

# Additional Licensing Scheme Consultation Document

Portsmouth City Council

May 2022

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## **Executive Summary**

Approximately 25% of the Private Rental Sector (PRS) in Portsmouth are Houses in Multiple Occupation (HMOs). Data available to the council indicates that up to 6,000 dwellings in Portsmouth are potentially HMOs.

We want all Portsmouth housing to meet suitable standards of maintenance, to be managed professionally and to a high standard. Under current laws, the council can only licence around 20% of the estimated 6,000 HMOs in Portsmouth. Additional licensing allows the council to designate that the whole city or part of its area should be subject to additional licensing controls. It may also choose to licence many different types of HMO including purpose-built flats and buildings which have been poorly converted in the past.

Through the current mandatory HMO licensing scheme the council have found upon inspection that approximately one third of HMOs in the city have significant hazards, which present potential health and safety issues to the occupants. HMOs are the cheapest rental option in the PRS and those living in them are often on the lowest incomes. National studies have shown tenants on a low income and living in poor conditions are unlikely to report disrepair issues to the local authority due to fear of retaliatory eviction, the financial strain this could cause in potential rent increases or having to find alternative accommodation, and the sense that they cannot afford better conditions elsewhere. This is reflected in the shared housing survey recently conducted by the council.

Licensing enables the council to set a common policy across all HMOs so that all landlords work to the same standards and that poorer properties are improved over a five year time frame. The aim of the additional licensing scheme is:

- To protect private rented tenants of HMOs from poorly managed and maintained properties.

The consultation document sets out the context of HMO licensing against the background of the council's Private Rented Sector Housing Strategy 2021-2026 and the proposal to consult on additional HMO licensing.

The document contains a description of the types of HMO we are intending to licence and how the proposed licensing scheme will work for applicants.

It is our intention to extend HMO licensing to all shared properties with three or more tenants and other self-contained flat type HMOs which are currently excluded from mandatory licensing. Proposed Licensing fees are included in the appendices.

A risk assessment has been carried out and it is believed that the risks to the council from introducing the scheme are manageable.

We welcome your feedback on these proposals.

## **1.0 Introduction**

### **1.1 Consultation**

This document seeks your views on Portsmouth City Council's plans to designate a city wide Discretionary Additional Houses in Multiple Occupation (HMO) Licensing scheme under Part 2 of the Housing Act 2004.

We want to hear your views about the proposal to introduce further HMO licensing in the city. If you are a tenant, resident, landlord, letting agent or a business living or operating in the area you could be affected by the proposals outlined in the document. If you live or operate outside of the proposed licensing area and might be indirectly affected by the proposal, we would also like to hear your views.

Local authorities are required to conduct a full consultation when considering the implementation of an additional licensing scheme. Our consultation is being carried out over a 10 week period from the 23<sup>rd</sup> May 2022 to the 31<sup>st</sup> July 2022.

#### **How to respond**

We want to know what you think about our proposal by 31<sup>st</sup> July 2022. To let us know your thoughts, please complete our online survey which you can view at:

<http://www.portsmouth.gov.uk/HMOlicensing>

Or return a survey form to:

Private Sector Housing (Additional Licensing Scheme)

Floor 1 Core 4, Civic Offices

Portsmouth

PO1 2AL

Hard copies of the survey will be made available at the help desk in the Civic Offices, Guildhall Square, Portsmouth from May-July, subject to national COVID-19 restrictions:

You may like to attend one of our live drop-in events, Find the details and more information at:

<http://www.portsmouth.gov.uk/HMOlicensing>

## 1.2 Portsmouth's Private Rented Sector Strategy

The council introduced a new Private Rental Sector Strategy in January 2021. This strategy includes wider aims to: To achieve an active and well-functioning private rental sector which works fairly for all, and for the private rental sector to be seen as a desirable type of tenure which meets the needs of those who use it, with support being focussed on those who need it most. Implementing an additional licensing scheme was included as a proposed action as part of this strategy and sits within the council's wider objectives for making more good quality homes available for our residents. This consultation is in line with the commitments of the Private Rental Sector Strategy.

## 1.3 Mandatory and Additional HMO Licensing

The Housing Act 2004 introduced for the first time mandatory licensing for all properties falling under its definition of house in multiple occupation (HMO). This allowed local authorities to regulate the physical and amenity conditions, layout and management standards of certain shared properties usually of three or more storeys. This definition was expanded in 2018 to include any property let privately to five or more individuals (including children) forming more than one household, irrespective of the number of storeys. Landlords are obliged to apply for a licence for all property meeting this HMO criteria within their local authority. A failure to do so can lead to prosecution or a civil penalty fine of up to £30,000.

Additional licensing allows a local authority (subject to public consultation) to licence a much wider range of HMOs within its area. This includes flats in purpose-built blocks, three or four person HMOs and poorly converted flats where less than two thirds of the flats are owner occupied. This latter type are known as section 257 HMOs. In the case of Portsmouth, mandatory HMOs (around 1,200 properties) make up approximately 20% of the total HMOs that could be potentially licensed, the others being non-licensable either because they have less than five residents, or they are in purpose built blocks or they are section 257 HMOs.

## 1.4 Background of Houses in Multiple Occupation Licensing in Portsmouth

The city council previously operated an additional licensing scheme for HMOs from 27 August 2013 to 27 August 2018. This meant that all HMOs, regardless of size, within postcode areas PO1, PO4 and PO5 were required to have a licence issued by the Council's Private Sector Housing service. Over the five-year period of the scheme, 2184 licences were issued to landlords of HMOs. Legally, any renewal of additional licensing required evidence that it had failed to deal with the problem that led to its introduction in the first place. This evidence was inconclusive at that time and therefore the scheme ceased in August 2018.

In October 2018, two months after the end of the additional licensing scheme, The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 changed the statutory criteria for Mandatory Licensing of HMOs, meaning that more properties were required to be licenced. This was reported to the Cabinet on 04 December 2018.

Since 2018 the city council has operated the statutory licencing schemes only for HMOs, with oversight from the HMO (now PRS) Governance Board. Throughout this time the board, and officers, have monitored the reports of issues within HMOs.

## 1.5 Types of HMOs in Portsmouth

There are a variety of HMO types across Portsmouth. Broadly they fall into the following categories:

- Traditional type bedsit HMO often containing a small kitchen but possibly sharing a bathroom elsewhere in the property often occupied by single persons.
- Shared houses or flats in multiple occupation; these are the most common type of HMO in Portsmouth.
- The third group are loosely, hostels and hotels taking single people or those placed there by the council or other council's as temporary accommodation. These are not to be confused with short term let properties advertising rooms for rent on a nightly basis. There are some properties where both short term lets and nightly letting take place simultaneously.
- Guardian Properties. In these properties, occupiers are issued a licence to "look after" an empty building, often commercial in origin whilst plans are made for redevelopment or sale. These properties may become HMOs if more than three tenants occupy the premises.
- The final type of HMO is converted blocks of flats where the conversion does not meet relevant building standards and less than least two third of the flats are owner occupied. All flat conversions undertaken before 1991 will fall into this category subject to the occupation rule as will some converted after this date if they do not meet the building regulation standards. This does not apply to purpose-built blocks. These are known as section 257 HMOs.

## 2.0 The legislative framework

### 2.1 Selective and additional licencing

The Housing Act 2004 enables local authorities to designate areas as subject to licencing. There are two types of discretionary licencing schemes; Additional licencing and Selective Licencing. A description of the two types of licencing, and the legal frameworks are provided below. If a scheme is designated all relevant properties within the designation area must be licenced and it is the responsibility of the landlord to ensure they are compliant with the scheme. The term 'discretionary' is due to the local authority's power to choose to implement and consult on such schemes.

#### **What is Selective Licencing?**

The Housing Act 2004 gives council's the powers to introduce selective licensing schemes for all privately rented properties in designated areas for a period of up to five years. A selective licensing designation can only be made if the designated area has a high proportion of properties in the private rented sector and is experiencing one or more of the following criteria:

- Low housing demand (or is likely to become such an area)
- A significant and persistent problem caused by anti-social behaviour
- High levels of crime
- Poor property conditions
- High levels of migration
- High levels of deprivation

Selective licensing looks to regulate all private rented accommodation within a defined area, using robust licence conditions.

The council considered the introduction of selective licensing in the Private Rental Sector Strategy 2021-2026 and concluded that the data was unclear to justify such action.

### **What is additional licensing?**

Sections 56 and 57 of the Housing Act 2004 provide local authorities with the power to designate areas as being subject to an additional licensing scheme, in relation to some or all of the houses in multiple occupation (HMO) in that area which are not already subject to mandatory HMO licensing. A HMO is any property (house or flat) occupied by three or more people comprising two or more households who share facilities (kitchen, bathroom and/or toilet) and occupy the property as their only or main residence, even if they are all friends and occupy the property on a single tenancy.

