



Department for
Communities and
Local Government

Extending mandatory licensing of Houses in Multiple Occupation (HMOs) and related reforms

A technical discussion document

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Introduction

This paper sets out options for extending the scope of mandatory licensing of Houses of Multiple Occupation (HMO). It also sets out our proposals to streamline the HMO licensing process to reduce red tape.

We plan to introduce these changes during 2016.

Background

The Government values the private rented sector. It is an important part of our housing market, housing 4.4 million households in England¹. It wants to support good landlords who provide decent well maintained homes and avoid unnecessary further regulation on them.

However, certain parts of the sector, particularly at the lower end, house some of the most vulnerable people in our society who do not have access to alternative housing. These people are sometimes housed illegally and unsafely in HMOs.

In his speech of 21 May the Prime Minister announced the Government's intention to "crack down on the unscrupulous landlords who cram houses full of illegal migrants, by introducing a new mandatory licensing regime".

(<https://www.gov.uk/government/speeches/pm-speech-on-immigration>)

Whilst this was said in the context of an immigration speech, it marks the Government's commitment to raising standards in HMOs more generally, so they are a safe place to live in and do not blight the neighbourhoods in which they are found.

We know there are a number of landlords who do not simply fail to manage their HMOs properly, but positively exploit their tenants and often the public purse through housing benefit, by renting sub-standard, overcrowded and dangerous accommodation to vulnerable tenants. The Government is determined that good landlords who work hard for their tenants and comply with the law should cease to face unfair competition from the rogue landlords, who ignore the law and their obligations.

Our paper, Tackling Rogue Landlords and Improving the Private Rented Sector (August 2015) (<https://www.gov.uk/government/consultations/tackling-rogue-landlords-and-improving-the-private-rental-sector>), complements these proposals and sets out the enforcement tools the Government proposes to make available to authorities so they can more effectively clamp down on the rogue landlords that operate within the private rented sector.

¹ English Housing Survey 2013/14

Sending responses:

The measures proposed in this paper would apply to England only.

The closing date for comments is 18 December 2015

Comments should be submitted on the online form:

https://www.surveymonkey.com/r/HMO_Licensing

Part 1: Extending mandatory licensing of Houses in Multiple Occupation in England

Introduction

1. This part of the paper sets out a number of options for extending the scope of mandatory licensing of HMOs. We welcome views on those options and in particular on the questions posed. It is estimated that there are about 463,000 HMOs in England². Not all HMOs are required to be licensed.
2. Under the Housing Act 2004 (the Act) an HMO is generally defined as a building or flat where the basic facilities are shared, such as a kitchen, bathroom or toilet, by persons who do not live together³.
3. A building will also be an HMO if it is a poorly converted block of flats and less than two thirds of the flats are occupied by owners- as set out in section 257 of the Act.

Current scope of licensing

4. Part 2 of the Act introduced a requirement that certain types of HMOs are required to be licensed by the local housing authority. The licensing provisions have been in force since April 2006.
5. Mandatory licensing applies to HMOs comprising non self-contained accommodation of three or more storeys occupied by five or more people, who do not form a single household (e.g. the building is occupied by more than one family)⁴.
6. In addition, the Act enables the Secretary of State to approve local licensing schemes which can apply to any other type or all other HMOs in a local authority area. The Secretary of State has given approval for local housing authorities in England to make local schemes without the need to get permission from central Government⁵. However, not all local authorities have introduced additional licensing schemes.

² Local authority housing statistics data returns 2012-2013. This includes all HMOs within the definition set out in the Housing Act 2004 (whether licensed or not) and converted blocks of flats within the meaning of section 257 of that Act.

³ For the general definition of an HMO see section 254 of the Act

⁴ See *The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) England Order 2006* (SI 2006/371)

⁵ See paragraph 3 of *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 26th March 2015.

