

# Improving Private Rented Housing in Gateshead

## Landlord Licensing-Service Standard



# **Selective Licensing Service Standard**

## **Introduction**

Selective licensing is a regulatory tool under Part 3 of the Housing Act 2004 which provides a discretionary power for local authorities to introduce selective licensing of privately rented homes in order to tackle issues and improve conditions for tenants and the local community.

Selective licensing contributes to confidence in the private rented sector, and helps protect the welfare of tenants and ensures housing standards are met. It also encourages landlords to be more accountable for the management of their property and their tenants. Generally, good responsible landlords will benefit from the additional support but unscrupulous landlords will find it a less appealing proposition.

Prior to a selective licensing scheme being approved local authorities are required to consult with all parties likely to be affected. This includes the local residents, landlords, managing agents and those who operate businesses and provide a service within the designated area.

The introduction of selective licensing schemes requires all landlords who privately rent out properties within a designated area to obtain a licence from the council. Landlords and managing agents are required to demonstrate basic safety checks have been carried out and that they have appropriate management arrangements in place.

It is a criminal offence to let a privately rented property in a designated area without a licence and failure to apply could lead to an unlimited fine or a civil penalty up to £30,000. Failure to comply with any of the conditions of the licence is also an offence and could also lead to an unlimited fine or a civil penalty. It is also a criminal offence to make a false statement in an application for a licence.

## **Summary**

The aim of the designation is to improve housing conditions and management standards in the private rented sector within a designated area. This policy aims to ensure the local authority:

- Effectively implements the selective licensing scheme, ensuring that all licensing functions are carried out in accordance with the provisions of the Housing Act 2004;
- Monitors and enforces the licence conditions during the course of the selective licensing scheme;
- Implements and delivers existing and future schemes in cohesion with other related strategies and initiatives: particularly those in place to tackle issues of fly-tipping and refuse, low demand, homelessness, poor property conditions and anti-social behaviour.

## **Application Criteria and Assessment**

This section provides the necessary guidance specific to licensing and describes how the Council fulfil their statutory duty and effectively implement the licensing regime, within a designated area.

### **Houses required to be licensed – Exemptions**

Where a designation is made, private landlords who rent out properties, occupied under a tenancy or licence within the designated area, are required to obtain a licence for each of their properties from the Council. There are several exemptions which apply including:

- the property is a House in Multiple Occupation (HMO) which is required to be licensed under Part 2 of the Act
- there is a temporary exemption notice in force (s. 86 Housing Act 2004)
- there is an interim or final management order in force (s.102 or s.113 Housing Act 2004)
- the property is subject to a prohibition order (s.20/s.21 Housing Act 2004)

A licence is not required where a statutory exemption applies. These properties include:

- Properties managed or controlled by Registered Social Landlords (RSLs) such as housing associations or managed or controlled by the council;
- Buildings regulated by other legislation
- Holiday lets;
- Tenancies under a long lease; and

- Business tenancies or where the council has taken action to close the property.

### **Temporary Exemption from Licensing Requirement**

An application can be made to temporarily exclude a property from applying for a licence within a Selective Licensing Area under section 86, Part 3 of the Housing Act 2004. If the property owner intends to take steps to ensure that the house does not require a licence they will be required to submit supporting evidence detailing the reasons, examples include:

- Where there is a sale agreed to someone who intends to live in the property themselves;
- Where the owner is moving back into the property; or
- The property is undergoing works to convert the property into a commercial premises

It is the responsibility of the person having control of the property to make a temporary exemption application (an application form has been produced by the local authority to assist with the process).

The local authority will consider any notification made to it and, if appropriate may serve a temporary exemption notice on the applicant, in respect of the property. During the time the notice is in force the property is not required to be licensed for three months.

In exceptional circumstances, and following a further request, a second temporary exemption could be granted for a further three months. This will only be granted if there are unforeseen circumstances which prevented the objective of the first notice from being achieved, within the initial three month period. The second notice will come into force on immediate expiry of the first and no further temporary exemption notices will be issued after it expires.