It can also include converted blocks of flats known as section 257 HMOs as previously described. The nature of these properties is that they may contain any number of different residents including leaseholders, freeholders and tenants. Ownership and control of such properties can be complex with right to manage companies, letting agents, managing agents and absentee owners all of whom may have some interest in how a property is run. Licensing provides a means by which a single party takes responsibility for the property and has responsibility to ensure that it is managed effectively.

The other significant feature of these HMOs is that the fire precautions will by definition be lacking or not up to the standards of an average new building property because they were converted prior to the 1991 building regulations (or subsequently but were never made compliant) which required structural fire safety precautions to a higher standard. Retrospective smoke detectors, fire alarms and emergency lighting may be required.

In 2010, a general approval was issued to enable local authorities to designate additional licensing schemes in their area without the Government's approval, provided there is a minimum 10 week consultation period. Once the designation is in force there must be a period of three months before it can come into operation.

## 2.2 What must the local authority consider in implementing an additional licensing scheme

In applying an additional licensing scheme, the local authority must:

- Consider that a significant proportion of the HMOs (that will be subject to the proposed designation) in the area are being managed sufficiently ineffectively as to give rise, or likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
- Consider whether there are any other courses of action available to them that might provide an effective method of dealing with the problem or problems in question.
- Consider that the making of the designation will significantly assist them to deal with the problem or problems

Any additional licensing scheme must form part of the local authority's housing strategy and seek to adopt a co-ordinated approach in connection with dealing with homelessness, empty properties, and anti-social behaviour affecting private rented property. This has to be combined with other courses of action available to the local authority and those available to other persons.

HMOs statistically present significantly greater risks to tenant's health and safety than comparable single occupancy dwellings. Living in such conditions can also have a significant impact on the mental health and wellbeing of the occupants.

For many people in this situation, their housing choices are limited due to socioeconomic status and availability of suitable alternative accommodation. Local housing allowance caps have meant that for some, shared accommodation is the only affordable option. Issues such as a lack of community cohesion due to high turnover of tenancies can also be problem, especially where property management issues are present. Primarily, additional licensing in Portsmouth would look to address issues related to property management and conditions.

## 2.3 Types of HMO that may be subject to Licensing

Mandatory licensed houses in multiple occupation can broadly be defined as a property that is occupied by five or more occupants forming more than one household, and where those persons share facilities, and are exempt from additional licensing regulation.

Following an assessment of the evidence, it is proposed that additional licensing will cover the full range of licensable HMO premises across Portsmouth. The proposed additional licensing scheme would apply city wide to all houses in multiple occupation (HMO) that are privately rented and occupied under a tenancy or licence

but fall outside the remit of the existing mandatory HMO licensing scheme. This would include:

- HMOs that meet the standard test, self-contained flat test or converted building test in section 254 Housing Act 2004 and are occupied by three or four persons comprising two or more households;
- HMOs that comprise a purpose-built flat occupied by three or more persons comprising two or more households that is situated in a block comprising three or more self-contained flats, commonly these will include HMOs in mansion blocks, other purpose-built blocks and council blocks; and
- Larger section 257 HMOs.

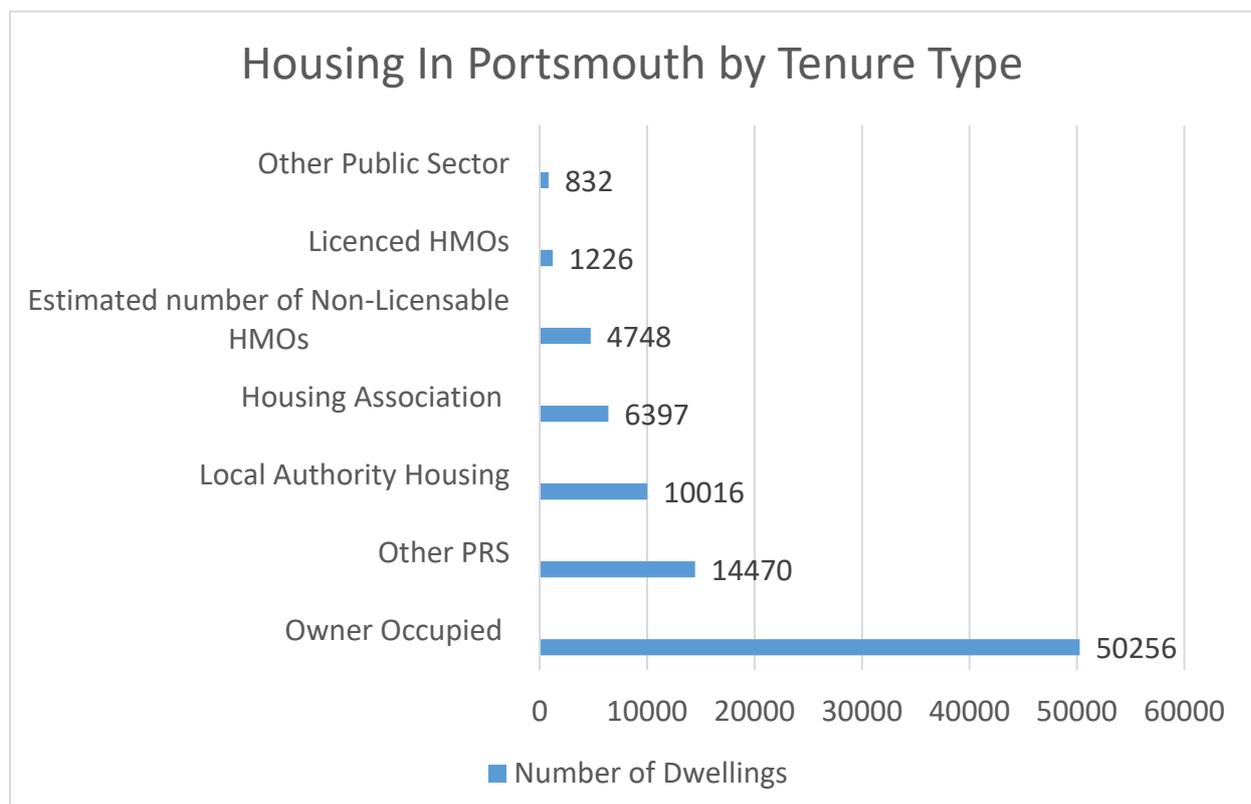
Further details may be found in section 4 of this document

### 3.0 The evidential base to support an additional licensing scheme

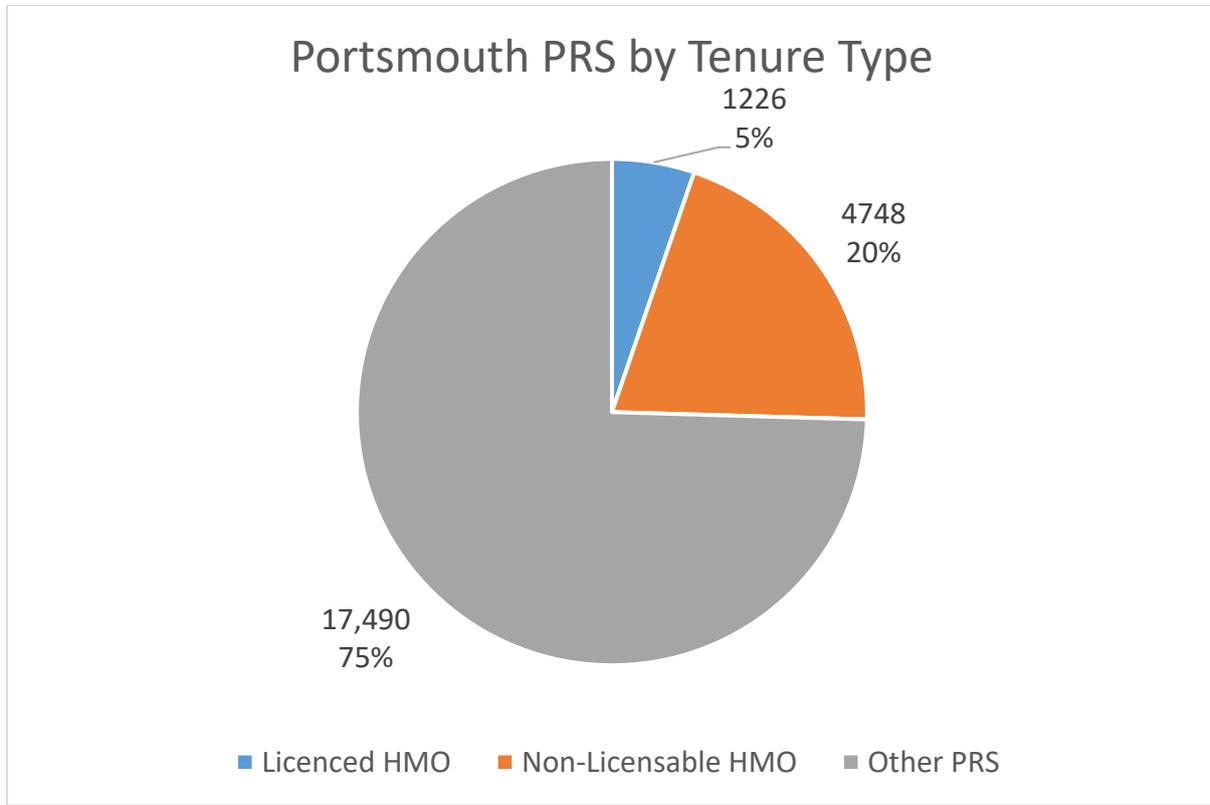
#### 3.1 Housing Tenure in Portsmouth

All the figures in the data presented below are based on the current known number of licenced HMO properties in Portsmouth, currently 1,226 properties, and uses data obtained by the Building Research Establishment (BRE) to indicate the total number of non-licensable HMOs in Portsmouth, believed to be 4,700 properties. The total number of HMOs in the city is therefore believed to be approximately 6,000.

