



Department for
Communities and
Local Government

Houses in Multiple Occupation and residential property licensing reforms

Government response



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Introduction

The Government values the private rented sector (PRS). It is an important part of our housing market, housing 4.3 million households in England.

We want to support good private landlords who provide decent well maintained homes and avoid unnecessary regulation on them. Houses in Multiple Occupation (HMOs) form a vital part of the sector, providing often cheaper accommodation for people whose housing options are limited. Some of the occupiers of HMOs are the most vulnerable people in our society. Regulation of this part of the sector is widely agreed to be necessary for those reasons, although it needs to be proportionate and targeted.

Mandatory licensing of HMOs came into force in 2006 and applies to those of three storeys or more lived in by five or more people in two or more separate households. Licensing has largely been successful in driving up standards and in helping make these 60,000 larger HMOs safer places to live in.

In the decade since mandatory licensing was introduced the HMO market has expanded significantly and it is now not uncommon for flats and single and two storey houses, originally designed for families, to be let as HMOs. It is estimated there are nowadays about 500,000 HMOs in England. Many are managed to good standards by reputable landlords, but unfortunately this is not always the case.

The increased demand for HMOs has been exploited by opportunist rogue landlords, who feel the business risks for poorly managing their accommodation are outweighed by the financial rewards. Typical poor practices include: overcrowding, poor management of tenant behaviour, failure to meet the required health and safety standards, housing of illegal migrants and intimidation of tenants when legitimate complaints are made. Tenants are sometimes exploited and local communities blighted through, for example, rubbish not being properly stored, excessive noise or anti-social behaviour. Although only a minority of landlords the impacts of their practices are disproportionate, putting safety and welfare of tenants at risk and adversely affecting local communities. They cause much reputational harm to the HMO market and it is often pot luck whether a vulnerable tenant ends up renting from a rogue or a good landlord.

We want to remove that uncertainty, particularly in high risk intensely occupied HMOs, by creating a level playing field between landlords, so the rogues cease to be able to operate substandard accommodation for maximum profit. The Government has, therefore, decided that properties used as HMOs in England which house 5 people or more in two or more separate households should be licensed by local authorities. This will help ensure they are not overcrowded and do not pose risks to

the health or safety of occupiers or blight the local communities in which they are located.

To that end the Government published in October 2016 a consultation paper *Houses in Multiple Occupation and residential property licensing reforms*¹ which sought views on the means to implement a number of measures consulted on in its earlier discussion paper on HMO reforms published in November 2015².

We asked for views on how to implement through secondary legislation the decision to:

- remove reference to storeys from the prescribed description of HMOs, so that most HMOs, occupied by five or more people from two or more separate households, are subject to mandatory licensing;
- include flats above and below business premises, occupied by five or more people from two or more separate households, within the scope of mandatory licensing and
- clarify the minimum size to be applied to rooms used for sleeping accommodation in HMOs.

In addition we also sought views on:

- criminal record checks in connection with applications for a licence;
- refuse disposal in licensed properties;
- the treatment of purpose built student accommodation and
- the accompanying impact assessment.

The measures complement those in the Housing and Planning Act 2016 which tackle rogue landlords. They will also operate within the new enforcement regime introduced by that Act, including the new financial penalty procedures.

In total we received 395 responses, which included 138 local authorities, 81 landlords/landlord organisations, 11 letting agents, 32 residents and resident groups, 16 tenant and tenant organisations, 30 public/professional bodies and 87 other responses. This represented a broad range of responses from stakeholders with an interest in the sector. We are most grateful for the responses which have helped consolidate the direction of the proposed legislative changes.

This document summarises the answers to the questions raised in the consultation paper, the Government's response and describes what will happen next.

¹ <https://www.gov.uk/government/consultations/extending-mandatory-licensing-of-houses-in-multiple-occupation-and-related-reforms>

² Extending mandatory licensing of Houses in Multiple Occupation (HMOs) and related reforms
A technical discussion document (<https://www.gov.uk/government/consultations/extending-mandatory-licensing-of-houses-in-multiple-occupation-and-related-reforms>)

Summary of the legislative proposals

Having regard to the responses to the consultation - as detailed in the relevant chapters - the Government's planned reforms (subject to Parliamentary approval) are summarised in brief below. Readers should refer to the relevant chapters of this paper, for the reasons and details of the proposals.

Extension of Mandatory HMO licensing (Chapter one)

The Government will extend the scope of mandatory HMO licensing.

- It will apply where certain HMOs are occupied by five persons or more in two or more households, regardless of the number of storeys.
- This includes any HMO which is a building or a converted flat where such householders lack or share basic amenities such as a toilet, personal washing facilities or cooking facilities.
- It also applies to purpose built flats where there are up to two flats in the block and one or both are occupied as an HMO.
- The new rules will be introduced in two phases.

Minimum room sizes in licensed HMOs (Chapter two)

We will introduce mandatory conditions in licences to regulate the size and use of rooms as sleeping accommodation in licensed HMOs:

- By prescribing the absolute minimum sizes of rooms that may be used for sleeping.
- By introducing a mandatory licencing condition requiring local authorities to specify which rooms in an HMO are suitable for sleeping accommodation, and by how many adults and children.
- Where a room does not meet these conditions, the local authority will be required to give the landlord a reasonable period of time to remedy the failure and during this period they will not face any sanctions for a breach of the condition (unless the breach of condition was deliberate, in which case sanctions apply).

Requiring criminal record checks to be provided (Chapter four)

The Government will not introduce legislation to mandate criminal record certificates to be provided in connection with applications for licences under the Housing Act 2004. Local authorities already have discretion to do this should they so choose and the new powers being introduced through the Housing and Planning Act on banning orders and a rogue landlord database will help strengthen this provision. This is however, an area which we will keep under review.

Refuse disposal and storage facilities in licensed HMOs (Chapter four)

We will introduce a mandatory condition in HMO licences requiring the licence holder to comply with their local authority scheme (if any) for the provision of facilities for the proper disposal and storage of domestic refuse.

Licence discounts for private providers of Purpose Built Student Accommodation (Chapter four)

The Government will not require local authorities to provide discounts for licences issued to certain private providers of purpose built student housing, but will keep this under review.