The local authority can refuse an application for a temporary exemption and must inform the applicant of the following without delay:

- (a) The decision;
- (b) The reasons for it and the date on which it was made,
- (c) The right of appeal against the decision to the Residential Property Tribunal (RPT) and the date by which an appeal must be brought;
- (d) The period within which an appeal may be made.

Where a property remains licensable, and a temporary exemption notice expires or is not granted, a licence application must be made to the Council.

A temporary exemption is not to be used as an alternative to licensing. One of the criteria for the granting of a temporary exemption is that the landlord is taking steps to ensure that the property will no longer need licensing and so this puts a substantial limit on its use. If a property within the designated area is licensable the local authority would expect the landlord would so licence their property. Any applications for a temporary exemption would be assessed on their own merit. Similarly, a temporary exemption is not a means of avoiding a prosecution for failure to licence.

### Grant or refusal of licences

In order for a licence to be granted an application must be submitted to the council, along with all supporting documentation including landlord fee, (only then will the application be deemed as duly made).

The types of licence which can be applied for are:

**Table 1: Types of licence**

Landlord licence (full application per property)	Single let property within a designated area or HMO (not subject to mandatory licensing)
Licence variation	<p>Where a licence already exists; is not due to expire but there have been a change of relevant circumstances since the time the licence was granted, an application to vary the licence can be made by the licence holder or a relevant person.</p> <p>However, if the licence holder ceases to be involved in the management of the property at some point during the term of the licence i.e. if an owner parts company with the manager, who is the licence holder; or where the ownership changes, a new licence application must be made. This is because the licence is granted to the person managing or having control of the property and the legislation prescribes that a licence cannot be transferred to another person.</p>

## Securing licence applications

In order to ensure all relevant properties are licensed, all reasonable steps will be taken by the council to secure licence applications throughout the duration of the selective licensing landlord scheme:

**Table 2: Summary of the procedure for securing licence applications**

Stage	Action
1	<p>The standard Housing Act 2004 s85 test will be applied to:</p> <ul style="list-style-type: none"><li>• identify the licensing status of all properties situated within the area;</li><li>• Identify the relevant person(s) believed to be having control of (usually the owner) or managing each licensable property.</li></ul>
2	<p>Following the resulting outcome of the test:</p> <ul style="list-style-type: none"><li>• Where a property is believed to be licensable, a notification will be served on any relevant person(s). This will require an application to be made within a prescribed timescale. The fee paid will be discounted if applicants are prompt and diligent with their applications (see fees and charges). Fees may be spread over an agreed timescale if requested.</li></ul>
3	<ul style="list-style-type: none"><li>• Where anyone subsequently fails to make a satisfactory licence application, a series of appropriate reminders will be sent, prior to formal enforcement action being instigated. Applicants who need to be pursued will expect to pay a higher application fee (see fees and charges for details).</li></ul>
4	<ul style="list-style-type: none"><li>• Where a property is believed to be non-licensable or is in the definitive exempt category, it will continue to be monitored throughout the designation, to identify any relevant changes in tenure. This will be done on a cyclical basis, through the periodic reapplication of the standard HA 2004 s85 test.</li></ul>

## Determining the Licence

Applicants are to ensure they apply in good time. The local authority will aim to determine applications within 3 months of a valid application being made. The fee to be paid will be calculated based on when the application is made and not when the licence is issued. The application form can be downloaded from the council website or completed on-line (from April 2018), a paper copy is also available from the local authority (there will be an administrative cost of £50 for this service).

The local authority has a duty to grant a licence to the most appropriate person, and in most circumstances, this would be the owner of the property. However, this could also be a leaseholder or a managing/letting agent. The Council are required to assess out of all persons available to be the licence holder, who is the most appropriate. It is the property owner's responsibility to ensure that an application for a licence is submitted for their properties.

The proposed licence holder must have the power to:

- Collect the rental income
- Arrange, manage and terminate tenancies
- Access all parts of the dwelling (agreed with the tenant by prior notice)
- Authorise and arrange repairs and maintenance as necessary

If the proposed licence holder is not available to manage the property, it is advisable to appoint a manager who is based locally and has the authorisation to deal with emergency repairs and other issues such as anti-social behaviour. This manager should be named on the licence and must agree to abide by the licence conditions.