The following table shows the breakdown of the tenure types in Portsmouth.

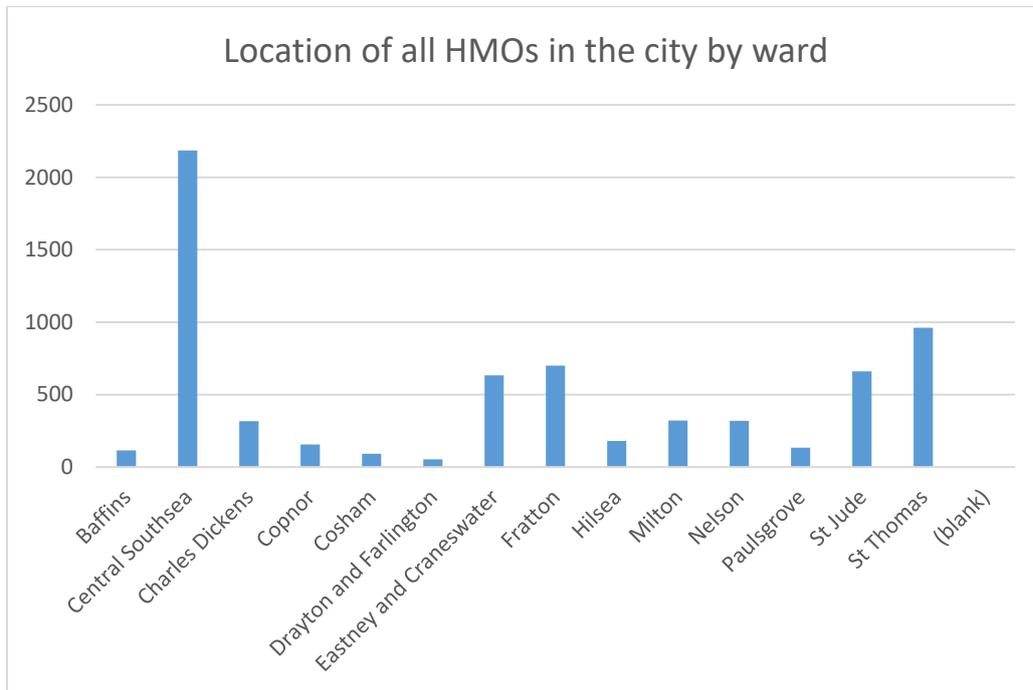


HMOs account for approximately 25% of the total Private Rental Sector (PRS) in Portsmouth.



Of the total Private Rental Sector 5% is made up of Licensed HMOs, and 20% are HMOs which currently do not require a mandatory licence. It is estimated that 80% of HMOs in the city do not currently require a licence.

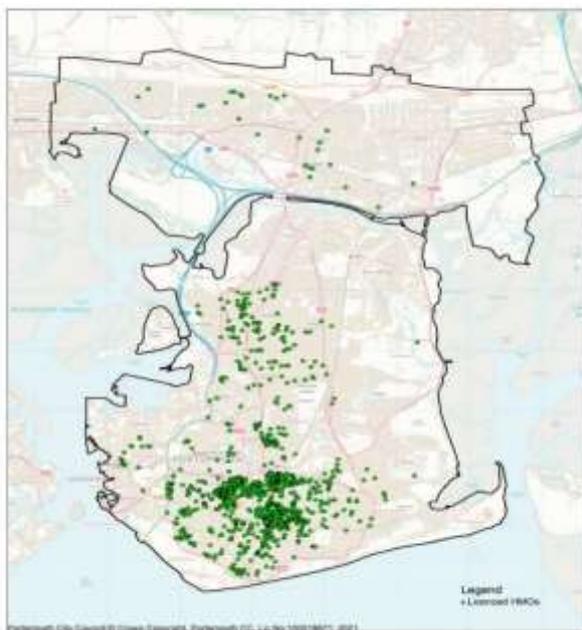
### 3.2 Location of HMOs in the City



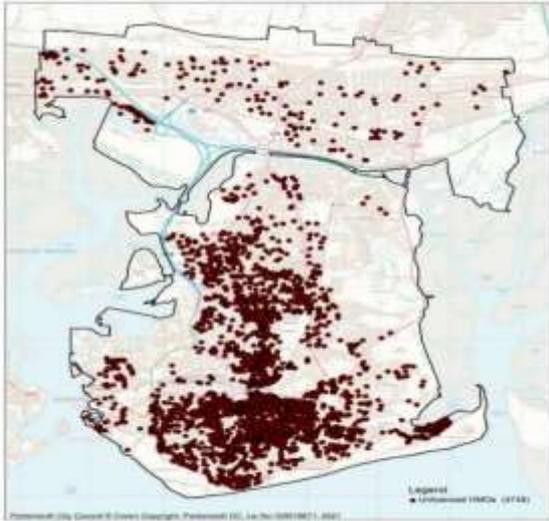
The wards with the highest numbers of HMOs in the City are Central Southsea, St Thomas, Fratton, St Jude, and Eastney and Craneswater.

The following maps show a visual representation of the location of HMOs in City.

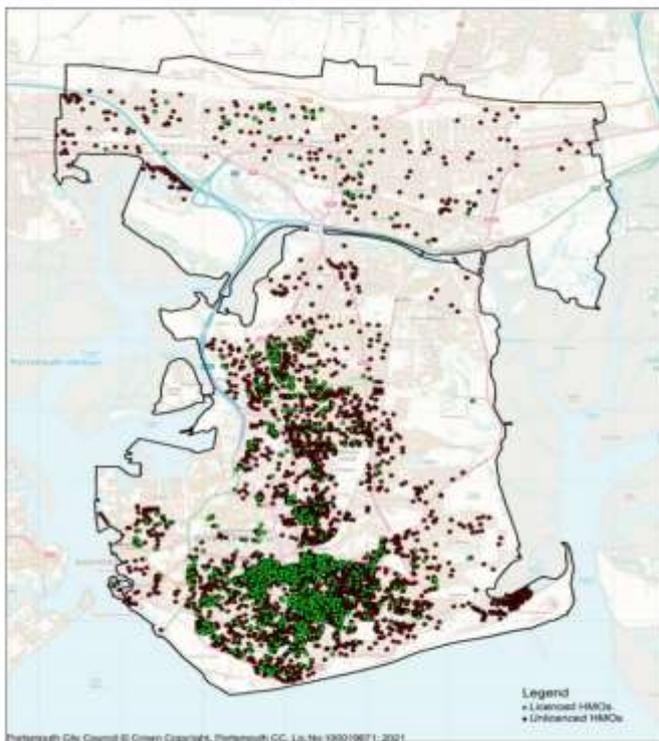
The first map shows the location of current mandatory licensed HMOs in the city.



The second map shows the location of estimated non-licensable HMOs in the city.



The following map provides a combined visual location of all HMOs in Portsmouth.



### 3.4 Student occupied HMOs

Approximately 28,000 students attend The University of Portsmouth, some of whom live in the private rented sector in Portsmouth, including HMOs. It is not possible to ascertain the exact number of students who live in the PRS in Portsmouth as the university do not collect data on the tenure of housing that every student lives in.

It is possible to identify the number of student occupied HMOs in city, although there are some limitations to this. The majority of HMOs occupied by students are solely occupied by students, and in these cases the property will have a council tax exemption and are therefore identifiable through council tax data. However, some HMOs will contain a mix of students and non-students. In this situations, it is only possible to identify a HMO as being student occupied when the property is occupied by only one person who is not full time student, as the Council tax team in this scenario record the property as student occupied, with a single person discount. Any HMOs occupied by 4 students, and 2 tenants who are not full time students for example, cannot be identified through council tax records.