Chapter 1: Extension of mandatory licensing of Houses in Multiple Occupation

Q.1 Is the proposal sufficiently clear about how the new scheme will apply to buildings that are HMOs occupied by five persons or more in two or more households? If not please explain why.

What consultees said:

336 respondents answered this question; of which 76 % (257) thought the proposals were sufficiently clear, whilst 24% (79) did not.

Although the majority of respondents thought the proposals were sufficiently clear, most did not elaborate any further as the question sought narrative responses from those who did not think was clear.

42 narrative responses, including those from landlords and local authorities, thought the proposal would create increased complexity and as result cause confusion as how licensing should be applied. In particular the proposal to exclude many purpose built flats would create added complexity as converted flats would remain within the scope of licensing. Two consultees commented that the proposals were unworkable and unfairly penalised good landlords with HMOs of a high standard.

One landlord representative organisation thought the proposals were sufficiently clear for the majority of HMOs and welcomed the proposed “tests” set out in Annex A, as very useful in determining whether a property is within the scope of mandatory licensing. The organisation suggested that a similar tool should be made available as an aid to self-assessment for landlords on the need to apply for an HMO licence and the need for guidance was supported by a number of other respondents.

Government response:

This question was about whether the proposed HMO scheme was sufficiently clear in relation to buildings. The principle for extending mandatory licensing was addressed in the Government’s earlier technical discussion paper and its published response to that paper *Extending mandatory licensing of houses in multiple occupation: a government response document*³. The consultation asked specific questions on flats.

No consultee raised any issue about the scheme’s application to buildings being unclear and the majority thought it was clear. We agree that it would be useful for an aid to be made available for landlords to help them understand if their HMOs are subject to mandatory licensing. We will work with landlord groups and local authorities to develop this before the extended mandatory regime comes into force.

³ www.gov.uk/government/consultations/extending-mandatory-licensing-of-houses-in-multiple-occupation-and-related-reforms

Q2. Do you agree with our approach with regard to the threshold for mandatory licensing of multiply occupied purpose built flats? If not, please explain why.

What consultees said:

303 replies to this question were received; of which 52% (159) of the respondents did not agree with our approach, whilst 48% (144) did.

The narrative responses from those who disagreed contained diverse reasons for doing so. Most of these argued for licensing to extend to a wider range of flats and a few rejected the need for licensing of flats at all. These included:

- there was no logic to limiting mandatory licensing to only blocks with fewer than three flats above shops;
- risks were the same as in converted flats;
- landlords may simply create an additional flat to avoid licensing;
- older purpose built blocks can be hazardous;
- flat sharing is different from house sharing so the number of occupants threshold should be reduced;
- there should be no licensing of flats at all and
- landlords will stop letting flats in multiple occupation if required to obtain a licence

In support for limiting the scope of licensing to smaller purpose built blocks a landlord organisation thought that it was proportionate and local authorities who had problems with larger blocks of flats (in multiple occupation) could introduce additional licensing.

One local authority queried how a particular form of accommodation known as “Tyneside flats”⁴ would be affected by the proposal.

Government response:

It is important that small blocks of flats above or below commercial premises are brought within the scope of mandatory licensing because of the risks associated with fire and escape. There is also a case for applying mandatory licensing to blocks which are not connected to commercial premises, such as Tyneside flats. We, therefore, propose to apply (and limit) mandatory licensing to purpose built flats in multiple occupation where there are no more than two flats in the block and one or both are occupied by five or more persons in two or more separate households (regardless of whether or not the block is above or below commercial premises).

We do not think the risks around flat sharing are so significantly different from house sharing to justify extending mandatory licensing to flats occupied by less than five persons in two or more households.

⁴ Tyneside flats are commonly found in the Tyneside area of the North East of England, but similar constructed blocks are also found elsewhere. They comprise of two flats (each with their own entrance from the street) built in a two storey block resembling a typical terrace house of the area.

Our proposal to limit mandatory licensing to smaller blocks of purpose built flats will not affect local authorities' powers to introduce additional licensing to cover purpose built flats in larger blocks if those are problematic.

Q3. Are the different rules that apply in relation to the mandatory licensing of flats in purpose built blocks and converted premises set out sufficiently clearly? If not please explain why.

What consultees said:

312 responses were received to this question; of which 61% (189) of the respondents thought the different rules were sufficiently clear, 39% (123) thought they were not.

Most consultees argued that there should be no difference between the treatment of purpose built flats and those in converted blocks, echoing the responses to question 2. A number of local authority respondents thought the proposals were confusing and could allow a number of high risk HMOs to remain unregulated. One resident association thought it was particularly regrettable to exclude larger blocks of purpose built flats because this would exclude student accommodation. A few respondents argued that section 257 HMOs⁵ should be brought within the scope of mandatory licensing.

Government response:

This question was about whether the proposal was clear, and the responses indicated that this was the case. We explained in the response to the technical discussion paper⁶ why we do not propose to extend mandatory licensing to section 257 HMOs.

We plan to simplify the scheme so flats in multiple occupation (those occupied by five or more persons, forming two households or more) in purpose built blocks of up to two flats, regardless of whether the block also comprises commercial premises, will be subject to mandatory licensing.

Q4. Do you agree that where buildings contain individual flats in multiple occupation that these should be separately licensed, including where the flat is in a building which also contains bedsits? If not please explain why.

What consultees said:

There were 311 responses to the question; of which 78% (242) of respondents agreed with the proposal, 22% (69) did not.

One consultee supported the proposal because it would enable overcrowding in flats in multiple occupation to be controlled. A few others made the point that it was the HMO which is required to be licensed, not the building.

⁵ These are certain blocks of self-contained flats that do not meet the required building standards, as defined in section 257 of the Housing Act 2004. These are called "section 257 HMOs".

⁶ www.gov.uk/government/consultations/extending-mandatory-licensing-of-houses-in-multiple-occupation-and-related-reforms

A few narrative responses made the point that the proposal was sensible where there was different ownership of parts of the building, however, a number thought that a single licence should apply to the whole building when it is in single ownership. This was because it could include the common parts and would be cheaper and easier for landlords.

Government response:

A licence is required for the HMO, rather than the building. So if there is more than one HMO in a building then each of the licensable HMOs will require a separate licence.

