

NOTICE OF DESIGNATION

HASTINGS BOROUGH COUNCIL

DESIGNATION OF AN AREA FOR ADDITIONAL LICENSING OF HOUSES IN MULTIPLE OCCUPATION (HMOs)

NOTICE IS HEREBY GIVEN in accordance with Section 59 Housing Act 2004 that the Hastings Borough Council acting as local housing authority in exercise of its powers under Section 56 of the Housing Act 2004 (“the Act”) has designated for additional licensing of Houses in Multiple Occupation (“HMOs”) the area described in paragraph 4.

CITATION, COMMENCEMENT AND DURATION

1. This designation may be cited as the Hastings Borough Council Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2017.
2. This designation is made on **10 October 2017** and shall come into force on **3rd May 2018**.
3. This designation shall cease to have effect on **2nd May 2023** or earlier if the Council revokes the scheme under section 60 of the Act.

AREA TO WHICH THE DESIGNATION APPLIES

4. The designation shall apply to the wards of Braybrooke, Central St. Leonards, Castle and Gensing in the Borough of Hastings.

APPLICATION OF THE DESIGNATION

5. This designation applies to all HMOs as defined by section 254 and 257 of the Housing Act 2004 that are occupied by 3 or more persons comprising 2 or more households, within the area described in paragraph 4 unless:
 - a the building is of a description specified in Annex A (Buildings that are not HMOs for the purpose of the Act- other than Part 1);
 - b the HMO is subject to an Interim or Final Management Order under Part 4 of the Act;
 - c the HMO is subject to a temporary exemption under section 62 of the Act; or
 - d the HMO is required to be licensed under section 55 (2) (a) of the Act (mandatory licensing)
 - e the HMO is of a description exempted by the local authority.

EFFECT OF THE DESIGNATION

6. Subject to sub paragraphs 5(a) to (e) above, every HMO of the description specified in that paragraph in the area specified in paragraph 4 shall be required to be licensed under section 61 of the Act.

The decision to make the designation was approved by the Cabinet of the Hastings Borough Council on the 10th October 2017. The designation falls within a description of designations in relation to which the Secretary of State has given a general approval under section 58 of the Housing Act 2004, namely The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential

Accommodation (England) General Approval 2015 which came into force on the 1 April 2015.

A person having control of or managing a prescribed HMO must apply to the Hastings Borough Council for a licence.

INSPECTION OF DOCUMENTS/APPLICATION FOR LICENCE

7. Any landlord, managing agent or other person managing a HMO or any tenant within the Borough may inspect the designation, apply for a licence or seek further information or advice as to whether their property is affected by the designation from:

Housing Renewal

Hastings Borough Council

Muriel Matters House, Breeds Place, Hastings TN34 3UY

Email: licensingrentedproperty@hastings.gov.uk

Tel.01424 451100

Opening Hours Monday – Thursday 9.00am to 4.45pm Friday 9.00am to 4.30pm

ENFORCEMENT

8. Upon the Designation coming into force on **3rd May 2018**
 - any person who fails to apply for a licence in the designated area shall be guilty of an offence under Section 72(1) of the Act, and shall be liable to prosecution and liable to an unlimited fine. The Local Housing Authority may alternatively impose a financial penalty of up to £30,000.
 - In addition, they may be required to repay up to 12 months' rent if the tenant or the Council, in the case of housing benefit payments, apply to the Residential Property Tribunal under the provisions of section 73 and section 74 of the Housing Act 2004 for a rent repayment order.
 - No Section 21 notice (Housing act 1988 (recovery of possession on termination of shorthold tenancy)) may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO.

Annex A: Buildings that are not HMOs for the purpose of the Act- other than Part 1⁴

Buildings controlled or managed by public sector bodies etc⁵

1. A building where the person managing or having control of it is⁶.

- (a) a local housing authority
 - (aa) a non-profit registered provider of social housing
- (b) a police and crime commissioner under section 1 of the Police Reform and Social Responsibility Act 2011 or the Mayor's Office for Policing and Crime under section 3 of the same Act.
- (c) a fire and rescue authority under the Fire and Rescue Services Act 2004
- (d) a health service body within the meaning of section 9 of the National Health Service Act 2006
- (e) a body which is registered as a social landlord under Part 1 of the Housing Act 1996.
- (f) a profit-making registered provider of social housing where it is social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008⁷

Buildings controlled or managed by a co-operative society⁸

2. A building where:

- (a) the person managing or having control of it is a co-operative society whose rules are such as to secure that each of the conditions set out below is met, and
- (b) no person who occupies premises in the building does so by virtue of an assured tenancy, a secure tenancy or a protected tenancy⁹

The conditions are:

- (a) that membership of the society is restricted to persons who are occupiers or prospective occupiers of buildings managed or controlled by the society,
- (b) that all management decisions of the society are made by the members (or a specified quorum of members) at a general meeting which all members are entitled to, and invited to, attend,
- (c) that each member has equal voting rights at such a meeting, and
- (d) that, if a person occupies premises in the building and is not a member, that person is an occupier of the premises only as a result of sharing occupation of them with a member at the member's invitation.