A managing agent can apply to be a licence holder for a landlord/owner(s) if they have a management agreement in place. The managing agent is able to make an application for multiple properties owned by the same landlord. One application per portfolio can be made using the same application form, adding all properties that are under the same management agreement. All applications for properties owned by separate individuals must be made on separate applications.

If the proposed freeholder or /owner of the property has leased the property to another person or company, the leaseholder will be the person having control of the property and may then be the most appropriate person to be the licence holder.

If a company applies to be a licence holder, they must nominate the most appropriate person within the company to hold the licence. The proposed licence holder, letting agent or anyone who has an interest in the property must be a fit and proper person.

## Fit and Proper Person Criteria for Selective Licensing

Part 3 of the Housing Act 2004 outlines that, when deciding whether to grant a licence or not the local authority (the “Authority”) is required to look at three aspects of the management of the property (the “Property”) and if these are satisfactory then it must grant a licence;

- The proposed licence holder (the “Licence Holder”)
- The proposed manager (the “Manager”) (if a different person from the Licence Holder)
- The proposed management arrangements (the “Property Management Arrangements”)

The application will be checked to determine whether:

- The proposed Licence Holder is a fit and proper (“Fit and Proper”) person to be the Licence Holder, and is the most appropriate person
- The proposed Manager of the house is either – the person having control of the house, or A person who is an agent or employee of the person having control of the house
- That the proposed Property Management Arrangements for the house are satisfactory
- All persons involved in the management of the property are to be identified and assessed under the Fit and Proper person criteria

The Authority will ensure, through this procedure that:

- Each case will be determined on its own merit; and
- Each specific offence, incident or issue will be considered in terms of its relevance to the holding of a Licence or to management and will take into account the significance and nature of the offence

Where the information contained in the initial application is insufficient to determine suitability, we may contact the applicant to request further information. Where no other information is available or forthcoming, the Authority can refuse to grant the licence on grounds of insufficient evidence.

## Fit and Proper Person Criteria

### The Proposed Licence Holder must be a 'Fit and Proper Person'.

The local authority "must have regard (among other things) to" evidence which shows that the proposed licence holder or any person associated or formerly associated whether personally or on a work basis with the proposed licence holder, provided it is relevant to whether that person is fit and proper, has:

- (a) Committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003;
- (b) Practiced unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business.
- (c) Contravened any provision of the law relating to housing, public health, environmental health, or of landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against you e.g. failing to comply with a Housing Act notice or have had works in default carried out by the Local Authority on a property'.
- (d) Been refused a licence or had a licence revoked for any property in relation to HMO, additional or selective licensing under the Housing Act 2004.
- (e) Been, or is, the owner or manager of a property which has had complaints from tenants or other sources regarding serious or repeated breaches of the conditions of a licence; in relation to HMO, additional or selective licensing under the Housing Act 2004.
- (f) Been, or is, the owner or manager of any property that has been the subject of an interim or final management order or a special interim management order under the Housing Act 2004.
- (g) Demonstrated any conduct or business practices which are considered by Gateshead Council to indicate unsuitability to be a licence holder or manager of a licensed property.

The criteria is planned to be extended with the provision of the Housing and Planning Act 2016, Part 5, section 125. Applications received after these updates have been introduced will be assessed using the additional criteria.

A local housing authority in England must also have regard to any evidence that a person (P) is a fit and proper person to be the license holder or manager of the house including:

- requires leave to enter or remain in the United Kingdom but does not have it;
- Is insolvent or an undischarged bankrupt.

Evidence is within this subsection if—

- it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) is a person to whom subsection (3A)(a) or (b) applies; and
- it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder or (as the case may be) the manager of the house.