In most cases where the building (is in single ownership and) comprises a mixture of bedsits and self-contained flats the licence will apply to the whole building as comprising the HMO. However, if one or more of the self-contained flats also meets the threshold⁷ it will be required to be licensed as a separate entity.

Q5. Do you agree the licence of a multiple occupied flat should extend to the common parts, in appropriate cases? If not please explain why.

What consultees said:

There were 295 responses to this questions; of which 76% (223) of respondents thought the licence should extend to the common parts, 24% (72) disagreed.

In contrast to the yes/no responses, the majority of respondents who provided comments thought that the licences should not extend to the common parts of buildings. Whilst it was recognised this could work where the whole building was in single ownership, it was considered impractical if the common parts are in different ownership, such as where the landlord is a leaseholder of a flat and the common parts are controlled by a freeholder or head lessee. One landlord organisation thought it would impose a liability on a landlord which is entirely outside their control.

Government response:

We accept it is possible to extend licensing to the common parts of building where it is in single ownership. Indeed the licence will apply to the common parts in those circumstances, where the whole building is the HMO. However, it is not practical to impose liability where the landlord has no control over the common parts.

In such circumstances the landlord, if a leaseholder, can rely on the terms of the lease to ensure the common parts are properly maintained. In any case the local authority has powers and duties to require action by the owner of the common parts to remove hazards from them under Part 1 of the Housing Act 2004.

⁷ For mandatory licensing that is the flat is occupied by five or more people from two or more households and for additional licensing three or four persons in two or more households where the local scheme applies to flats.

Q6. How are the common parts dealt with under additional licensing which relate to self-contained flats (a) when the whole building is owned or managed by the licence holder and (b) where the licence holder is a leaseholder of an individual flat let in multiple occupation and doesn't have control of the common parts?

Government Response:

We are grateful to the 27 local authorities who provided detailed answers. These were helpful in confirming our view that it was impractical to apply the licence to the common parts where the licence holder does not have control of the common parts.

Q7. Do you agree that the proposal for implementing the new regime in two phases is clear and appropriate? If not please explain why.

What consultees said:

294 respondents answered this question; of which 78% (228) agreed with it, whilst 22% (66) did not.

The question attracted 74 narrative responses; 51 of which explained why they did not agree with the proposal. Some thought the phased implementation would only encourage landlords to wait until near the end of the grace period before applying for a licence. Others commented that the implementation period was not long enough, given the new duties imposed on local authorities. One response thought the implementation period would leave local authorities with little sanctions against poorly run HMOs. A further response thought this would lead to confusion for tenants and could have impacts where a landlord served a section 21 notice⁸.

Some expressions of support were qualified with a request for an adequate lead-in time to effectively communicate the changes to landlords and property managers. Others thought that six months' was appropriate.

Government Response:

The Government intends to implement the extension of mandatory licensing in two phases. The first phase will last six months and during that period local authorities' general duties to promote licensing, process applications received and issue licences will remain in force.

A landlord of an HMO (subject to the new mandatory regime) may not be prosecuted for not licensing the property within that period and no rent repayment order may be made in respect of such an HMO. However, during the first phase it is expected landlords will apply for a licences. At the end of the six month grace period landlords

⁸ A section 21 notice gives a landlord an automatic right of possession without having to give any grounds (reasons) once the fixed term of an Assured Shorthold Tenancy has expired. See section 21 of the Housing Act 1988.

who have still not applied for a licence may be prosecuted and can be subject to rent repayment orders being made against them.

The requirement under Section 75 of the Housing Act will remain, meaning that a section 21 notice (used by a landlord to obtain possession of the property) cannot be issued unless the HMO is licensed, a valid application for a licence has been made (and not withdrawn) or the HMO is subject to a temporary exemption notice⁹.

It is not the intention that in the first six months it will be optional to apply for a licence, simply that the sanctions for not applying will not be enforced during that time.

Q8. Are the transitional arrangements for HMOs that are already licensed, or which ought to have been licensed, clear and appropriate? If not please explain why.

What consultees said:

283 respondents answered this question; of which 86% (242) thought the proposals were clear and appropriate, 14% (41) thought not.

A local authority said it was not clear whether HMOs subject to additional licensing would be passported into the new mandatory licensing regime. A number of responses queried whether HMOs that are licensed under selective licensing would be subject to the passporting arrangement. A landlord organisation welcomed the proposals, but raised concerns about the perceived outdated notification requirements.

Government Response:

We are pleased that these are widely understood and agreed with. We would, however, like to clarify a couple of issues.

First, an HMO which is licensed under an additional licensing scheme¹⁰ will be passported into mandatory licensing automatically without any cost or alteration to conditions for the remaining period of the licence. However, if an HMO is subject to an additional licensing scheme and is not licensed and then becomes subject to the mandatory scheme, the six months grace period referred to in question 7 will not apply to the HMO. This means the person having control of the HMO can be prosecuted or have a rent repayment order made against them for not obtaining the mandatory licence during the first six months following commencement. This

⁹ See Section 62 of the Housing Act 2004. A local authority may grant a three month initial exemption from licensing if it satisfied that particular steps are being taken to ensure that the HMO will no longer be required to be licensed.

¹⁰ Additional licensing is a local scheme for licensing HMOs that are not subject to the current mandatory requirements. See sections 55 (2) (b) and 56 of the Housing Act 2004.

principle will also apply to any unlicensed properties which are subject to a *selective* licensing scheme¹¹.

Secondly, we acknowledge that it would be appropriate to make conversion arrangements for HMOs subject to selective licensing¹². There should be no charge to the landlord for issuing a converted licence.

Q9. Do you agree that persons sharing protected characteristics are more likely to live in HMOs than in the wider private rented sector? Please give your reasons.

What consultees said:

There were 262 responses to this question; of which 66 % (171) of respondents thought it was more likely that persons sharing protected characteristics will live in HMOs rather than in other accommodation in the private rented sector; 34% (91) did not think so.

Some consultees providing narrative responses thought that the real issue was around affordability, rather than protected characteristics of the occupiers, which was the underlying reason why persons lived in HMOs. Others thought HMOs were often occupied by vulnerable persons.