7. Local housing authorities may charge a fee for considering an application for an HMO⁶. The Government has no plans to specify the level of fees that can be charged. When setting fees local authorities may take account of the costs of their functions in implementing their licensing functions⁷. Fee levels should be consistent within the local authority policy, which should be transparent and clear as to how they are calculated and what costs are taken into account.
8. Management regulations⁸, which impose certain minimum requirements in respect of the management and maintenance of all HMOs, are also in place.

Rationale for intervention

9. HMOs come in a variety of forms. The most familiar are traditional bedsit type accommodation, where unrelated tenants share basic amenities, and shared houses, where a group of unrelated people rent a property under a single tenancy agreement.
10. HMOs generally provide a cheaper form of rented accommodation than renting a flat or a house as a single household. They are, therefore, one of the main forms of housing in the private rented sector for people on low incomes or living on benefits. They are also often the only source of housing for certain groups, such as students, people on low income or foreign nationals. Tenants can be vulnerable because of their age, lifestyle, and nationality or immigration status.
11. The Government recognises that managing HMOs can be more demanding than managing single rented households, not least because they are occupied by unrelated people, who are living separate lives with different expectations and standards. Many landlords and agents do an excellent job in managing their HMOs to high professional standards, but that is far from universal.
12. Failure to effectively manage HMOs properly can adversely affect the health and safety of tenants within the building and can have a wider impact on the local community in which the HMO is located.
13. However, there are a number of landlords who do not simply fail to manage their HMOs properly, but positively exploit their tenants and often the public purse through housing benefit, by renting sub-standard and dangerous accommodation to vulnerable tenants, sometimes in overcrowded conditions.

⁶ Section 63 (3) of the Act.

⁷ See section 63 (7) of the Act.

⁸ The Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 2006/372) (applies to all HMOs except poorly converted blocks of flats) and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (SI 2007/1903) (which applies to poorly converted blocks of flats).

14. This is frequently reported in the national and local media. Some recent examples are given below:

Cornwall restaurant owner operating flat above restaurant occupied by 10 people, found guilty of breaches of obstruction of fire escape, for having faulty smoke detectors and no gas safety certificate.

Conviction of Watford landlord for breach of HMO regulations following a fire in a two storey house which was occupied by seven people.

Willesden landlord convicted of operating smaller HMO without a licence housing 16 tenants sharing one kitchen and shower and two toilets.

Darlington landlord operating small terrace house as HMO convicted of breach of regulations after six tenants discovered living in overcrowded and unsafe conditions (some sleeping on the floor).

Landlord convicted of not providing adequate protection against fire following blaze at two storey HMO comprising seven bedsits in Leamington Spa.

Landlord in Leeds letting out flats to vulnerable people in a poorly converted block, including a one bedroom flat let to a family of five, convicted for breaches of HMO regulations, including fire safety measures. It was reported the landlord owned 26 properties in the city and was receiving about £94,000 a year in rent paid by housing benefit.

15. The Government is committed to cracking down on rogue landlords like those in the case studies. None of the properties outlined were subject to mandatory licensing and all were occupied by more than five people. The geographical spread of these examples shows that mismanagement of HMOs isn't confined to big cities and nor are problems confined to "traditional" HMOs. We want to make it easier for local authorities to raise standards in smaller HMOs where there is a need for improvement and identify

the rogues who currently operate below the radar, letting out substandard and sometimes dangerous accommodation, whilst housing vulnerable people and sometimes illegal immigrants.

Options for extending mandatory licensing

16. Whilst there was a clear rationale for introducing mandatory licensing in 2006 to cover larger HMOs, over the last decade the nature of the HMO market in England has changed. With a larger student population in the private rented sector and more families, foreign nationals, illegal immigrants and vulnerable people living in the sector, it is an increasing priority to ensure smaller HMOs are adequately protected and properly managed.
17. The Government, therefore, invites views on options for an extension to the scope of mandatory licensing.