### **Application process - How we will determine whether a person meets Fit & Proper**

The Licence Holder or any other applicable persons will be assessed under the Fit and Proper person's criteria. They will be assessed to determine they are without relevant convictions, cautions, reprimands and warnings from the information provided on the application form. The nature of some offences will be viewed more seriously than others and must pay regard to the following:

- As of the 1st October 2014 it is a legal requirement for all managers to be a member of a redress scheme. Redress schemes for letting agency work and property management work (requirement to belong to a scheme) (England) Order 2014
- The Licence Holder must not discriminate against race, colour, gender, religion, ethnic or national origin disability (where appropriate) or sexual preference; and are promoted and available to people whose backgrounds may include such circumstances including homelessness, mental health issues, bankruptcy etc, where the provision of support where necessary enables that person to successfully manage their tenancy
- That all information relating to the tenancy, property and tenant rights and responsibilities is presented in a format accessible and understandable by the individual; and
- That the management of their property does not contravene relevant legislation and standards, such as the Race Relations Act and Statutory Code of Practice on Racial Equality in Housing.
- In addition to assessing compliance with current and previous licence criteria, the Authority will take into account the way in which the applicant has engaged with any previous licensing or enforcement procedures, both within or outside the Authority. The fact that the prospective Licence Holder may have been successful in mandatory licence applications is not sufficient evidence on its own to fully demonstrate engagement with previous application or enforcement processes.

It should be noted that this document and the fit and proper person criteria is not exhaustive and the Authority reserve the right to amend the Fit and Proper Person criteria and the Property Management Arrangements from time to time in line with government directives or through service or policy development. Any amendments changes to the document or the criteria will be published and sent to existing Licence Holders and Managers

### **Licence Holder Finances**

It is expected that finances are available to deal with routine and emergency repairs at the property. In cases where a managing agent is the licence holder, the owner will need to authorise expenditure of 25% of the hearily income of the house for such repairs (at a minumum of £1500) to the agent. Existing management contracts between the agent and the owner should be amended accordingly.

### **Application Process**

A licence under Part 3 of the Housing Act 2004 must include conditions: some of these conditions are mandatory and must be included, and there are further conditions attached to the licence to ensure the property complies with national and local standards. These can be set by the Local Authority.

Prior to granting a licence the council are required to consult the applicant and any interested parties about the licence conditions to make them fully aware of the role and the responsibilities associated with being a licence holder. Following receipt of a 'Proposal to Grant a Licence' Notice, representations can be made within a period of 14 days from the date of receipt of the Notice. Any representations made will be considered at this time.

If the licence holder feels it is necessary they will have the opportunity to make an appeal to the First Tier Tribunal - Property Chamber Residential. Your rights of appeal will be detailed throughout the process.

### **Licence Holder/Council Meeting**

Prior to the granting of a licence, the proposed licence holder will be invited to meet with a Licensing Officer at a convenient time and venue. In the majority of cases this will be at Gateshead Councils Civic Centre which is located in close proximity to licensing areas. It is expected that in being the person in control at a dwelling and the most appropriate to hold a licence, the proposed licence holder will have an active presence in the licensing area to ensure effective management and fulfilment of responsibilities.

The licence represents a partnership between the licence holder and the Council. The meeting will provide an opportunity for the Council to become satisfied that the

proposed licence holder is fully aware and understands their role and responsibilities, including the conditions attached to their licence.

## **Public Register**

Once the council have approved the application, the relevant details from the licence will be entered onto a public register that the council is obliged by law to keep. An application for a licence, therefore, will constitute consent to a granted licence being entered on the public register. The application itself, and sensitive personal data, will not be entered onto the public register.