Government Response:

The Government believes that people sharing a particular set of protected characteristics are more likely to occupy HMOs than other accommodation in the private rented sector. We do not, however, believe that people who share a set of protected characteristics are the majority of occupiers in this part of the PRS market. Reasons for people living in HMOs vary, but lack of choice and affordability are major factors, which often do not have a direct link to protected characteristics.

Q.10 Do you believe that extending the scope of mandatory licensing will impact upon persons sharing protected characteristics and if so how will it impact upon them? If you think the impact is negative can you suggest how it may be mitigated?

What consultees said:

266 respondents replied to this question; of which 65% (174) thought that the proposed extension of mandatory licensing will impact upon persons sharing protected characteristics; 35% (92) did not think so.

Most respondents giving a narrative answer thought the impact was positive, in terms of raising standards and the prevention of overcrowding or considered there were no negative impacts. There were, however, concerns expressed that it could result in rents increasing and make landlords less willing to let to people on benefits.

¹¹ Selective licensing is a scheme under Part 3 of the Housing Act 2004 which requires all private rented properties, including HMOs, in a designated area to be licensed.

¹² Selective licensing is a scheme under Part 3 of the Housing Act 2004 which requires all private rented properties including HMOs in a designated area to be licensed.

Government Response:

The Government believes the extension of mandatory licensing will have positive impacts on persons sharing protected characteristics because it will raise standards in management and condition of their homes through increased local authority regulation.

Chapter 2: National minimum room size

Q.11. Do you agree that the regulations should only apply to rooms occupied by one or two persons? If not, please explain why.

What consultees said:

289 respondents answered this question; of which 64% (186) thought the regulations should only apply to rooms occupied by one or two persons; 36% (103) did not.

In terms of narrative responses the majority of landlords and managing agents thought there should be no statutory minimum room sizes or that the suggested space standards should be smaller. Other respondents thought that by imposing a minimum standard this would lead to the default room size standard. Tenant organisations thought the room sizes too small. Those in favour of minimum room sizes thought they were important to combat overcrowding. Some respondents thought there should be different treatment between bedsits and bedrooms in shared houses. One response welcomed the proposal, but suggested the current rules on overcrowding were not being applied.

In relation to the question itself those who provided a narrative response suggested the regulations should apply to rooms occupied by more than two persons.

Government Response:

This question was seeking views on whether the proposed mandatory rules should apply to rooms occupied by three or more persons. Most narrative responses did not address the question asked. Instead most of the responses repeated opposition to mandatory minimum sleeping room sizes. This matter had already been fully consulted on in our technical discussion paper. We also explained our considerations and rationale on how we intended to proceed within our response paper *Extending mandatory licensing of Houses in Multiple Occupation: a Government Response Document*¹³.

Nothing raised in the responses received has caused us to change our overall proposals, that rooms of less than 6.51sqm cannot be let separately as sleeping accommodation and only rooms of at least 10.22sqm can be occupied as sleeping accommodation by two adults in HMOs. There are three points we would wish to clarify.

First, the minimum room size is simply a standard *below which* a room cannot be used as sleeping accommodation. It is not intended to be the norm or the lowest common denominator. Local authorities can seek higher standards which reflect the layout, space and amenities in the HMO in question and more generally conditions of stock and housing need in their areas.

¹³ <https://www.gov.uk/government/consultations/extending-mandatory-licensing-of-houses-in-multiple-occupation-and-related-reforms>

Second, the proposed minimum room sizes reflect those in section 326 of the Housing Act 1985 which is concerned with overcrowding in residential accommodation in England.

Third, in our view, the HMO licensing provisions in the Housing Act 2004 do not provide for differential treatment for absolute minimum size sleeping accommodation between different types of models of occupation e.g. shared houses or houses converted into bedsits.

In line with section 326 of the Housing Act 1985 we intend to specify in the regulations that a room of less than 6.51sqm cannot be occupied as sleeping accommodation by any person aged 10 or over, but that a room with a usable floor area of between 6.51sqm and 10.22sqm can be occupied by a single adult (or a child aged 10 or over).

Having regard to the issue about whether the regulations should apply to rooms occupied by three or more persons the Government believes this is a matter for local regulation and enforcement. As we have already said, the prescribed standards are the absolute minimum which will apply, but these can be built upon by local authorities in developing their own recommended standards. This will include accommodation where it is permissible for rooms to be slept in by two or more adults.

The regulations will require that licences are granted with a condition stating the maximum number of persons who may occupy the specified rooms as sleeping accommodation.

We will make transitional arrangements, where licensed HMOs do not immediately comply with the maximum occupancy mandatory condition, to enable landlords to regulate the number of occupiers permitted under the licence within a reasonable time allowed by the local authority, up to a maximum of 18 months from the grant of the licence. During the transitional period, providing the landlord is taking steps to reduce the number of occupiers which exceed the permitted number, no offence of breaching the condition will be committed.

These regulations apply only where minimum national room size standards are breached. They will not impact on local authorities' own room size policies, where occupation does not breach the national standards.

Q.12 Do you agree that there should be no difference in how children and adults are counted for the purpose of the room size condition? If not please explain why.

What consultees said:

283 replies were received to this question; of which 81 % (230) of respondents thought there should be no difference, whilst 19% (53) thought there should be.

One landlord organisation suggested it would be unfair that a pregnant woman living in a single occupancy room should face eviction once she gave birth. Some responses thought the proposals conflicted with the overcrowding standards in the Housing Act 1985 and there were also concerns about families being evicted even when they were not statutorily overcrowding accommodation.

Government Response:

The objective of minimum room sizes is to prevent rooms being let that are too small to be occupied for sleeping in. There is no intention to criminalise landlords who do not create overcrowding, or require tenants to be evicted immediately because they have given birth since moving in to the HMO. However, overcrowding whether deliberate or accidental cannot go unchecked.

The Housing, Health and Safety Rating System operating guidance (HHSRS Guidance) identifies that one bedroom accommodation may be suitable for occupation by two persons regardless of age and furthermore small children require as much space as adults and adolescents may need more than elderly persons.¹⁴

As explained, in response to question 11, where a room becomes unsuitable to be used as sleeping accommodation for the number of occupiers because it does not meet the minimum size requirement in the regulations, the local authority must allow a reasonable period (of up to 18 months) for the overcrowding to be remedied, before it is able to prosecute the landlord for breach of the licence condition.