Threshold for mandatory licensing: Number of storeys and households

18. As the case studies illustrate, there is a strong case for extending mandatory licensing to two storey buildings. A two storey house occupied by 16 people is obviously overcrowded and potentially dangerous and an HMO that catches fire because the landlord has neglected to take adequate precautions puts the occupiers' lives and property at risk.
19. There may also be a case for extending mandatory licensing to cover single storey buildings (for our approach to flats see below). Whilst this would bring within scope traditional single storey residential buildings, such as bungalows, it would also enable local authorities to target non traditional residential buildings, such as converted garages, which rogues are known to house people in. Whilst there are often other enforcement tools available to local housing authorities to deal with the misuse of buildings in this way, the HMO licensing regime could provide additional armour to deal with such abuses.

Q1. Should mandatory HMO licensing (a) cover all relevant HMOs regardless of their number of storeys or (b) should only apply to buildings of two storeys?

Q2. Local authority respondents only: How many additional HMOs in your area would be covered by extending the scope of mandatory licensing to:

(a) include two storey buildings occupied by at least 5 persons?

(b) two and single storey buildings occupied by at least 5 persons?

20. Our current view is that five people (in two households) should be the appropriate number of persons for the threshold to apply for smaller HMOs. This will ensure that smaller sized but high risk HMOs are brought within the regime.

Q3. Is five people in at least two separate households the correct threshold? If no, please state what you think the threshold should be with reasons.

Treatment of Poorly Converted Blocks of Flats⁹

21. Mandatory licensing does not apply to poorly converted blocks of flats. Whilst such buildings can be subject to additional licensing we understand few schemes cover such HMOs.
22. Mixed tenure arrangements, coupled with absent landlords and poor management structures in such blocks, can result in poor and sometimes dangerous conditions, especially in relation to common parts. This would suggest that licensing is an appropriate tool to ensure acceptable standards are achieved and maintained both for the benefit of the tenants and flat owners.
23. In addition, many poorly converted blocks of flats are in single ownership with the landlord renting out all the flats. Indeed there are examples of such blocks where the flats are bedsits, where the landlord has simply installed a shower unit and toilet within the unit. It is in the Government's view doubtful that those HMOs pose any lesser management challenges than those where there is an element of sharing.

Q4. Should poorly converted blocks of flats be brought within the scope of mandatory licensing?

Q5. Local authority respondents only: How many additional properties in your local authority area would be affected if poorly converted blocks of flats were subject to mandatory licensing? (Please provide a numerical estimate)

Treatment of flats in multiple occupation

24. Mandatory licensing currently applies to large flats in multiple occupation (comprising more than two storeys) and other flats above and beneath business premises because these flats pose a greater risk, particularly in relation to fire spread and escape, than to occupiers of conventional flats in residential blocks. However, in the latter case the whole building has to comprise three storeys or more.
25. With the proposed reduction of the number of storeys more flats will become subject to mandatory licensing. We believe all flats and other cluster HMO arrangements (such as bedsits), occupied by the threshold number of persons above and below business premises should be brought within the regime.

⁹ Section 257 HMOs are regarded as a special category of HMO. These are buildings that have been converted into self contained flats, but at the time of conversion did not meet the relevant building regulations standards (and still do not comply with them). There is a further requirement that more than one third of the flats are occupied by tenants (not long leaseholders)

26. However, the Government does not believe there is a strong case for bringing flats in residential blocks within the scope of mandatory licensing. These will generally be owned on a long lease by the landlord and prohibition against multiple use of such flats is quite common. Long leases will almost always contain clauses prohibiting nuisance. If a long leaseholder landlord has let a flat in multiple occupation against the terms of the lease, or has permitted it to be used in such a way that it is a nuisance to other flat owners and occupiers, the freeholder can take steps to forfeit the lease. This is a strong incentive in private law for landlords to ensure compliance with the lease and in particular manage multiply occupied flats effectively.

Q6. Should mandatory licensing be extended to include all flats in multiple occupation above and below business premises?

Q7. Local authority respondents only: How many flats in your local authority area would be affected if flats in multiple occupation occupied by at least five persons were subject to mandatory licensing? (Please provide a numerical estimate)

Q8. Local authority respondents only: Under the current regime how many HMO decisions are appealed against to the First Tier Tribunal in your local authority area per year?