### Other Considerations:

1. A Selective Landlord Licence is not transferable. Where a property changes ownership (and remains licensable) the new landlord must make an application for a licence, if they wish to continue to let the property. A repayment of the licence fee cannot be made for any un-expired period of the licence, and a full fee will be required from the new applicant. If there is a change in the managing agent (who is operating as the licence holder) to another known managing agent (when the owner of the property remaining the same), a new licence will be issued (admin charge applicable). See fees and charges. A new licence application will be required (full fee payable) when a new and unknown managing agent is to be the licence holder.
2. In the event of the death of the current licence holder occurring during the period of the licence, the licence ceases to be in force from the date of death. During the period of 3 months from the date of death, and providing a copy of the death certificate is submitted, the house will be treated as if a temporary exemption notice (TEN) has been served. At any time during the 3 months, a formal application may be made for a TEN. If approved by the council, the TEN will be valid for a period of 3 months, and will take effect after the initial 3 months ends.
3. Where a licence holder wishes to alter the terms of their licence, such as a change to the manager or managing agent, they must notify the council immediately in writing of the change of circumstance. The new manager or managing agent will be required to submit information including the fit and proper person declaration.
4. If the licence holder changes mid-term (unless from agent to agent) then a complete application will need to be submitted to the council along with any required supporting documents at the point of application. In this instance a full fee will be required for the new application. See fees and charges.

5. It is a criminal offence to make a false statement in an application for a licence, or to fail to comply with any licence condition.

It is essential that all relevant parts of the application form are completed fully and all evidence requested is supplied at the time of application. (There will be an administration fee levied for all incorrect and incomplete applications).

Failure to apply for a licence will result in an investigation, which could result in a civil penalty and/or prosecution (the consequences of this are detailed the Enforcement Policy).

### **Incomplete licence applications**

Where an application is missing information that is required as part of the application process, one opportunity will be offered to supply the correct information (administration charge payable). Where information is still not supplied as required to comply with the requirements of an application the applicant will be returned. The applicant will be deemed to have not made a valid application and may be at risk of further investigation for failing to licence the property.

### **Reduced licence term**

In certain circumstances the local authority can issue a licence for a reduced period of time. This is a consideration when the council are not completely satisfied with the proposed management arrangements or if the proposed licence holder has failed to comply with previous requested from the local authority. In some instances the local authority can refuse to grant a licence.

### **Refusal of a licence**

The Council consider each licence application on its own merit and any mitigating factors are taken into consideration. The council will adopt a common sense approach, exercising its discretion reasonably and proportionately. However, there are many instances where the local authority may consider refusing a licence including the following circumstances:

- The applicant is not deemed fit and proper based on information contained within the application of otherwise known about the applicant
- The proposed licence holder or manager has been prosecuted in the past 5 years for a housing related offence
- The proposed licence holder or manager have failed to comply with a relevant notice in the past 3 years, this includes notices which may have been served under the Housing Act 2004, Building Act 1984, Environmental Protection Act 1990 or Prevention of Damage by Pests Act 1949

- Incomplete application form, incomplete fee or missing or invalid certification
- The proposed licence holder failed to comply with previous licence conditions and was in breach of their previous licence.

## Fees and Charges

Part 3 of the Housing Act 2004 enables the Council to charge a fee for Landlord licensing, this is to contribute towards the cost and overheads associated with operating the scheme in accordance with the duties under this part of the Act. The licence fees have been calculated in line with the number of properties that will require a licence and the costs of implementation over the five year period.

There are approximately 300 private rented properties in the proposed redesignated Central Bensham Scheme and an estimated 850 private rented properties in the proposed Avenues Scheme.

### Proposed Fees and charges

Early Application Fee	£550  (complete application received prior to scheme live date, or before licensable property is purchased/managed mid scheme)
Standard Fee	£750  (complete application received within 28 days of becoming licensable)
Standard Fee Plus	£850  (complete application received more than 28 days of property becoming licensable and reminder sent)
Late Application Fee	£1000  (complete application received more than 28 days of becoming licensable and application had to be pursued on multiple occasions)
<b>Discounts</b>	
Accredited property (paid at expiry of licence)	£100 (18% discount from standard fee)  <i>Unaccredited on application</i> – discount repaid if property accredited within agreed timescales and property meets standard for