To count as a full-time student, if the student is 20 years of age or over, the course must involve at least 21 hours study per week and last at least 24 weeks of an academic or calendar year. If a student is studying a qualification up to A level and is under 20 years of age, the course must: last at least 3 months and involve at least 12 hours study per week.

Information obtained from the University shows the below number of students who reside in halls of residence:

2018/19: 4272

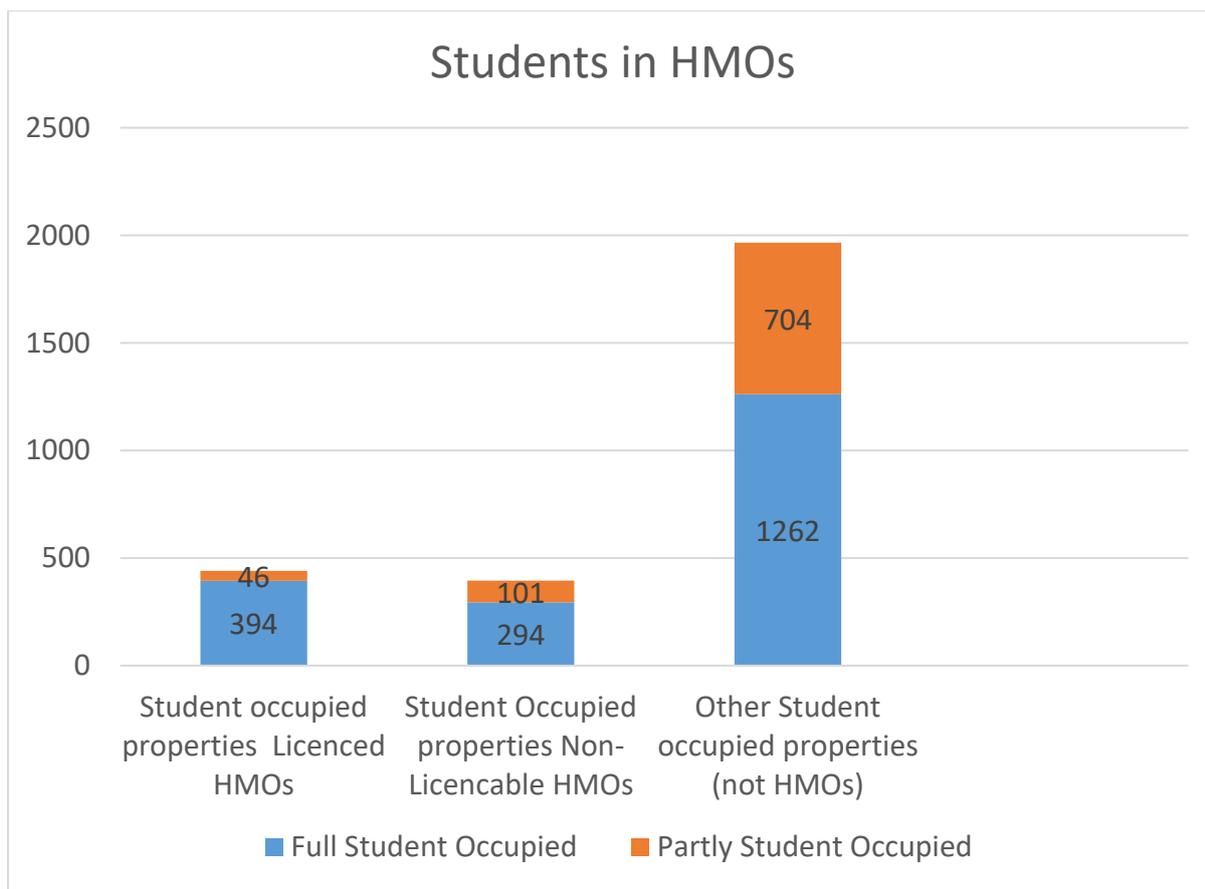
2019/20: 4314

2020/21: 4030

2021/22: 3262

*"It may be helpful to note that the statistics provided for the current year to date will not include students who arrive in January and reside in halls from January to June, who are included in the other years listed above. It may also be helpful to note that these figures include all students who resided in halls, whether for the full academic year or a shorter duration".*

The below graph shows the number of properties in the city identified through Council tax records as being student occupied HMOs in Portsmouth, compared with other tenure types not including halls of residence or purpose built student accommodation:



Source: Council Tax Student Exempt and Discounted Data October 2021

According to Council Tax data regarding student occupied dwellings, not including halls of residence or purpose built student accommodation, there are 2801 student dwellings in Portsmouth. Of the 835 student occupied HMOs, 53% are currently licensed through the Councils mandatory licensing scheme. Overall student occupied properties represent approximately 3% of the total housing tenure in the city.

The following map provides a visual representation of the location of HMOs occupied by students in the city.



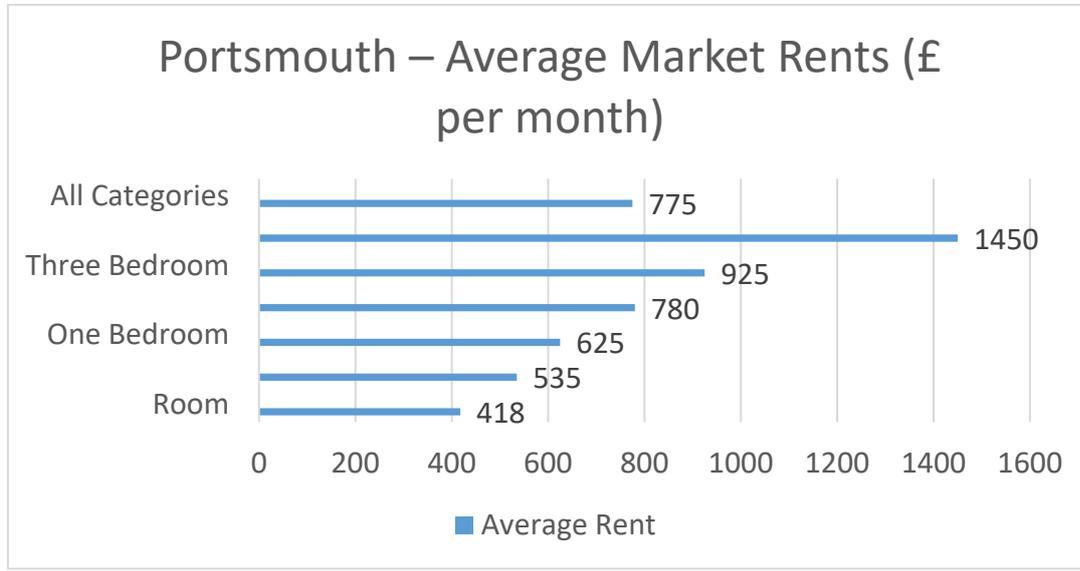
### 3.5 Living conditions for HMO tenants

HMOs provide an important accommodation option for a variety of people and are required for a variety of reasons. Typically, the following groups of people may live in a HMO:

- Students (including further education, undergraduates, postgraduates, overseas and language schools)
- Unemployed people - either single or couples/ families
- People who move to an area for work, seasonal or transient/contract workers
- Residents in hostels/refugees
- People with special social needs- with live in carers or social workers
- Migrant workers
- Older house sharers who cannot afford to buy or rent their own property
- Lodgers
- People on bail/ fleeing domestic violence/refugees
- Newly homeless people/people who are being re-habilitated back into the community
- Local Housing Allowance (housing benefits) claimants
- Staff supplied with accommodation as part of their job, for example hotel, restaurant or hospitality workers
- Trainee and recently qualified medical staff

- Young professionals and recent graduates
- Young non-professionals

The following table shows the average market rents in Portsmouth.



Source: Valuation Office Agency – (Lettings Information Database, Office for National Statistics.) Median monthly private rental price in England, by local authorities and bedroom category, 1 April 2020 to 31 March 2021

HMOs are the cheapest rental option in the PRS and those living in them are often on the lowest incomes. National studies have shown that tenants on a low income and living in poor conditions are unlikely to report disrepair issues to the local authority due to fear of retaliatory eviction, the financial strain this could cause in potential rent increases or having to find alternative accommodation, and the sense that they cannot afford better conditions elsewhere. This reluctance to report poor living conditions in the lowest income properties means that the true extent of disrepair in non-licensable HMOs is unknown.

### Hazards Identified in HMOs

The housing health and safety rating system (HHSRS) is a risk-based evaluation tool to help local authorities identify and protect against 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.