In the case of a tenant giving birth and the arrival of the child causing a room to be overcrowded, potential remedies could include securing alternative accommodation in the HMO or elsewhere. Alternatively, and if practicable, the overcrowding might be remedied by the enlargement of the room or the provision of an additional room (of not less than 4.64 sqm) for use as sleeping accommodation by the child. Our proposals relating to children under the age of 10 are explained in more detail in response to question 20.

However, it is important to remember that these regulations will only apply where minimum national room size standards are breached. They do not impact on local authorities' own room size policies, where occupation does not breach the national standards. As explained in response to question 20, we will make provision so that some rooms under 6.51sqm may be used as sleeping accommodation by younger children.

Q.13 If you do not agree with question 12 how you would treat children for the purpose of calculating minimum room sizes?

What consultees said:

57 consultees responded to this question. Overall the respondents thought children under the age of 12 should be not be included when calculating the number of persons who may occupy a room (i.e. a two person room can be occupied by two adults and additionally a child under the age of 12) or alternatively such a child

¹⁴ See Housing Health and Safety Rating System – Operating Guidance (ODPM,2006) Paragraphs 11.16 and 11.07

should only be counted as half an adult for the purpose of the calculation. Many of the respondents thought that exempting families with young children from the regulations for 12 months would give local authorities sufficient time to find them more suitable accommodation.

Government Response:

We thank the consultees for their constructive and helpful responses. Our proposals are detailed below.

Q.14 How easy or difficult would it be for the local housing authorities to monitor and enforce where children are to be counted separately from adults?

What consultees said:

50 responses were received to this question. Most thought it would be difficult to monitor because that would require regular inspections, which authorities are not resourced to do. One response thought that tenants may deliberately conceal they had children. Another thought it would be necessary to have access to personal data, such as that held by the Department for Works and Pensions, in order to monitor and enforce.

Government Response:

We are grateful for these responses. Our proposals will require some level of monitoring and whilst we appreciate local authorities' concerns about resources, we do not believe this would unduly burden authorities as they already check licence compliance - including permitted numbers of occupiers under section 67 of the Housing Act 2004.

Q.15 Do you agree that the minimum floor to ceiling height should be set at 1.5 metres? If not, do you have an alternative measure that can be used? Please explain your alternative measure.

What consultees said:

300 respondents answered this question; which 61% (182) of respondents agreed with that the minimum ceiling height should be 1.5 m, 39% (118) disagreed.

Comments were invited as to why 1.5m should not be the minimum height. Consequently most of the narrative responses focussed on the issue of whether that height was appropriate. A number of responses commented that it was below the standard set out in the HHSRS Guidance¹⁵ for collisions and entrapments. Some respondents pointed out that 1.5 m is below the average height of an adult. Others suggested that the ceiling height should be determined in relation to the layout of the

¹⁵ Paragraph 26.18 of The Housing, Health and Safety Rating System operating guidance (ODPM 2006)

property or room in question. There were also suggestions that a definition of “usable floor area” should be prescribed.

Government Response:

The proposed minimum ceiling height is for the purpose of calculating whether the minimum floor space is met i.e. the usable floor area. We do not intend to be over prescriptive by specifying what constitutes usable floor area. That will be for the local authority to determine. It is important to note that HHSRS Guidance relates to a different hazard from overcrowding, but may be relevant. That will be a matter for local authorities to decide as they will retain the right to set their own standards on ceiling heights which can exceed the proposed statutory minimum 1.5 metres for sleeping rooms in HMOs and indeed HHSRS guidance heights. The importance of the statutory ceiling height is so that a room that otherwise meets the floor area requirement for sleeping in is not to be deemed suitable if a person does not have sufficient head room to use the room safely and comfortably as sleeping accommodation.

Q.16 Do you think that the proposal not to treat temporary visitors as occupiers is appropriate?

What consultees said:

274 respondents answered this question of which 81% (223) of respondents agreed that the regulations should exclude temporary visitors and 19% (51) did not.

Most narrative responses briefly supported the proposal. Some thought that landlords might try to evade the regulations by claiming that persons were only temporary visitors. Some respondents thought it might be difficult to crack down on overcrowding if occupiers are able to claim they are only temporary visitors.

Government Response:

We are pleased that an overwhelming majority of respondents supported the proposed exclusion of temporary visitors as occupiers from the regulations. Whilst we appreciate the concerns expressed by some of the respondents, both local authorities and landlords have sufficient powers and leverages to deal with permanent unlawful occupiers being represented as temporary visitors.

We shall, therefore, exclude temporary visitors from the regulations

Q.17 Do you agree that if the landlord causes or permits the occupation of a room which does not comply with the room size rule, they shall be in breach of the HMO licence?

What consultees said:

290 respondents answered this question; of which 80% (231) of respondents agreed that the landlord should be in breach of the licence, 20% (59) did not agree.

The majority of responses agreed with the proposal with a few comments in support of the measure, stating it would enable effective enforcement of room sizes.

A number of qualified supporting statements agreed that landlords who knowingly let rooms should be found to be in breach of licence, but they should not be penalised if tenants choose to occupy small rooms. Others said that local authorities should have discretion to permit existing occupiers to remain in their accommodation.

Those who disagreed thought that:

- tenants may choose to live in smaller rooms at a lower cost;
- undersized rooms should be permitted to be occupied, if this was compensated for by adequate communal living space;
- introducing the standard would render smaller rooms in older houses “useless”;
- landlords should be given six months to make necessary changes and only after then if there is non-compliance should there be a breach of the licence condition.

Government Response:

We note that 80% of the respondents thought failure to comply should be a breach of the licence.

Some of the suggestions in the narrative responses are more concerned with mitigating the impact of, or the form of, the condition itself, which is discussed below. On communal facilities and space, the minimum room size will apply to any room used as sleeping accommodation, and is not related to other communal space in the HMO. This reflects the overcrowding standard rule in section 326 of the Housing Act 1985, which is only concerned with sizes of rooms used for sleeping and not whether there are compensatory features in the dwelling by means of family or shared communal space. Also the suggestion that persons could choose smaller rooms belies the character of a mandatory licence condition.

