained in good repair. Facilities and equipment must be kept in a safe condition and good working order. Worn or dangerous furniture or fittings must be replaced.
21. Must supply to the Council, where applicable, a current Energy Performance Certificate (EPC) on demand.
22. Must comply with the minimum level of energy efficiency for privately rented property required under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. From April 2018, landlords of privately rented property in England or Wales must ensure that their properties reach at least an Energy Performance Certificate (EPC) rating of E before granting a new tenancy to new or existing tenants. From 1 April 2020 these requirements will then apply to all private rented properties, all subject to any exemptions from this regulation.
23. Must meet current statutory requirements for electrical installation and supply to the Council, on demand a current (less than 5 years old) electrical installation condition report. Any category 1 or 2 defects in a report must be rectified. On the expiry of a report, a new report must be obtained and supplied to the Council within 2 months of the previous report's expiry date.
24. Must, where there is an existing fire alarm system, supply to the Council on demand a satisfactory certificate of inspection and testing as required under BS 5839-6: 2013.
25. Must ensure that a smoke alarm is installed on each storey of the house on which there is a room used wholly or partly as living accommodation and to keep any such alarm in proper working order.
26. Where there is a new tenancy these alarms must be checked on the day the tenancy begins and supply on demand a declaration of the condition and positioning of any such alarms.

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27. Must ensure that a carbon monoxide alarm is installed in any room (includes a hall or landing) in the property which is used wholly or partly as living accommodation (includes bathroom or lavatory) and contains a solid fuel burning combustion appliance, and to keep any such alarm in proper working order. The alarms must be checked on the day the tenancy begins if it is a new tenancy and supply on demand a declaration of the condition and positioning of any such alarms.

28. Note – Solid fuel includes coal, wood, etc. A non-functioning, purely decorative fireplace would not constitute a solid fuel burning combustion appliance.

29. Must provide to the Council, on demand a declaration that the lighting system is in proper working order. Emergency lighting to be maintained in accordance with the relevant British Standard (BS5266: Part 1: 2005).

30. Must, where the LACoRS “Housing - Fire Safety, Guidance on fire safety provisions for certain types of existing housing” has been used to determine fire precautions, review the precautions annually or whenever there are alterations to the property or its contents or at changes of tenancy; to ensure the fire precautions are appropriate to the risk, written evidence of any review to be supplied on demand

31. Must provide written details of fire evacuation procedures to tenants/occupiers. Ensure that all tenants/occupiers are aware of fire and fault indications of the fire alarm system and are adequately familiar with controls (e.g. resetting). They must also be made aware of measures to avoid false alarms. These details must be supplied on demand.

32. Must, where food is provided, ensure food handlers have appropriate food safety training.

33. Must ensure that the layout of the property, including any numbering of rooms is not altered without first gaining written permission from the Council. Requests to alter the layout should be made in writing to Licensing Team, Private Housing, Bristol City Council and include a full description of the proposed changes.

34. Must ensure that the property is occupied in accordance with, and by no more than the number of persons and households specified in the licence.

35. Must, if the occupation of the property is in excess of the maximum permitted number, inform the Licensing Team, Private Housing, Bristol City Council in writing within 28 days of the over occupation occurring.

36. Must, if any proposed changes to the mode of occupation be submitted to the Licensing Team, Private Housing, Bristol City Council to determine if any changes to the conditions and the permitted number are needed.

37. Must provide suitable facilities for the storage and disposal of refuse and recycling in accordance with the Council’s waste and recycling collection requirements.

38. Must ensure that their name, address, any telephone contact number or email address are made available to each household and such details are clearly displayed in a prominent position in the property.

Address for sending documents to the Council: private.housing@bristol.gov.uk or Private Housing Licensing Team (100TS), Bristol City Council, P O Box 3176, Bristol, BS3 9FS

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Appendix 3 West of England - Code of Good Management Practice

It is a requirement of your licence conditions to comply with this code. Failure to comply without reasonable excuse could lead to a formal investigation and result in prosecution or a financial penalty of up to £30,000.

1. Conduct

The licence holder agrees to: conduct business with regard to the property and the tenancy in a reasonable and equitable manner and; to answer reasonable queries and issues raised by the tenants in a timely manner (in any event to respond within 5 working days of the query or issue being raised, emergencies should be replied to within 24 hours).

2. Inventories

Licence holders to ensure that an inventory is signed by both parties at the beginning of the tenancy (or as soon as practicable afterwards) and to give the tenant the opportunity both to carry out a joint inventory inspection at the outset and to discuss the inventory at the end of the tenancy.

3. Deposits

The Licence holder must comply with all statutory obligations regarding tenancy deposit protection if a deposit is taken.

4. Repairs and maintenance

The Licence holder must carry out repairs within a time period appropriate to the severity of the problem, keeping as far as is reasonably practicable to the following timescales:

- Emergency repairs: 24 hours (Affecting health or safety e.g. dangerous electrical fault, blocked WC, no hot water, etc.)
- Urgent repairs: 5 working days (Affecting material comfort e.g. no heating or fridge failure, serious roof leak, etc.)
- Other non-urgent repairs: 20 working days.

5. Landlord and tenant matters

The licence holder must comply with all statutory obligations under housing and landlord & tenant legislation; in particular the landlord shall not harass or threaten a tenant. Any eviction process must be carried out in accordance with legal requirements.

Access to the property (for inspection, repairs, monitoring or other reasons) should only be by prior arrangement with the tenant and on having given 24 hours' notice (except in emergencies).

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6. Property Management

The licence holder must ensure that they comply with current statutory requirements relating to the safe management of the property including duties relating any asbestos containing materials, Legionella risks and to carry out a Fire Risk Assessment on the common parts of the property. Further information on minimum requirements are available in the West of England Rent with Confidence Scheme standards www.westofenglandrentalstandard.co.uk/standard.

7. Pest Control

Where there is an infestation of pests in a licensed house in multiple occupation the licence holder must employ a competent pest control contractor to carry out appropriate treatments to eradicate any recognised pest species infesting the property.

8. Neighbours

The Licence holder must take reasonable steps to minimise any nuisance, alarm, harassment or distress that may be caused to neighbours by the way the property is used. The licence holder will provide occupiers of the immediately neighbouring properties a contact telephone number, address or e-mail address to report any problems and will ensure that "To Let" or "Let" boards are not left up as long-term advertising features (over 28 days); and to keep the external appearance of the property in a condition taking into account its age of the property, character and locality.

Appendix 4:

Building Research Establishment (BRE) Integrated Dwelling Level Housing Stock Modelling and Database for Bristol City Council, August 2017

found at:

<https://www.bristol.gov.uk/documents/20182/2870395/Bristol+Intergrated+Housing+Stoc k+Modelling+Database+Report.pdf/422e4bd6-56d1-ff8b-640c-6a0f6698873e>

¹ HMO Exemptions: Schedule 14, Housing Act 2004

² Definition of HMOs: Section 254, Housing Act 2004

³ Certain poorly converted blocks of flats: Section 257, Housing Act 2004

⁴ Definition of an HMO licensable under Mandatory licensing scheme: Statutory Instruments 2006, No.371, Housing, England: The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006

⁵ Additional Licensing Conditions: Section 67, Housing Act 2004

⁶ Educational Establishments: SI420 The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2016

⁷ HHSRS Part 1, Housing Act 2004