Q9. Do you think extending the scope of mandatory licensing will result in more appeals being made in your local authority area? If yes, how many do you estimate?

Raising standards in the HMO sector

27. As we have said the rationale for intervention is to raise standards in HMOs, some of which have been under the radar and not subject to any enforcement action. To better understand the scale of the issues in smaller HMOs we would like to know:

Q10. How many non licensable HMOs in your area have been subject to enforcement action for hazardous conditions? (Please provide a numerical estimate.)

Q11. How does this compare with licensed HMOs?

Q12. How many non licensable HMOs in your area have experienced fires? (Please provide a numerical estimate.)

Q13. How does this compare with licensed HMOs?

Q14. What are the most significant problems routinely encountered in non licensable HMOs?

Q15. What remedies (if any) are required to address those problems and how much do they cost?

Part 2: Other potential changes to licensing

National minimum room sizes

28. If the Government decides to extend the scope of mandatory licensing to include smaller sized HMOs it may be necessary to introduce a prescribed minimum room size.
29. Most local housing authorities have developed, some in co-operation with neighbouring authorities, comprehensive and practical room size standards for HMOs.
30. The Upper Tribunal (Lands Chamber) has recently given guidance on local authority size standards in *Clark V Manchester City Council* (2015) UKUT 0129(LC). This tribunal, whose decisions are binding on the First Tier Tribunal, has ruled that local authorities' standards are guidance only and not binding in all cases. The Council's case was that the floor area fell well below the local housing authority's minimum standard, which was set at 6.5 sq.m, below which a room would be statutorily overcrowded - see section 326 of the Housing Act 1985.
31. This decision will have some implications going forward. Local housing authorities are already under pressure to relax their standards, as this case illustrates. The Government believes that pressure will increase if smaller potentially overcrowded HMOs are brought within the scope of mandatory licensing. We would not expect a local authority to permit rooms of less than 6.5 sq.m as sleeping accommodation in a licence, not least because it is a criminal offence to occupy such a small room.
32. The Government is concerned that local authorities may, going forward, have decisions to that effect routinely challenged. In general such appeals will simply waste resources of the authority and the tribunal service. However, there may also be cases where a tribunal might permit occupation of a room that does not comply with the overcrowding standard.
33. In order to avoid these possibilities the Government could set a national minimum room size. Local housing authorities will, of course, be able to continue to set their own size standards, but these could not be less than the minimum set by Government. If a national minimum room size were introduced we would have in mind the standard for overcrowding in section 326.
34. We do not think any other changes need to be made to the national prescribed standards. These are flexible enough to allow local authorities to build upon them to set their own higher standards (if necessary) for smaller sized HMOs.

Q16. Should there be minimum national room sizes for sleeping accommodation in HMOs?

Q17. Do you agree the standard should be in line with section 326 of the Housing Act 1985?

Removal of exemption from selective licensing: Letting to family members

35. Certain types of lettings are currently excluded from selective licensing and the landlord need not, therefore, obtain a licence for that property¹⁰. This includes lettings to family members. This exemption, which was intended to ensure that family arrangements were not caught up in unnecessary red tape, has been the subject of some abuse and caused some local authorities considerable time and resources in establishing the identities of the relevant parties. The Government, therefore, intends to remove this exemption to selective licensing.

Q18. Do you agree with the proposed removal of the exemption for family members from selective licensing?

¹⁰ The Selective Licensing of Houses (Specified Exemptions) (England) Order 2006 (SI 2006/370)

Part 3: Simplifying the process for applying for an HMO or other residential property licence

Introduction and rationale for intervention

36. This part of the paper seeks views on how a reduction in time and costs in completing and processing applications for HMO and selective licences can be achieved by streamlining the process.
37. Some changes to renewal applications were introduced in 2012. This part of the paper explores what further changes can be made to both first time and renewal applications.
38. The information requirements in relation to applications are set out in the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006¹¹ and in particular Schedule 2 to those regulations.