In reality, as it is proposed the requirement will take the form of a mandatory condition of the licence, failure to comply with the condition will be a breach of the licence.

The condition relating to sleeping accommodation will apply to all HMOs that are licensed on or after commencement of the regulations; including renewals of existing licences and to new licences issued under the mandatory scheme or a local additional scheme.

Under the transitional provisions referred to in question 11, in respect of the first licence or renewal granted immediately after commencement, the regulations will provide for a 'grace' period (of up to a maximum of 18 months, to be determined by the local authority) during which time a licence holder will not be liable for a breach of the new condition relating to sleeping room standards. This is provided they are taking active steps to remedy the breach or breaches and in circumstances where the breach or breaches arise because of the imposition of the new condition and the licence holder in case of renewals was not already in breach of any condition in the previous licence relating to overcrowding.

The regulations will provide that after commencement it will be an offence for a landlord to knowingly let a room to more than the number of persons, if any, specified in the licence condition that are permitted to occupy it. An offence will also be committed if the room is in an HMO which has been let under a joint tenancy or is occupied by licensees and the landlord permits a room to be so occupied by the tenants or licensees. This will apply from when the first licence is granted or an existing licence is renewed, after the commencement date.

However, where a room becomes occupied in breach of the licence condition during the course of the tenancy the landlord will not be liable for that breach if they are taking active steps to remedy the breach within a reasonable time specified by the local authority. This is subject to the local authority being satisfied the licence holder has not caused or permitted the breach to occur, for example by allowing the tenant to move their partner into their sleeping accommodation when it is only suitable for one person. The reasonable time allowed by the local authority for remedying the breach must be within 18 months from it occurring.

The grace period will only apply where minimum national room size standards are breached. It will not apply to local authorities' own room size enforcement policies, where occupation does not breach the national standards.

Q.18 Do you think the definition of hostel and temporary accommodation providers is appropriate? If not please explain why. Can you give examples of the types of providers whose accommodation may be subject to the exemption?

What consultees said:

There were 243 responses to this question; of which 77 % (187) of respondents thought the definition appropriate, 23% (56) did not.

Two responses thought the definition needs to be clearer, but offered no improvements. Other responses disagreed with the principle of excluding hostel and

temporary accommodation from the regulations. Some argued that landlords might set up sham arrangements to avoid the cost of licensing whilst continuing to exploit tenants. Others made the point that hostel and temporary accommodation, whether run by charities or not, can be in very poor condition and it is not that uncommon that these can be occupied by persons for up to six months. They should, therefore, be subject to licensing to ensure standards are being maintained.

We received limited narrative responses suggesting exemptions should be extended to temporary homeless accommodation.

Government Response:

The question was concerned with whether our proposed definition of a provider of hostel and temporary accommodation is appropriate. Although a significant majority of respondents to the question thought the definition appropriate, unfortunately we received very limited examples of the type of accommodation that would fall within the exemption.

Most of the narrative answers argued that hostel type accommodation should not be exempted. In this respect it is important to clarify that there are no plans to exempt this type of accommodation from licensing, just from the minimum room size condition.

In light of the representation received (and in the absence of further particular comments) we propose to exempt providers of hostel/temporary accommodation as described in the consultation from the minimum sleeping room size requirements in the regulations. We note the concerns raised about evasion, but it will be for the local authority to decide if the HMO qualifies for the exemption, not the owner of the HMO.

Q.19 Do you think that introducing minimum room sizes will impact upon persons sharing protected characteristics and if so how will it impact upon them? If you think the impact is negative can you suggest how it may be mitigated?

What consultees said:

260 consultees answered this question; of which 56% (146) of respondents thought the introduction of minimum room sizes would impact upon persons sharing particular characteristics, whilst 44% (114) did not.

Many respondents thought the proposals would positively impact upon persons sharing protected characteristics by setting out clear guidelines for landlords and because they would lead to improvements in the standards and quality of the places those persons live in.

One tenant organisation, whilst reiterating support for minimum room sizes, stated that it could have a negative impact upon persons sharing protected characteristics, because they believe many are already living in rooms that do not meet the

standards. In mitigation they suggest one option might be discretion where rooms do not meet the standards, but all other licence requirements are met and there is adequate communal space.

A local authority considered the minimum room sizes would affect older and disabled persons, as they are not large enough for these groups and could affect their health (including mental health).

An advice body suggested that the group most likely to be affected would be pregnant women. Pregnant women may find it harder to find places to rent as a result of landlords being reluctant to rent to them for fear of breach of the licence condition.

The Government response:

The Government has identified that the groups of persons who are most likely to share protected characteristics that could be affected by the proposals are (a) people who are more vulnerable by reason of age (younger and older persons); (b) disabled persons and (c) pregnant women.

Our policy is to ensure that rooms are not used as sleeping accommodation when they are, by reason of size, manifestly unsuitable to be so used. To that extent the policy has medium to long term positive impacts for those persons who share protected characteristics, since it will reduce overcrowding and ensure those persons' health, safety and welfare are properly protected.

However, we also recognise the requirements in the short term could have a negative impact on existing occupiers of rooms that do not meet minimum sizes, without mitigation being put in place.

As stated in response to questions 11 and 12, we plan to mitigate the impact by ensuring occupiers sleeping in unsuitable rooms are given reasonable time to move to alternative accommodation (whether within the HMO or elsewhere) which are suitable for their needs. Local authorities will have up to 18 months to ensure the licence condition is being met.

Q.20 How many families living in bedsits or shared houses do you think would be affected by the policy of restricting the number of occupants to specific sizes of rooms?

What consultees said:

We received 109 responses to this question. Very few consultees were able to give estimates, either locally or nationally, of the number of families living in bedsits or rooms within shared houses. The responses we received from local authorities estimated the number families that would be affected were, in their respective areas,

between 10 and 136. This in part reflected the size differential between local authorities answering this question.

Many responses thought the policy would have minimal effect on families as HMOs are in the main occupied by single people or couples (without children). It was said that some local authorities already set room size requirements to deter occupation of individual rooms by families.

One response thought that significant numbers of families lived in shared housing. It was concerned that the proposals should not affect their access to suitable shared accommodation.

Other respondents thought the policy would mean families need to leave HMOs and some thought this would increase homelessness and pressures on local authorities.