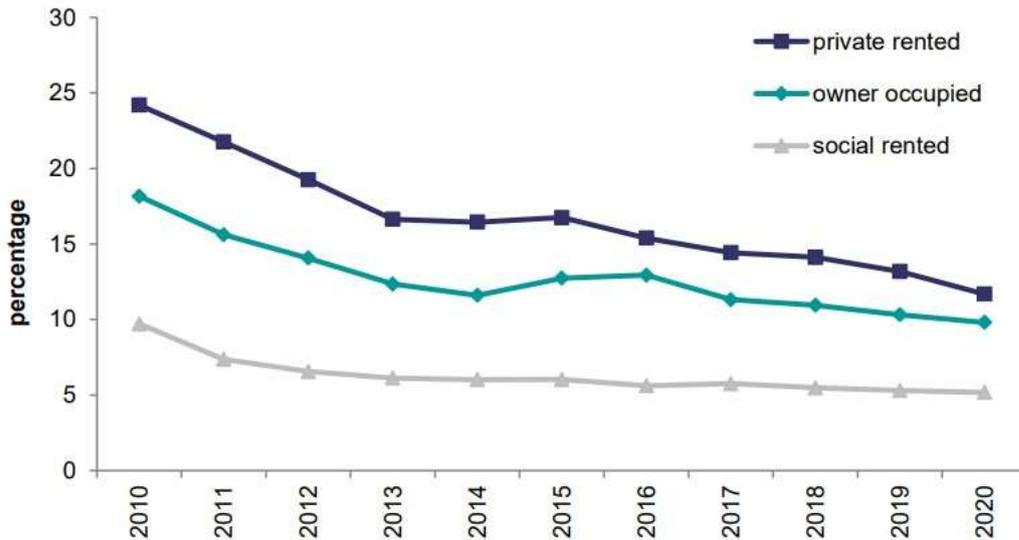
This assessment method focuses on the hazards that are present in housing, and categorises them as either Category 1 hazards (being the most serious which local authorities must take action to address when identified), and Category 2 Hazards

which present a less severe risk. Tackling these hazards make housing healthier and safer to live in.

National data from the English Housing Survey 2020-21 indicates that approximately 12% of properties in the private rental sector have Category 1 hazards.

### English Housing Survey 2020-21

#### Homes with Category 1 Hazards, by tenure, 2010 to 2020



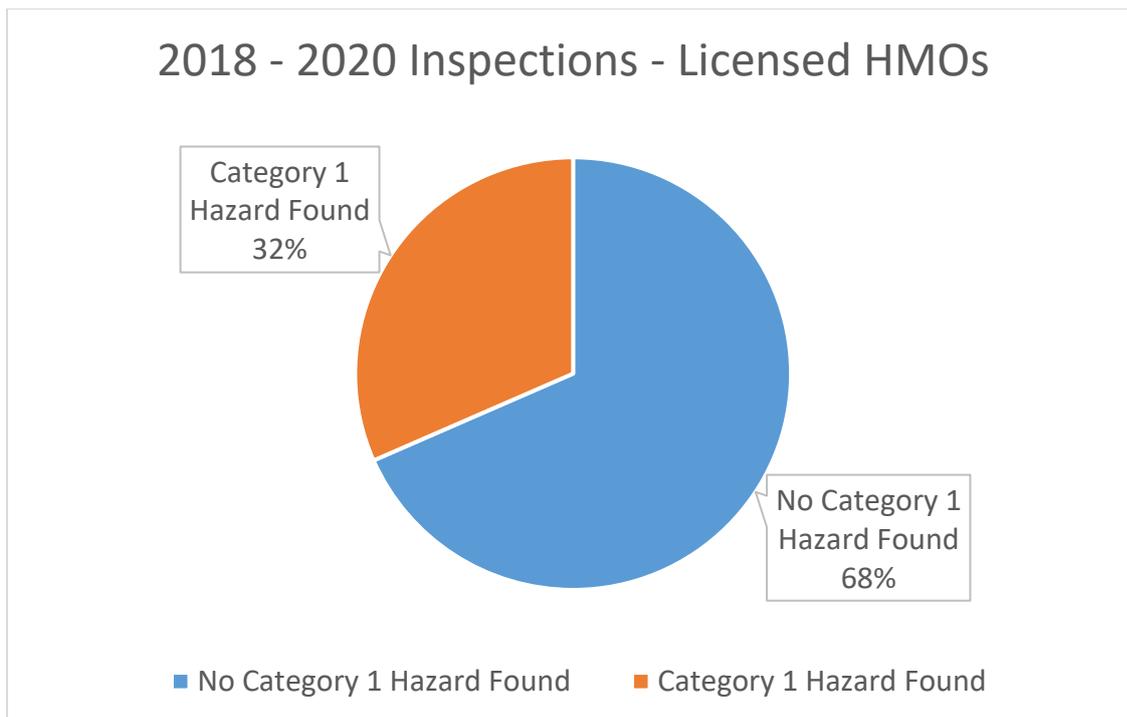
**Notes:**

- 1) 2020 figures are estimated based on 2018 and 2019 figures
- 2) Underlying data are presented in Annex Table 2.4

**Sources:**

- 2010-2019: English Housing Survey, dwelling sample
- 2020: English Housing Survey, modelled data including vacant dwellings

Findings from the councils Private Sector Housing teams inspections for mandatory licensed HMO, based on inspections taken place between 2018 and 2020, suggested that a significantly higher percentage of Category 1 hazards have been identified in licensed HMOs in the city:



This data suggests a higher proportion of hazards are likely to exist in HMOs in the city compared with other PRS properties. Currently only 20% of the estimated number of HMOs in the city are licensed. Given the economics of scale, significant hazards are likely to be identified in a significantly high proportion of the other 80% of HMOs in the city not currently licensed, particularly as a large majority of these non-licensed HMOs will have had no inspection by the council before.

#### Landlord compliance

Based on national data, it is estimated that there are 11,000 landlords operating in Portsmouth. We know from research included in the City Councils Private Rental Sector Strategy, approved in January 2021, that the vast majority of landlords rent their properties on a small scale and are not a landlord as a main profession.

A survey of landlords conducted as part of the PRS strategy found that 57% of landlords in Portsmouth own just 1 or 2 properties and have invested in them for what they describe as a "pension-plan". 18% of landlords describe themselves as becoming landlords through circumstance, perhaps through inheritance or merging of two families, sometimes referred to as "accidental" landlords. A further 18% of landlords described themselves as a "one man band" business. Only 5% of landlords who responded to the survey identified themselves as running on a large scale commercial basis.

It is likely therefore that a significant number of landlords in the city, including those letting HMOs, may not be abreast of all current legislative requirements and how to manage their properties accordingly.

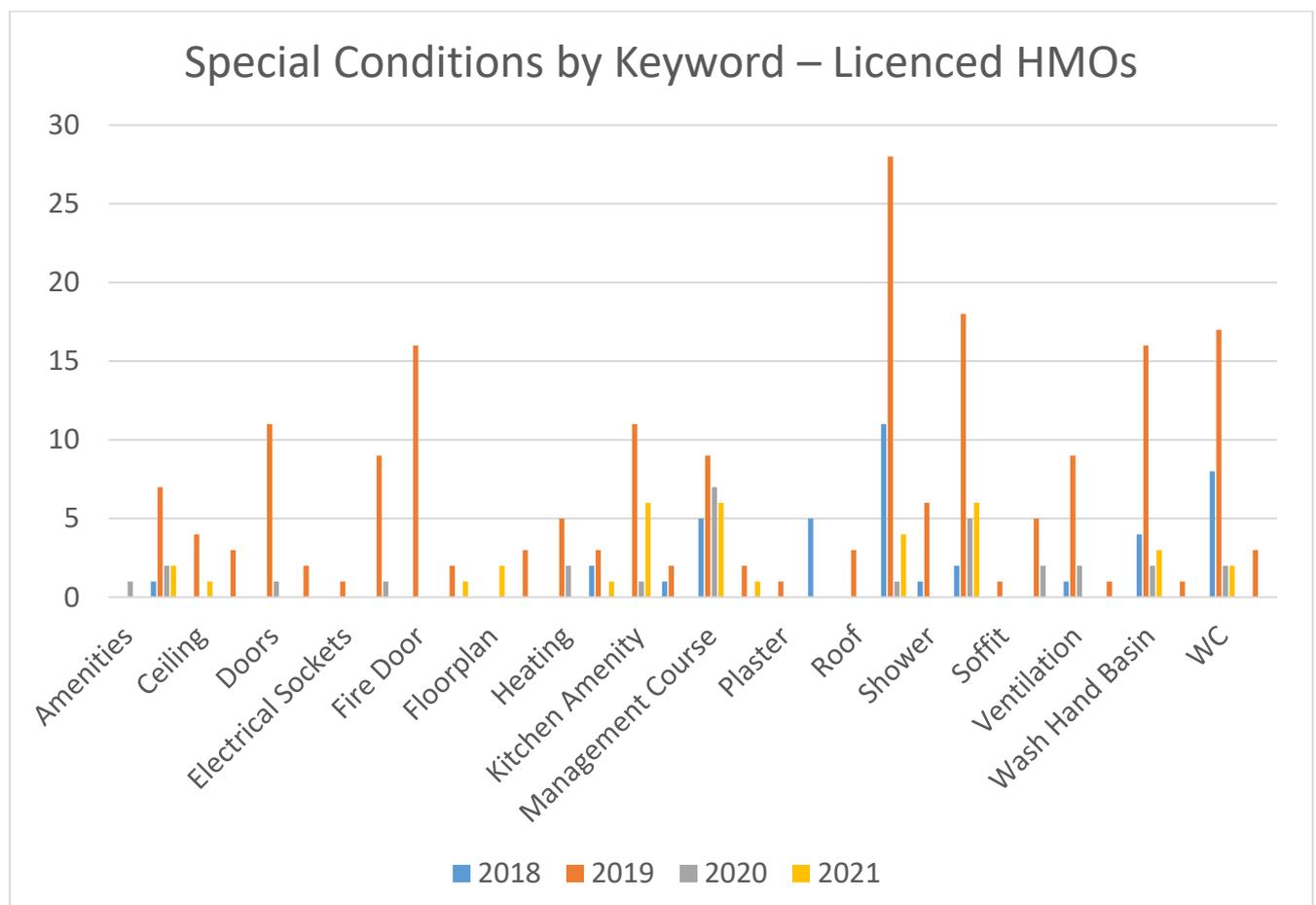
This is reflected in the data held by the City Council in relation to compliance of landlords for the existing mandatory Licensing scheme.