Schedule 2 information

39. It is important that the information which is required in relation to all applications for a selective or HMO licence is relevant and necessary to determine the application. Schedule 2 of the Regulations sets out the minimum information currently that must be provided in an application. That schedule, as currently in force, is set out in the annex to this paper.

Q19. Is the information required to be given in common with all applications for a licence necessary and relevant? If not please state which are not and give your reasons.

Q20. Should further or different information be required on an application for a licence?

Q 21. Could any information that is required be given in a simpler way? If yes, how?

Multiple applications: Requiring applicant's details only once

40. Applications for licences require information about (a) the property to be licensed and (b) the person or organisation to whom the licence is to be granted and any other

¹¹ SI2006/373 as amended by The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions)(Amendment)(England) Regulations 2012 (SI2012/2111)

person or organisation who manages the property. The information on the property is unique and different for each application, but that is not so with the information on (b). Having to supply the same information on multiple occasions to the same local housing authority may be time consuming and largely unnecessary.

41. We are, therefore, considering that the information on (b) should only need to be provided in the first application where the applicant intends to make two or more applications within a particular time frame and the persons, and information relating to those persons, would be the same for the subsequent applications for other properties in the same local authority area. This would apply to applications made under Parts 2 and 3 of the Act. The personal details would, therefore, only need to be provided once and not on every subsequent application.
42. If this were to be taken forward it would apply to any applications submitted within five years of the submission of the first application, unless there has been a change in any of the persons mentioned in (b) or in their circumstances, for example if one of those persons had been found guilty of a relevant offence since the submission of the first application

Q22. Should personal information be removed from subsequent licensing applications for other properties where that information is identical to that provided in the first application?

Concluding question

Q23. Is there anything else you want to tell us about these proposals (as set out in parts 1, 2 or 3 of this paper)?

Annex: Information required in connection with applications for HMO licences and selective licences under Part 3 of the Housing Act 2004

SCHEDULE 2

CONTENT OF APPLICATIONS UNDER SECTIONS 63 AND 87 OF THE ACT Regulation 7(1), (2) and (3)

1. The form of statement mentioned in regulation 7(1) is:

"You must let certain persons know in writing that you have made this application or give them a copy of it.

(a) The persons who need to know about it are--

- (i) any mortgagee of the property to be licensed
- (ii) any owner of the property to which the application relates (if that is not you) i.e. the freeholder and any head lessors who are known to you
- (iii) any other person who is a tenant or long leaseholder of the property or any part of it (including any flat) who is known to you other than a statutory tenant or other tenant whose lease or tenancy is for less than three years (including a periodic tenancy)
- (iv) the proposed licence holder (if that is not you)
- (v) the proposed managing agent (if any) (if that is not you)
- (vi) any person who has agreed that he will be bound by any conditions in a licence if it is granted.

(b) You must tell each of these persons--

- (i) your name, address telephone number and e-mail address or fax number (if any)
- (ii) the name, address, telephone number and e-mail address or fax number (if any) of the proposed licence holder (if it will not be you)
- (iii) whether this is an application for an HMO licence under Part 2 or for a house licence under Part 3 of the Housing Act 2004
- (iv) the address of the property to which the application relates
- (v) the name and address of the local housing authority to which the application will be made
- (vi) the date the application will be submitted"

2. The information mentioned in regulation 7(2)(a) is--

(a) the name, address, telephone number and e-mail address of--

- (i) the applicant;
- (ii) the proposed licence holder;
- (iii) the person managing the HMO or house;
- (iv) the person having control of the HMO or house; and
- (v) any person who has agreed to be bound by a condition contained in the licence;

