

APPENDIX 2

Administrative practices for Licence determination under Parts 2 and 3 Housing Act 2004

[NOTE: paragraph numbers follow from Appendix 1 – these documents will be joined for ease of use after approval]

64. In the following paragraphs it sets out how the Council applies certain administrative practices when processing licences under Parts 2 and 3 of the Housing Act 2004) which are:

- (i) Licence start dates – the date from which the LHA calculates the duration of a new licence application.
- (ii) Licence start dates – the date from which the LHA calculates the duration of a licence on renewal.
- (iii) Passporting licences between Licensing Schemes – how the LHA administers licences that need to ‘passport’ or ‘transfer’ between Licensing Schemes.
- (iv) Overhanging Licences – the approach taken by the LHA in relation to Licence continuation after expiration of discretionary Licensing Schemes.

Licence start date – date from which durations calculated

65. In the proceeding paragraphs, the Council has set out its rationale for using the ‘effective date’ of a licence application as the date upon which it will calculate the licence duration to commence from. As from the date of the adoption of this administrative practice note, this is the general approach that will be applied by the LHA, but it does accept that circumstances may exist whereby it takes a different approach depending on the facts of the case. The reasons for use of the ‘effective date’ of application are:

- (i) Section 72 (4) & 95 (3) of the Act, states that if a person is subject to proceedings for the offence of operating an unlicensed property, that person has a defence in law, if at the material time they had submitted an application for a licence and that application had been assessed as ‘duly made’. Therefore, the initial administration step for any application received by the LHA is to assess whether the application has been ‘duly made’. To do so, the LHA undertakes a triage of the application to make sure the application has been properly and fully completed with all required documents and fee having been submitted. The date upon which that assessment is completed is what the LHA refers to as the ‘effective date’ for the licence application.
- (ii) The Act provides the LHA with the authority under sections 68 & 91 to ‘*grant a licence for such period as the Housing Authority may specify or determine*’. Therefore, the LHA has some discretion around how it may determine applications, the dates on which they become effective and the duration of licences. It should be noted though that a licence

period cannot, in law, be longer than five years from the date the licence is granted or comes into force.

(iii) The length of time it takes the LHA to determine an application varies and is dependent upon many factors such as the application type, particular property, a Landlord and/or Manager background, complexity of an application and also the point within which the Licensing Scheme is within its cycle of operation. By way of example, both the Additional and Selective Licensing Schemes are discretionary licensing schemes which are adopted by the Council for 5 year periods. When each Scheme is first implemented and becomes operational, or as the Schemes approach a renewal date, there is naturally a large peak in the amount of applications that have to be assessed and determined by the LHA. This peak of 'new' applications levels off during the life of the Scheme. With other licence applications, factors may exist that result in the need for extra due diligence, for example a pre-liscence inspection may be required, there may be evidence of past or current poor management issues in relation to a property or across a portfolio. In these circumstances, periods of communications between the LHA and Landlord/Manager are likely to be needed to clarify application points before the licence can be determined. In examples like these it takes a longer period of time for applications to be determined and therefore the LHA states that the licence (when determined in favour of the landlord) commences on the date on which the application became effective.

66. The purpose of this statement is to be transparent on the administrative approach taken as some prospective Licence Holders may perceive an unfairness in its application. However, a Licence Holder should consider that they submitted a licence application on a particular date because generally that would be the point in time when it was required because the Property is licensable in law. During the period between the 'duly made' application having been made, up to the point of when the licence application is determined, the Landlord is regarded as compliant in law and has benefitted from the protection of a statutory defence against proceedings for operating a rental Property without a licence. Whereas, if the LHA applies the alternate process whereby the licence becomes effective on the date it is determined (or granted) then the licence holder in some cases will gain unfairly from an extended period of licence. From a practical point of view, there will always be a period of time between receipt of a licence application up to the point when a licence is determined because realistically a licence will never be determined by the LHA on the day it is received.

Renewal Licences

67. On renewal of a property licence, it is expected that a 'new' application will be made in advance of the expiration of the former licence. Assuming that the LHA is of the view that the application should be determined in favour of the applicant and granted, then the commencement date for the licence will be the day after the expiration of the former licence, meaning there is no break in the

continuity of the licences. If, however, an application is received and the previous licence has expired, enquiries will be made as part of the determination process to establish reason(s) for any gaps. Assuming the Council is in favour of granting the application and the property was licensable during the gap, the new licence will generally commence the day after the expiration of the former licence.