The Government response:

We are grateful to those local authorities who responded to the question.

It is clear that there is some occupation of single rooms (i.e. bedsits) by families, but the numbers are small.

Q.21 Do you think the impact on the family would be negative or positive? Please explain why. If you think the impact is negative please say how you think it might be mitigated.

What consultees said:

221 responses were received to this question. Answers were evenly split; of which 52% (116) of respondents thought the policy's impact would be positive, whilst 48% (103) believed it would have a negative impact.

Some respondents thought the policy would have a positive impact on families because removing them from overcrowded conditions would help ensure detriments to children's well-being, development and health would be avoided.

Other respondents thought the policy would mean families would need to leave HMOs. Some thought this would increase homelessness and place additional pressures on local authorities or make it harder for families in financial difficulties to obtain and afford suitable accommodation.

Some respondents suggested that this could be mitigated through local authority discretion when applying the rules where there was sufficient communal space. Others suggested that local authorities suspend the condition for 6 to 12 months so families can be re-housed.

The Government response:

This question is about impacts on families occupying accommodation in rooms that are, under the proposed standards, only suitable to be lived in by a specific number of persons. We did not get any sense from the narrative responses that anyone thought that it was acceptable for families to live in small single rooms and most respondents thought the proposals would in the long term have positive impacts.

Concern about impacts on local authorities and financial pressures on families by having to move is noted, but these are largely balanced by ensuring that families are not living in overcrowded accommodation that could be dangerous and detrimental to the health and well-being of the family.

We believe in the medium to long term families would benefit from the policy, since it will prevent overcrowding in HMOs and protect the health, safety and welfare of children being housed in wholly unsuitable accommodation.

Nevertheless in the short term without appropriate mitigation the impact would be negative on individual families. Therefore, we will introduce measures that suspend enforcement of the condition to enable a reasonable period of up to a maximum of 18 months for steps to be taken to remove the overcrowding.

The regulations will also make clear a room with a usable floor area between 4.64sqm and 6.5sqm may be occupied as sleeping accommodation by a child under the age of ten in a licensed HMO. This is only when let together with a sleeping accommodation of 6.51sqm or more.

These regulations will not prevent local authorities from issuing guidance on larger rooms for accommodating children.

Summary of next steps in respect of room sizes for sleeping accommodation in licensed HMOs:

We have considered representations on minimum room sizes and how the proposals impact on persons occupying rooms as sleeping accommodation, including those sharing protected characteristics and families. As a result of these comments we have outlined below the scheme we plan to introduce.

Basic principles

- No person should sleep in accommodation which would breach the overcrowding standards in section 326 of the Housing Act 1985 just because the property is an HMO
- The purpose of HMO licensing is to ensure multiple occupied flats and buildings are properly managed, are safe places to live in and tenants have an adequate amount of “living” space of their own.
- No person sleeping in accommodation which was adequate for them to do so at the time of letting, but then becomes by reason of the regulations no longer suitable, should be immediately evicted.
- No landlord letting to such a person shall be in breach of the licence condition by continuing to allow the tenant to remain in the accommodation for such reasonable period as the authority permits, up to a maximum of 18 months.
- However, the offence of breaching the licence condition will be committed if the accommodation becomes deliberately overcrowded after the regulation come into force, for example if the tenant moved their partner into a room which was only suitable for one person and the landlord is not taking all reasonable action to address the breach.

On that basis the minimum sleeping room size condition will require:

- The authority to specify in the licence each room which is suitable for use as sleeping accommodation and the maximum number of persons (adults and children under 10) who may sleep in each room (and for avoidance of doubt any room not specified as suitable for sleeping accommodation is prohibited from use as sleeping accommodation).
- The total number of occupiers permitted in each sleeping room is the maximum number of persons who can occupy under the licence (see section 64 (3) (a) of the Housing Act 2004).
- A room with a usable floor area between 6.51sqm and 10.21sqm may only be occupied as sleeping accommodation by one person.
- Only a room with a usable floor area of 10.22 sqm or more may be occupied as sleeping accommodation by two persons.
- A room with a usable floor area between 4.64sqm and 6.5sqm maybe occupied by a child under the age of ten provided the room is let or occupied in connection with the letting or occupation of a room with a usable floor area of or in excess of 6.51sqm to a parent or guardian of the child.
- No room may be occupied as sleeping accommodation if the floor area of the room is less than 4.63 sqm

- For the purpose of calculating the usable floor area of a room any area of the room in which the distance between the lowest part of the floor and the ceiling measuring less than 1.5 m is to be disregarded.
- “Occupied as sleeping accommodation” does not include temporary use of accommodation by a visitor to the HMO.
- A landlord will breach the condition (and commit an offence) if they let, or permit, a room as sleeping accommodation:
 - of 6.51sq m or more by more persons than the maximum number permitted in the condition;
 - of between 4.64sqm and 6.51sqm, except as specified in the condition.
 - of less than 4.64 sq m.
- A landlord will be in breach of the condition (and commit an offence) if they permit a room to be occupied in breach of the condition and do not take steps to remedy the breach within such reasonable time as the authority may allow up to a maximum of 18 months.

Chapter 3: Impact Assessment

Q.22 Do you have any comments on the Impact Assessment?

What consultees said:

We received 108 responses to this question, mainly from individual landlords/ landlord organisations/letting agents (40) and local authorities (48).

16 respondents thought the impact assessment accurately reflected the cost of the proposals to business. Broadly others who commented on it (rather than the wider issues) raised concerns that the costs had been underestimated. These were around (a) the time and cost for landlords to familiarise themselves with the legislation; (b) the cost and time involved in completing a licence application and (c) the licence fee. A few consultees doubted whether discounts would be offered by the local authority, as the licensing proposal is a mandatory requirement instead of a discretionary one.

The Government response:

The Impact Assessment was considered by the independent Regulatory Policy Committee, who assessed it as fit for purpose in addressing likely costs to business of the proposals set out in the Technical Discussion Paper.

We appreciate the concerns about the cost of familiarisation and completing applications expressed by some consultees. In common with a landlord organisation and other respondents to the consultation, we agree it would simplify the process if landlords and agents were able to identify whether their properties required a licence. As mentioned in response to question 1 we will develop and publish a tool kit for doing so. We also intend to publish guidance for local authorities - which will be available to landlords - on licensing procedure, which will assist in reducing red tape. This too will help ensure costs associated with familiarisation and completing applications are kept proportionate.