HMO licences are issued with a number of conditions attached to them. These conditions include the need for Landlords to provide certification such as gas safety certificates to the council on an annual basis. Since 2018 the Private Sector Housing team have had to issue 1397 formal written letters to landlords to chase up late certification. These relate to 929 separate HMOs out the 1226 which are currently licensed, and relates to 653 separate landlords, indicating that their management and compliance is poor.

Furthermore, where a property or its management do not meet the required criteria at the time a HMO licence is applied for, the PSH team can impose special conditions onto the licence. An example of this would be to add a condition to provide additional amenities or facilities, or to restrict the number of occupants where it is over-occupied for the size and layout of the property.

Since 2018, 306 special conditions have been applied to Licenced HMOs, relating to 188 properties out of a total 1226 Licenced HMOs. This indicates that 15% of HMOs currently licensed were deficient in amenities, or over-occupied, which would not have been identified if they had not been licensed.

The below graph demonstrates volume and types of special conditions applied to Licenced HMOs based on keywords from October 2018 to October 2021:



The above graph indicates that the majority of special conditions applied to licenced properties relate to room restrictions, lack of amenities or size of the property. Typically these special conditions will be applied based on the need to restrict the use of a room or regarding how many occupants the licenced HMO can adequately house based on its size or amenities.

From June 2019 to December 2020, 11 Civil Penalties were issued by the PSH team in relation to licensable HMOs, largely due to failure to apply for a HMO licence where it was required or due to breach of licence conditions.

Issues experienced by the council regarding compliance could be summarised as: frequently providing late certification often after reminders have been issued and some properties not being wholly suitable when the application is made. Based on the levels of enforcement taken in relation to these, it can be seen that typically this informal approach is suitable when addressing issues of non-compliance. It is seen that in most occasions conditions of licences are met, negating the need to escalate towards more punitive action. Typically, special conditions placed onto licences are adhered to once in place with very few civil penalties are issued against breach of licence conditions.

Similarly, low rates of penalties against unlicensed HMOs may suggest that where a licence is required for a HMO landlords and managers are generally aware of this and submit applications.

### 3.6 Houses in Multiple Occupation Survey 2021-22

The city council conducted a public survey between 6<sup>th</sup> December 2021 and 16<sup>th</sup> January 2022. The purpose of this survey was to capture the views and experiences of people regarding Houses in Multiple Occupation. The survey was split to capture the views of three key groups: tenants, landlords and residents or local community groups. The results of the survey were presented to the Councils cabinet in March 2022 [Additional Licensing of HMOs.pdf \(portsmouth.gov.uk\)](#)

As with any survey, there are limitations on the methods and data that it can provide. Officers from the City Council's Private Sector Housing (PSH) team worked to provide a survey that was accessible by as many people as possible, and that awareness of the survey was with as many people as possible who may realistically be considered as wanting to respond.

The survey was not mandatory, and was completed by those tenants, landlords and residents who wanted to complete it. This should be taken into consideration when considering the value of the responses given. It should also be considered that the survey outcomes are based upon the respondents and cannot necessarily be assumed to represent the whole population of the city, or even of tenants, landlords and residents living near HMOs.

## Impact of HMOs on tenants

The following is a summary of some of the key results of the survey from HMO tenants, of which there were 101 respondents.

The survey for HMO tenants suggested that a third of respondents expected to continue living in HMO accommodation during the next 5 years, indicating that a notable portion view this as their long-term housing option.

The data also showed that most HMO tenants surveyed were over the age of 35, with a significant portion between 45 - 54 years old.

Just over half of HMO tenants said they could not afford to move if they wanted to. However 46% indicated they had plans to move out of HMO accommodation in the next 5 years. This data suggests a lack of choice amongst many HMO tenants regarding their housing options, relying on HMOs as an affordable option for them.

The survey told us that tenants overall felt positive about the relationships they had with their housemates and landlords. However many gave a neutral answer regarding their relationship with neighbours. This may indicate that HMO tenants do not know their neighbours well, or not feeling a sense of community.

Only 17% of HMO tenants who responded said that they had needed to contact the city council regarding the conditions or management. Approximately half indicated they were satisfied with conditions, safety, standards and management generated more positive responses. However, a third said they were unhappy with property conditions, standards and managements. Similar responses were given regarding confidence in landlords to carry out repairs on time.

23% of HMO tenants who responded indicated they would not be happy to report repairs or problems to their landlord due to concerns of repercussions such as eviction or rent increases.

## Impact of HMOs on the local community

The impacts of those who live in HMOs on those around them, are issues that were explored in the city-wide survey, the results of which were contained in a report to the Councils cabinet meeting in March 2022 [Additional Licensing of HMOs.pdf \(portsmouth.gov.uk\)](#). The survey results strongly suggests that HMOs impact upon residents in a number of ways, such as increased parking issues, waste management, noise and ASB. These issues can be complex, although various council services work together to react to, and resolve, them where possible. However additional licensing will not directly address these issues, and therefore the overall aim of the proposed additional licensing scheme is focused on protecting private rented tenants of HMOs from poorly managed and maintained properties. However, by improving the management of HMOs, the proposed licensing scheme may have potential benefits to the wider local community.

### 3.12 The potential benefits of licensing

#### Potential benefits to tenants:

- More professional landlords should bring about improvements to the quality, safety and management of property.
- Improvements to the neighbourhood would also benefit private tenants' security and sense of community.
- Better management practices should help to increase length of tenure and reduced incidence of unplanned moves or homelessness.
- Enforcement of standards will improve quality of lettings for tenants resulting in improvements to the welfare of tenants.
- Increased support for necessary enforcement action on rogue and criminal landlords.
- Better informed as to premises that are suitably licensed.
- Tenants living in purpose-built flats will be protected.

#### Potential benefits to landlords:

- Responsible landlords will receive information and support.
- Equalisation of standards with mandatory licensable HMOs will create a more level playing field.
- Licensing creates an equality of opportunity, so decent landlords will not be undercut by an unscrupulous minority and robust enforcement can be taken against rogue and criminal landlords.
- Improvement in the reputation of private landlords through promotion of a public register of licensed premises.
- Shorter void periods and reduced tenant turnover.
- The local authority can provide practical support and training around dealing effectively with issues such as anti-social behaviour from tenants, or how to support vulnerable tenants.

#### Potential benefits to neighbourhoods and communities:

- Making these properties safer will lead to more desirable places to live.
- Making it easier to involve all landlords in wider strategies.

- Protecting vulnerable groups, who are often occupiers of privately rented accommodation which are poorly managed and maintained.
- Improve community cohesion through a reduction of tenancy turnover due to increased satisfaction with living environment.

Potential benefits to the council:

- This will enable the council to target support, information and enforcement more effectively.
- Landlords who have not responded to any previous measures (such as voluntary landlord engagement schemes) will be forced to engage with the council.
- Irresponsible landlords will be forced to improve their practices or leave the market.
- Rogue and criminal landlords will be subject to enforcement action.
- Schemes should be easy to administer and explain, as all private HMO landlords in a designated area would be covered by licensing of some kind.
- The council will gain extensive knowledge about private renting in a particular area.

### 3.12 Overall justification of the scheme

The Evidence shows a clear correlation between the houses in multiple occupation that the council are proposing could be subject to additional licensing, and housing conditions concerns, and management concerns. The council feel that additional licensing would impose conditions to regulate the prevalence of these issues relating to this property type. The council are proposing to licence all HMOs not already covered by mandatory licensing including those those living in section 257 HMOs.