For these purposes "co-operative society" means a body that:

- (a) is registered as a co-operative society under the 2014 Act or is a pre-commencement society (within the meaning of that Act) that meets the condition in section¹⁰ 2(2)(a)(i) of that Act, and is neither:
 - (i) a non-profit registered provider of social housing, nor
 - (ii) registered as a social landlord under Part 1 of the Housing Act 1996.

⁴ Schedule 14 of the Act and SI 2006/373

⁵ Paragraph 2 of schedule 14.

⁶ For the definition of "person managing" and "person having control" see section 263 of the Act.

⁷ Paragraph 2A of Schedule 14.

⁸ Paragraph 2B of Schedule 14.

⁹ "assured tenancy" has the same meaning as in Part 1 of the Housing Act 1988; "protected tenancy" has the same meaning as in the Rent Act 1977; "secure tenancy" has the same meaning as in Part 4 of the Housing Act 1985.

¹⁰ the 2014 Act" means the Co-operative and Community Benefit Societies Act 2014.

Buildings regulated by other enactments¹¹

3. A tenancy, licence or occupation of a house which is regulated under the following enactments:
- (a) sections 87 to 87D of the Children Act 1989
 - (b) section 43 (4) of the Prison Act 1952
 - (c) section 34 of the Nationality, Immigration and Asylum Act 2002
 - (d) The Secure Training Centre Rules 1998¹²
 - (e) The Prison Rules 1999¹³
 - (f) The Young Offender Institute Rules 2000¹⁴
 - (g) The Detention Centre Rules 2001¹⁵
 - (h) The Criminal Justice and Court Service Act 2000 (Approved Premises) Regulations 2001¹⁶
 - (i) The Care Homes Regulations 2001¹⁷
 - (j) The Children's Homes (England) Regulations 2015¹⁸
 - (k) The Residential Family Centres Regulations 2002¹⁹

Certain student lettings etc²⁰

4. A building —
- (i) which is managed or controlled by a specified educational establishment or is of a specified description of such establishments and
 - (ii) the occupiers of the house or dwelling are undertaking a full time course of further or higher education at the specified establishment²¹ and
 - (iii) the house or dwelling is being managed in conformity with an Approved Code of Practice for the management of excepted accommodation under section 233 of the Act.²²

Religious communities²³

5. A building which is occupied principally for the purpose of a religious community whose principal occupation is prayer, contemplation, education or the relief of suffering except if the building is a converted block of flats to which section 257 of the Act applies.

Buildings occupied by owners²⁴

6. A building which is only occupied by:
- (i) one or more persons who hold the freehold or a leasehold interest granted for a term of more than 21 years of the whole, or any part of, the building
 - (ii) and/or any member of the household²⁵ of that person or persons but this exemption does not apply to a converted block of flats to which section 257 of the Act applies, except for ascertaining the status of any flat within the block.

¹¹ Paragraph 3 of Schedule 14.

¹² SI1998/472 as amended by 2003/3005

¹³ SI1999/728 as amended by SI 2000/1794, SI 2000/2641, SI 2001/1149, SI 2002/2116, SI 2002/3135, SI 2003/3301 and 2005/869

¹⁴ SI2000/3371 as amended by SI 2002/2117, SI 2002/3135 and 2005/897

¹⁵ SI 2001/238 NB Section 66(4) of the Nationality, Immigration and Asylum Act 2002 provides that the reference to a detention centre is to be construed as a reference to a removal centre as defined in Part VIII of the Immigration and Asylum Act 1999.

¹⁶ SI2001/850

¹⁷ 2001/3965 as amended by SI 2002/865, SI 2003/534, SI 2003/1590, SI 2003/1703, SI 2003/1845, s2004/664, SI 2004/696, 2004/1770, 2004/2071 and 2004/3168

¹⁸ SI 2015/541

¹⁹ sa 2002/3213 as amended by S12004/664, 2004/865 and 2004/3168

Buildings occupied by resident landlord²⁶

7. A building which is occupied by a person or persons to whom paragraph 6 applies (subject to the proviso therein) and no more than two²⁷ other persons, not forming part of the owner's household.

Buildings occupied by two persons²⁸

8. Any building which is occupied by two persons (forming two households)

Meaning of "building"

9. in this annex a "building" includes a part of a building

²⁶ Paragraph 6 of schedule 14 and SI 2006/373

²⁷ Paragraph 6(2) of SI 2006/373

²⁸ Paragraph 7 of Schedule 14

²⁹ Paragraph 1 of Schedule 14