	<p>full licence duration</p> <p><i>Accredited at time of application - £50 upfront discount for properties already accredited and £50 paid at licence expiry if standard maintained)</i></p>
Accredited member of National Landlords Association (or equivalent)	<p>£100 up front discount for current accredited NLA members/licence holder commits to and attends foundation course</p> <p>£65 additional discount at end of scheme if membership maintained for full licence duration</p>
Multiple Properties (discount on the fit and proper element of a licence after the first application)	£10 per subsequent application
<b>Licence Variations</b>	
Change of address details of existing licence holder, manager, owner, mortgagee, freeholder, leaseholder etc.	No fee
Change of mortgage provider, freeholder and leaseholder (unless they are also the licence holder or manager)	No fee
Variation of Licence instigated by the Council	No Fee
Change of licence holder	Application fee
Change of manager (if not the licence holder),	No fee
Change of manager (if the new manager is the most appropriate to be the licence holder and the property owner remains the same)	£50 administration fee
<b>Charges</b>	
Charge for provision of and receipt of a paper application (for applications received after online system becomes available)	£50

Charge for each incomplete/deficient application received	£25 (added to fee)  (if application is returned or missing information needs to be pursued)
Phased payment plan (per property)	£25 per property (to be added to final invoice amount)
Charge for failing to return requested property/licence information mid scheme	£25 per additional request
Caution issue (as an alternative to prosecution)	£300 (staff time, caution issue)
Public register – request for paper copy	£50

### **Refund Policy**

Our fees are not connected to the length of a licence. If a licence holder cancels their licence before it expires, the Council will not give a refund for any unused time. However, there are certain circumstances when a refund is re-payable including:

- If a duplicate application was made in error
- an application for an exempted property by mistake

Conversely, there are certain circumstances when the Council will not be given a refund including:

- when an application has been refused
- where an application has been withdrawn
- the Council have revoked the landlord licence

### **Revocation or Variation of Licence**

A licence can be varied or revoked by the Council.

#### **Revocation of a Licence**

The council can revoke an application on its own initiative, on further application from the licence holder or other relevant person where an application to do so is made by the licence holder or any relevant person, or where the council consider that:

- The licence holder has seriously breached a condition of the licence, or repeatedly breaches a condition of the licence

- The licence holder is no longer a fit and proper person
- The management of the house is being carried on by someone who is not a fit and proper person
- The property ceases to be one that requires a licence
- The property is granted a licence as an HMO (under part two of the Housing Act 2004)

### **Variation of a Licence**

The Council may, on its own initiative or further to an application from the licence holder or other relevant person, vary a licence. It may do so with the agreement of the licence holder or where it considers that there has been a change of circumstances since the grant of the licence. There are several situations when a licence is required to be varied including:

- Change of manager (unless they are also the licence holder),
- Change in occupation,
- There is a change of address or details of any interested party such as the manager, owner, mortgagee, freeholder or leaseholder

### **Death of a Licence Holder**

In the event of the death of the current licence holder occurring during the period of the licence, the licence ceases to be in force from the date of death. The licence cannot be transferred to another person. During the period of 3 months from the date of death, and providing a copy of the death certificate is submitted, the house will be treated as a temporary exemption notice (TEN) has been served. At any time during the 3 months, a formal application may be made for a TEN. If approved by the council, the TEN will be valid for a period of 3 months, and will take effect after the initial 3 months ends.

If the property remains in occupation after this period then a complete application will need to be submitted to the council along with any required supporting documents at the point of application. In this instance an administration fee will be charged. See fees and charges.

### **Procedures and Appeals**

Throughout the licensing process the statutory procedure relating to grant or refusal of licences as laid down in the Act, schedule 5, will be adhered to by the Council. This also details how relevant persons can appeal against any licensing decision including granting or refusal of licence, revocation or variation of licence and licence conditions.

The Council will provide all licence applicants and where appropriate other relevant persons, full details of the right to appeal to the First Tier Tribunal – Residential

Property Tribunal, which is a body independent from the Council. In most cases, an appeal must be lodged 28 days beginning with the date specified in the notice.

## **Public Registers**

The public register used for recording private landlords in the selective licensing areas provides details of all properties where a licence is currently in force, and it identifies the name and address of the licence holder and property manager if applicable.

The temporary exemption notices register provides details of all properties where a licensing exemption is currently in force and identifies the name and address of the person who has applied to the Council for such an exemption. Both registers can be viewed by appointment and copy printed for a nominal charge (see fees and charges).