## 4.0 Licensing criteria and exemptions

### 4.1 Which HMOs will be licensable?

It is proposed to designate a city wide additional licensing scheme to cover the following types of HMOs. See Appendix 1 for a map of the proposed additional licensing designation area.

#### a) Shared flats and houses

Shared by three or more people forming more than one household.

This will include all HMOs as defined in section 254 of the Housing Act 2004 that are not required to hold a licence under the current mandatory licensing requirements

and that are occupied by three or more people forming more than one household. The households share one or more basic amenity (such as a toilet, bathroom, or kitchen), or the living accommodation will be lacking in one or more of these basic amenities. This licence will cover the whole flat or house.

Specifically, this will include private flats in council blocks, and other purpose built accommodation which are currently exempt from licensing, but it will not include the common parts of such properties.

If you own and live in a property and have lodgers, additional licensing will only apply if you have three or more non-family members living with you.

b) Houses converted into self-contained flats

Where less than two-thirds of the self-contained flats are owner-occupied, and the building does not meet the standard of the 1991 Building Regulations (or later).

It is proposed that very small two storey flat conversions will be excluded. The proposal is to licence properties which meet the following criteria:

- Contain three or more flats in a building which is entirely in residential use or
- Contain two or more flats in a building with mixed business and residential uses.

AND

- Have a common entrance way shared by 2 or more flats
- Comprise three or more storeys (including basements and floors occupied by businesses)

This will include most HMOs defined under section 257 of the Housing Act 2004 which are buildings converted into self-contained flats that do not meet the “applicable standards”.

This licence will cover the communal areas and any lettings under the control of the licence holder.

Flats in converted properties will be deemed owner occupied if it is occupied by:

- Someone who has a lease of the flat which has been granted for a term of more than 21 years,
- Someone who has the freehold estate in the converted block of flats, or
- By a member of the household of the people mentioned above

#### 4.2 House conversions that don't meet the applicable standard

‘Applicable standard’ means:

- A conversion into flats where the building work was completed before 1 June 1992, or which is dealt with by regulation 20 of the Building Regulations 1991 and which would not have been exempt under those regulations, or

- Building standards equivalent to those imposed, in relation to a building or part of a building to which those regulations applied, by those regulations as they had effect on 1 June 1992; and
- In the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984

This means that for conversions completed prior to 1 June 1992, they must meet the building regulation standard in force from 1 June onwards. Conversions completed after this date must comply with the building regulations in force at the time of conversion.

In order to identify where conversions don't meet this standard, typical features could include:

- Original lath and plaster walls and ceilings.
- Lack of 30 minute fire proofing between flats.
- Poor sound insulation between flats.
- Single glazing in some of the windows.
- Energy efficiency requirements may not be met.

#### 4.3 Will the scheme cover all of Portsmouth?

We are proposing to make the scheme city wide. Whilst some wards have higher concentrations of HMOs than others, our data indicates that 32% of HMOs across Portsmouth have potentially serious hazards present. There is therefore no justification for targeting specific areas of the city. We also believe that having different requirements in certain areas would cause confusion to landlords and tenants. It may also put undue pressure on neighbouring wards where rogue operators may be displaced. We want to see an equalisation of standards across the city with well managed multiple occupancy properties in every ward.

#### 4.4 Which properties are exempt

Certain properties are exempt through legislation and do not require a licence. These will include:

- Houses and flats controlled or managed by public sector bodies
- Where the person managing or in control of it is a registered provider of social housing.
- Certain buildings controlled or managed by a co-operative society.
- Buildings occupied by students where the person managing or having control is the educational establishment.
- Buildings principally occupied and used by religious communities (shared houses and flats only).
- Buildings that are already regulated, such as bail hostels

## 5.0 The licensing process

### 5.1 Licensing Policy

It is the council's intention to engage and work alongside landlords to ensure they are fully aware of their legal responsibilities, are provided with any necessary support and advice in this regard, and ensure compliance is achieved in how properties are managed.

However, where it is clear that landlords are not willing to effectively engage, and legal duties are not being upheld, the council will make use of its enforcement powers to ensure that private rented accommodation, including multiple occupancy accommodation, is appropriately managed, maintained and licensed.

The council's approach to regulating HMOs, including the effective administration of its licensing scheme, follows the principles set out in the Private Sector Housing Enforcement Policy as follows, which aims to:

- demonstrate the transparency of enforcement with respect to private sector housing and caravan sites in Portsmouth, by setting out legal requirements, policies and principles that officers will follow when enforcing legislation;
- improve housing conditions and raise the standard of property management within the private rented sector;
- provide safer, healthier, affordable and warmer homes in the private sector to enable all people within Portsmouth to benefit from healthy housing and environments;

It is intended that this policy will be updated before the introduction of any proposed licensing scheme to ensure that the scheme is administered accordingly. The proposed new Enforcement Policy is contained in Appendix 7.

### 5.2 Applying for a licence

Applications for new HMO licences and renewals can be made on the council's website.

In order to meet the requirements set out in legislation and to ensure that the property is suitable for occupation (or can be made suitable), we will ask for the following information to be attached to applications:

- A current certificate certifying the safety of the landlord's gas appliances and installations (if present).

- A current certificate of service demonstrating the proper operation of the emergency lighting system (if present).
- A satisfactory Electrical installation Condition Report or similar
- A current certificate of service demonstrating the proper operation of the fire alarm system(s)
- A current PAT certificate (electrical appliance safety certificate) for appliances provided by the landlord (if required).
- A current fire risk assessment

We will also ask for accurate information on the application including the number of sleeping rooms, amenities (kitchens, bathrooms, WC's, etc) as well as room sizes. This is to help us determine whether the property is suitable for the proposed number of occupants. Certain items such as the gas safety certificate are a legal requirement when applying for a HMO licence.

For houses converted into flats, we will need to know how many flats (if any) are under the direct control of the licence holder.

### 5.3 Proposed licence holder

#### **Shared houses and flats**

The most appropriate person to apply for a licence will be the person having control of the property. This is normally the person who receives the rent. This could be the freeholder or any other owner or lessor who receives rent (whether directly or through an agent or trustee) from tenants or lodgers in the premises.

In determining whether the proposed licence holder is the most appropriate party the council will consider whether they have:

- The authority to ensure compliance with the licence conditions.
- The authority to let and terminate the tenancies and receive the rental income.
- Are able to access all parts of the premises.

#### **Houses converted into self-contained flats**

The 'person having control' and the most appropriate licence holder in respect of a section 257 HMO is:

Where no person has been granted a long lease of a flat within the HMO, the person who receives the rent for the HMO, whether on their own account or as an agent or trustee of another person;

In relation to an HMO in respect of which a person has been granted a long lease of a flat within the HMO, in the order of preference listed below:

1. Has acquired the right to manage the HMO under Part 2 of the Commonhold and Leasehold Reform Act 2002;
2. Has been appointed by the Leasehold Valuation Tribunal under section 24 of the Landlord and Tenant Act 1987;
3. Is the person who is the lessee of the whole of the HMO under a lease between him and a head lessor or the freeholder, or is the freeholder of the HMO; or
4. Has been appointed to manage the HMO by the freeholder, by a head lessor of the whole of the HMO, or by a person who has acquired the right to manage the HMO under Part 2 of the Commonhold and leasehold Reform Act 2002.

#### 5.4 Licensing Standards

Details of the proposed relevant HMO standards can be found in Appendix 2.

#### 5.5 Licensing conditions

Certain conditions applicable to licensed HMOs are set out in legislation and will apply to all HMOs that are covered by the scheme. The council may also impose property specific conditions to ensure that HMOs are suitable and safe for occupation.

Conditions many include requirements to carry out improvement works to make the HMO suitable for the number of occupants and will also include management conditions. The conditions will be tailored to the type of property being licensed.

The full set of proposed conditions can be found in Appendix 3.

General conditions will include:

- Maximum permitted number of occupants and households per unit of accommodation.
- Ensuring statutory minimum bedroom sizes are met.
- Effective tenancy management with assured shorthold tenancies.
- Suitable management arrangements are in place for dealing with repair issues and emergencies.
- Addressing complaints about anti-social behaviour.
- Gas and electrical installations are safe at all times.
- Fire precautions and in place that are suitable for the type of property.
- Ensuring furnishings in the property are safe.
- Maintaining adequate provision for the storage and disposal of waste.
- A requirement to notify the council of any changes in management or person in control.

The council believes that such conditions are not onerous and would be typical requirements for well managed properties.

### 5.6 HMO Licence Fees

There will be a fee payable upon application to licence a property. Legislation allows local authorities to charge fees to recover the costs incurred in administering a licensing scheme. Our proposed fees have been calculated in accordance with this and can be found in Appendix 6.