Passporting between Licensing Schemes

68. The Council operates three licensing schemes which include Mandatory and Additional Licensing Schemes for Houses in Multiple Occupation (HMOs) and Selective Licensing for privately rented properties. Mandatory licensing applies to HMOs that meet the prescribed description of being occupied by five or more persons living in two or more separate households; and which meets the tests under Section 254 of the HA 2004. The Council also exercised its powers under section 56 Housing Act 2004 ("HA 2004") to designate areas of the City to be subject to Additional Licensing. Under the 'Nottingham City Council Designation of an Area for Additional Licensing 2019', which came into force on 1 January 2019, all other non – mandatory licensable HMOs in the city are required to have an HMO Licence where they are occupied by three or more persons living in two or more separate households; and where they meet the tests under Section 254 of the HA 2004, but it excludes Section 257 HMOs. As from 1 August 2018, the Council also implemented a Selective Licensing Scheme which applies to rental properties that are located within a designated area of the city.
69. It is recognised by the Council that changes in circumstances often occur when operating and managing rental properties. Due to the fact that there are three licensing schemes operating in Nottingham City, changes in occupation levels may mean that a Property becomes licensable under a different licencing scheme. The Council refers to this as 'pass porting' which covers the situation where a licence needs passport (transfer) between schemes.
- (i) When the recent Licencing of Houses in Multiple Occupation (Prescribed Description) Order 2018 was enacted, it amended the definition for mandatory licensable HMOs by removing the requirement of 3 storeys meaning any House occupied by 5 or more unrelated persons living in two or more separate households became licensable under Part 2 of the Act. This meant that some properties previously licenced under Selective or Additional Licensing Schemes needed to be pass ported (or transferred) into the Mandatory Licensing Scheme. With these cases, Nottingham City LHA has already worked through and identified any licences affected and landlords were contacted directly regarding their options.
 - (ii) A licence holder under the Selective Licence Scheme (Part 3 of the 2004 Act) may decide they want to increase occupation levels meaning the Property is then licensable under Part 2 of the Act, or alternatively a Licence Holder may decide they no longer wish to operate and manage a HMO deciding that they would prefer to operate as a rental for a single household.

70. The Council has previously operated a separate licence fee for ‘pass porting’ between Parts 2 (HMO licensing) and 3 (Selective Licensing) of the 2004 Act. However, this process was found to be administratively complex because the level of documentation and information required is different depending on which licence is required. This difference is as a result of the requirements of the 2004 Act, rather than as a result of requirements set locally by the LHA. Therefore, the LHA came to the view that in the event that of a landlord needing to ‘passport’ between Parts 2 and 3 of the 2004 Act, a new application with the appropriate licence fee is generally required. If, however, a landlord notifies the LHA early enough in the processing of an application and before the LHA grants or refuses a draft or final licence in respect of a Property, then the LHA will manage the applicable licence fees payable in accordance with the scenarios set out in the Table at paragraph 38 above (Refunds Section).

Licence duration

71. Generally, when determining licences in favour of an applicant, the LHA has decided that it will grant licences for the full five years. However, the LHA may determine that circumstances exist whereby it may issue a shorter term licence duration, this would depend on the specific circumstances of the case and full reasons would be given. For illustrative purposes only, this may be considered where there has been some history of non-compliance with management regulations or licence conditions or there are outstanding issues relating to planning permission which may need a period of time to be resolved.

Licence continuation after expiration of discretionary Licensing Schemes (“Overhanging Licences”)

72. Following on from point 70 above, the Council generally grants licences for the full five years, even though this means that a licence will continue in its application after the expiration of the adopted Licensing Scheme. The Council refers to these licences as ‘overhanging licences’. For example, the Council’s Selective Licensing Scheme came into force on 1 August 2018 and will expire on 31 July 2023. However, licence applications that are received after the 1 August 2018 will still generally be granted by the Council for a full five-year period from the date on which the application was deemed as ‘effective’. This means that generally licences will continue after the expiration of the underlying discretionary Scheme.
73. The Council has previously adopted a different practice in relation to its Additional Licensing Scheme whereby it used to grant licences with an expiration date that coincided with the expiration of the underlying licensing Scheme, meaning shorter length licences were being granted. However, after the LHA adopted a second 5-year Additional Licensing Scheme which commenced on 1 January 2019 and the Selective Licensing Scheme on 1 August 2018, it became apparent that it was more pragmatic for both the Council and the Licence Holder, if the Council granted licences for the full 5-year term. This then enabled the licence

granted under the first scheme to continue to be in force under the 2nd Scheme, allowing the Licence Holder to have a continuous full 5-year licence.