- (b) the address of the HMO or house for which the application is being made;
- (c) the approximate age of the original construction of the HMO or house (using the categories before 1919, 1919-45, 1945-64, 1965-80 and after 1980);
- (d) the type of HMO or house for which the application is being made, by reference to one of the following categories--
 - (i) house in single occupation;
 - (ii) house in multiple occupation;
 - (iii) flat in single occupation;
 - (iv) flat in multiple occupation;
 - (v) a house converted into and comprising only of self contained flats;
 - (vi) a purpose built block of flats; or
 - (vii) other;
- (e) details of other HMOs or houses that are licensed under Part 2 or 3 of the Act in respect of which the proposed licence holder is the licence holder, whether in the area of the local housing authority to which the application is made or in the area of any other local housing authority;
- (f) the following information about the HMO or house for which the application is being made [except in respect of an application in respect of a section 257 HMO]--
 - (i) the number of storeys comprising the HMO or house and the levels on which those storeys are situated;
 - (ii) the number of separate letting units;
 - (iii) the number of habitable rooms (excluding kitchens);
 - (iv) the number of bathrooms and shower rooms;
 - (v) the number of toilets and wash basins;
 - (vi) the number of kitchens;
 - (vii) the number of sinks;
 - (viii) the number of households occupying the HMO or house;
 - (ix) the number of people occupying the HMO or house;
 - (x) details of fire precautions equipment, including the number and location of smoke alarms;
 - (xi) details of fire escape routes and other fire safety [information] provided to occupiers;
 - (xii) a declaration that the furniture in the HMO or house that is provided under the terms of any tenancy or licence meets any safety requirements contained in any enactment; and
 - (xiii) a declaration that any gas appliances in the HMO or house meet any safety requirements contained in any enactment;
- [(g) where the application is being made in respect of a section 257 HMO, the following information--
 - (i) the number of storeys comprising the HMO and the levels on which those storeys are situated;

- (ii) the number of self-contained flats and, of those, the number--
 - (aa) that the applicant believes to be subject to a lease of over 21 years; and
 - (bb) over which he cannot reasonably be able to exercise control;
- (iii) in relation to each self-contained flat that is not owner-occupied and which is under the control of or being managed by the proposed licence holder, and in relation to the common parts of the HMO--
 - (aa) details of fire precautions equipment, including the number and location of smoke alarms;
 - (bb) details of fire escape routes and other fire safety information provided to occupiers; and
 - (cc) a declaration that the furniture in the HMO or house that is provided under the terms of any tenancy or licence meets any safety requirements contained in any enactment; and
- (iv) a declaration that any gas appliances in any parts of the HMO over which the proposed licence holder can reasonably be expected to exercise control meet any safety requirements contained in any enactment].

3. The information mentioned in regulation 7(2)(b) is--

- (a) details of any unspent convictions that may be relevant to the proposed licence holder's fitness to hold a licence, or the proposed manager's fitness to manage the HMO or house, and, in particular any such conviction in respect of 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) details of any finding by a court or tribunal against the proposed licence holder or manager that has practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origin or disability in, or in connection with, the carrying on of any business;
- (c) details of any contravention on the part of the proposed licence holder or manager of any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against him.
- (d) information about any HMO or house the proposed licence holder or manager owns or manages or has owned or managed which has been the subject of--
 - (i) a control order under section 379 of the Housing Act 1985 in the five years preceding the date of the application; or
 - (ii) any appropriate enforcement action described in section 5(2) of the Act.
- (e) information about any HMO or house the proposed licence holder or manager owns or manages or has owned or managed for which a local housing authority has refused to grant a licence under Part 2 or 3 of the Act, or has revoked a licence in consequence of the licence holder breaching the conditions of his licence; and

(f) information about any HMO or house the proposed licence holder or manager owns or manages or has owned or managed that has been the subject of an interim or final management order under the Act.

4. The form of declaration mentioned in regulation 7(3)(a) is as follows--

I/We declare that the information contained in this application is correct to the best of my/our knowledge. I/We understand that I/we commit an offence if I/we supply any information to a local housing authority in connection with any of their functions under any of Parts 1 to 4 of the Housing Act 2004 that is false or misleading and which I/we know is false or misleading or I am/we are reckless as to whether it is false or misleading.

Signed (all applicants)
Dated

I/We declare that I/We have served a notice of this application on the following persons who are the only persons known to me/us that are required to be informed that I/we have made this application:

Name, Address, Description of the person's interest in the property or the application

Date of service