The fee structure is based upon the number of occupants. The licence fees are split into two parts as required by law; the first part covers the costs of receipt and validation of a licence application and will be charged alongside the initial licence application. The second part will be charged once a decision has been reached to issue a licence which covers the costs of enforcing the licence. These separate fee elements are also set out in Appendix 6.

Fees can be paid online or over the phone, and details of how to do this will be provided alongside the application form. The full fee must be paid in order for the licence to be issued.

### 5.7 Granting or refusing a licence

In order to hold an HMO licence the council must be satisfied that the proposed licence holder is a fit and proper person. This means, they have not been convicted of housing and certain other offences that would indicate they are unfit to manage a property and may place tenants at risk.

The main reasons we would refuse to issue a licence are:

- The house is not suitable for the number of households and it would not be possible to make it suitable by imposing conditions.
- There are insufficient management arrangements in place.
- There is a banning order in place.
- The applicant is not considered the most suitable person to hold the licence.
- The licence holder is not considered to be fit and proper.

Proposed licence holders will be required to complete a fit and proper person declaration when making an application. We will also conduct checks to ensure that there is no history of previous enforcement action.

Before we approve a licence, we will issue a draft copy of the licence to the applicant, proposed licence holder (if different) and other “relevant persons”.

“relevant persons” is defined in the Act and includes other people having an estate or interest in the property such as leaseholders, mortgage companies and management

companies. This will provide the opportunity to make representations on the occupation limits and any proposed licensing conditions.

### 5.8 Licence duration

In most situations the licence will run for five years from the date of approval. This is the maximum length of time a licence may last.

The council may however decide it is necessary to issue a licence of a reduced duration where:

- The HMO is identified by the council or as a result of a complaint rather than through a licence application.
- There is previous history of non-compliance either in Portsmouth or another local authority.
- Conditions within the property are poor, or conditions are attached to the licence that will require a review of management arrangements in the following 12 months.
- The applicant is not able to demonstrate they will maintain full control over the property for five years, for example due to a short lease.
- The property is occupied by 'Property Guardians' on a short-term basis.
- The planning status for use as an HMO is unconfirmed.

As the designation for Additional Licensing is for a maximum of 5 years, licences issued after the start of scheme would run until the end of designation period (e.g. a licence applied for one year after the designation started would be granted for a maximum of 4 years).

### 5.9 Enforcement of Licensing Conditions

We are committed to working with landlords to ensure properties are safe and well managed. Where any breach of legislation is identified we will follow the council's private sector housing enforcement policy in determining the most appropriate course of action. This will take into account the severity and number of breaches, potential or actual harm caused to tenants as well as the licence holders track record.

In the case of significant breaches of licence conditions, the council may:

- Issue a Civil Penalty Notice up to £30,000
- Prosecute the licence holder or managing agent
- Revoke the licence

The proposed enforcement policy can be found in Appendix 7.

### 5.10 What happens if a landlord lets a property without a licence?

As is the case with our currently mandatory HMO licensing scheme, it will be an offence to knowingly let out and be in control of a property under the proposed additional scheme without applying for a licence.

Licensing of HMOs provides an excellent way of identifying and taking actions against criminal landlords. Typically, in addition to non-compliance with other housing, consumer protection and health and safety legislation, they are unlikely to apply for a licence.

If a property is identified that is without a valid licence, the council will assess the circumstances of each case individually. The first priority will be to ensure that an appropriate licence holder is put in place to ensure that the property is properly managed and maintained for the safety of the residents. For cases where there is clear culpability, evidence of poor management, or the property is in a poor condition the council may pursue the following enforcement options:

- Issue a Civil Penalty Notice up to £30,000
- Prosecute the person in control or managing
- Apply for a Rent Repayment Order (if housing benefit/Universal Credit paid)
- Consider a Banning Order

In addition to the steps that the council can take, tenants living in unlicensed properties will have the ability to reclaim up to 12 months' rent through a Rent Repayment Order.

## **6.0 Aims and objectives of the proposed scheme**

### **6.1 Aims of Licensing**

Our aim for licensing overall is:-

- To protect private rented tenants of HMOs from the poorly managed and maintained properties.

Our view is that licensing will improve housing conditions and management. It will aid in protecting the welfare of tenants, provide confidence in the private rented sector and put clear standards in place. It will be more conducive to good landlords and provide an environment which is less opportunistic and attractive for irresponsible and criminal landlords.

The objectives of the additional licensing scheme are:

- To effectively regulate HMOs in the private rented sector by identifying dedicated property licence holders responsible for the management and conditions of the property, ensuring consistency of standards across the city for HMOs in the private rented sector.

- To drive up housing standards in properties where there is poor management, need for repairs, amenity and safety issues.
- To enable council officers to utilise enforcement powers effectively to significantly drive up housing standards, housing management and the wellbeing of tenants in high risk properties.
- To support good landlords to operate within the area and make it easier to identify and enforce against rogue landlords.

Our proposal for additional licensing is made on the grounds that the proposed property type:

- a) Is prevalent for issues relating to poor property conditions.
- b) Is prevalent for poor property management.
- c) Is likely to have high occurrence of Overcrowding and lack of adequate space or amenities for the number of occupants.

and that an additional licensing designation would impose conditions directly relating to addressing these issues.

## **7.0 What are the risks?**

### [7.1 Risks identified to the implementation of a successful scheme](#)

The council has considered the risks of introducing licensing, particularly the risk of increased costs to landlords who are fully compliant with their obligations. It is also important for local authorities to consider some of the possible effects of making a designation and to include any risk assessment they may have carried out. A number of risks have been identified principally around costs to the landlords, tenants and the council itself. A copy of the Risk Assessment can be found at Appendix 4.

## **8.0 What other options have been considered?**

### [8.2 Alternatives to HMO Licensing](#)

Other alternatives to HMO Licensing have been considered. These include action through The Housing Health and Safety Rating Scheme (HHSRS), Landlord accreditation and use of management regulations.

The HHSRS is designed for individual properties; not for area wide action, and is resource intensive. It is also largely reactive, being applied in response to complaints about housing conditions, as opposed to the proactive measures available through licensing. The HHSRS cannot be used to improve standards of management.

Landlord accreditation is an option which might be considered. Portsmouth City Council has been running a Landlord accreditation scheme since 2010 which was

rebranded in 2018 to "Rent it Right". It was well advertised when relaunched and free to join, as well as offering many benefits to members such as free support and advice and discounts. However, take up from local landlords has been limited, as at May 2021 there were 277 accredited landlords registered with the Rent it Right scheme, out of an estimated 11,000 landlords in Portsmouth. As with most types of accreditation those who join are usually those who already have the knowledge and capacity to adequately manage their properties, meaning the poorer performing landlords are not reached. It must also be acknowledged that some landlords employ professional companies and agents to manage their properties and these are usually members of national agents' bodies such as UKALA, Safeagent, or ARLA.

Selective licensing is an alternative method of regulating anti-social behaviour and requires landlords to be fit and proper persons in a similar way to HMO licensing. However, it does not address property standards and not all HMOs would be captured by selective licensing. City wide selective licensing covering more than 20% of the geographical area also requires the Secretary of States approval.

The targeted use of Interim Management Orders and Empty Dwelling management orders allows a local authority to tackle the day to day management of the private sector tenancy where certain prescribed conditions are met relating to antisocial behaviour and protection of health and safety. However, this is resource intensive and requires the management to be taken over by the council, or a council's agent, to manage the property. This effectively means that poor landlords would have the council manage their property for them and potentially still receive income from the property. This does not provide a long-term solution to poor management of private rented properties.

## **9.0 Alignment with other housing strategies**

### **9.1 Private rented sector Strategy**

Portsmouth City Council's Private Rental Sector Strategy 2021-2026 sets out the council's intentions towards the private rented sector. The Strategy published in January 2021, aims to:

- achieve an active and well-functioning PRS which works fairly for all.
- For the PRS to be seen as a desirable type of tenure which meets the needs of those who use it, with support being focussed on those who need it most.

An extract of the councils private rental sector strategy 2021-2026 can be found in Appendix 5 along with a link to the full document which can also be found on the councils website.

The strategy includes proposals to consult on an additional licensing scheme for HMOs, to help in the better management of them and understand how they interact

with the local community. The case for selective licensing will also be kept under review. There are plans to raise awareness of support services for tenants, as they are often unaware of them and as there is high turnover in the sector. Increasing the number of accredited landlords and lettings agents is suggested as it offers them training and professional development and gives assurance to tenants.

It includes proposals to provide workshops for landlords on how to be good landlords; such as how to choose appropriate tenants and carry out HHSRS assessments of their properties. Workshops for tenants on how to be good tenants, aimed at helping them to maintain tenancies, including money management, behaviour, and how to work with their landlord. Workshops have been provided since September 2021 but with low take up.

It also proposes to provide a mediation service between landlords and tenants to help improve security of tenure, which has been running as a pilot scheme since July 2021.