We do not agree that the estimated cost of a licence fee is too low. First, it is based on the average charge and there will be regional and local variations, some higher others lower. In any case there will be some HMOs passported into the new regime free of charge under the transitional arrangements referred to in Chapter one.

On the issue of discounts for landlords who are accredited, this is ultimately a matter for each local authority. The Government's view is, however, that it is likely that most local authorities will want to offer discounts to landlords who are proven members of an approved accreditation scheme operating in their area.

Chapter 4: Further consultation

Evidence relating to the “fit and proper person” requirement

Q.22A Do you think regulations should be made that would require a criminal record certificate to be obtained for an applicant for a licence and any manager of the property?

What consultees said:

272 answers were received to this question; of which 78% (213) of respondents thought a criminal record certificate should be obtained, whilst 22% (59) disagreed.

There was a paucity of reasons given from those who supported mandating the requirement. A number did point out that it would remove inconsistencies between local authorities, including in approach and evidential basis for determining whether a person is “fit and proper”. Some consultees agreed with introducing the mandatory requirement, but thought costs for reputable landlords should be minimised.

One consultee who disagreed thought that mandating the requirement would require significant additional resources, which would result in higher licence fees. Others thought it was unnecessary and this should be a matter for individual discretion of authorities based on their own risk assessment. Some respondents pointed out there was no need to require certificates to be obtained, since local authorities will have access to the rogue landlord database¹⁶, which will record criminal records and therefore, help local authorities in deciding whether a person is “fit and proper”.

The Government response:

It is important and indeed a legal requirement under the Housing Act 2004 that a licence holder and any manager of an HMO or part 3 house is a “fit and proper” person. Under the current rules all applicants have to declare relevant information necessary for the determination of whether the person is fit and proper. It is an offence to provide false or misleading information or to conceal relevant information. In addition local authorities have the power to require all, or any, applicants to provide a criminal record certificate, should they so choose.

A criminal record is only part of the picture in determining whether a person is fit and proper, relevant too will be such matters as contraventions of housing and immigration law, discrimination practices and bankruptcy/insolvency. There are no hard and fast rules that will automatically determine that a person is not fit and proper, although the gravity of an offence or repeated contraventions of the law will

¹⁶ See Part 2, Chapter 3 of the Housing and Planning Act 2016 for details of the national database relating to rogue landlords and property agents.

be strong indicators as to the fitness of a person, as would failure to declare or lying about the relevant information required in the application.

Whilst the Government accepts that requiring all landlords to provide a certificate would be a consistent approach nationally; it would also increase costs and delay licensing processes. As noted local authorities can require this anyway, although it is only part of the picture in deciding whether someone is fit and proper.

The database of rogue landlords and property agents, due to be introduced later this year, is an important additional source of information that will be available for local authorities to interrogate in deciding whether a person is fit and proper. The use of the database will not involve additional costs or cause delays to the licensing process. Whilst it is accepted that it may take some time for the database to become populated, we anticipate that in the long term it should replace any need for criminal record checks and in the meantime local authorities will still have the power to require landlords to produce certificates when necessary.

The Government has, therefore, decided that it is not necessary at present to mandate the requirement to obtain criminal record certificates in connection with licensing applications, although we will keep this decision under review as the extension of mandatory licensing beds in.

Q.23 Do you have a preference for checks through DBS or Disclosure Scotland? If so please explain why.

What consultees said:

113 responses were received to this question; of which 90 (80%) preferred checks through the Disclosure and Barring Service (DBS) and 13 (20%) preferred checks through Disclosure Scotland.

In the few narrative responses received explaining the preference, a number of consultees thought the DBS was preferable because local authorities would be familiar with the service.

The Government Response:

Given that we do not plan to impose mandatory checks at this stage, it is not necessary for a final decision to be made at present, although if we did require mandatory checks our preference would be through DBS. The use of DBS would necessarily involve a different procedure from that which currently applies when a criminal record certificate is required. Local authorities would on receipt of the application be required to refer the applicant to the DBS who would provide a report to the local authority.

Refuse Disposal Facilities

Q.24 Do you agree there should be a mandatory condition in HMO licences relating to household refuse?

What Consultees said:

This question attracted 284 responses; of which 213 (75%) of respondents agreed, whilst 71 (25%) were opposed.

Some responses thought the management regulations¹⁷ were insufficient to control refuse management since the only option was criminal prosecution. Other consultees complained that HMO conversions are being undertaken without regard to the need for adequate waste storage, placing the burden of inadequate waste management on tenants and local authorities. Some respondents thought that bin sizes were too small and there were problems with the frequency of collection. A number of responses stated that rubbish generated from HMOs was blighting local areas. A number of local authorities thought that rubbish from HMOs should be treated as commercial waste and dealt with accordingly.

Some consultees qualified their support by pointing out that sometimes landlords may not be able to comply with conditions, particularly around the storage of bins within the curtilage of the HMO.

A number of responses did not support the proposals because:

- refuse was already covered in the management regulations; with some pointing out that the duty under the regulations extended to tenants as well as landlords;
- the condition would be unfair because it would make landlords responsible for tenant behaviour, which is something that is beyond their control; and
- waste management is the responsibility of the local authority which is funded through council tax, and should not be an additional cost to landlords.

Government response:

The Government recognises that overfilling bins and rubbish dumped inappropriately is not only a visual blight, but can attract vermin and cause health issues. The more people living in separate households in a building, the more domestic rubbish is going to be generated from that building. Whilst tenants are responsible for properly disposing of their rubbish, they need adequate and accessible receptacles to do so. We accept that the issue of rubbish collection is not within the control of the landlord and there is no intention to require landlords to perform functions which are the responsibility of the local waste authority. However, securing the provision of suitable

¹⁷ Regulation 9 of The Management of Houses in Multiple Occupation (England) Regulations 2006

facilities for disposal and storage of refuse is, in the Government's opinion, a fair and proper responsibility for the manager of an HMO.

Although we acknowledge that the management regulations cover refuse disposal, regulation 9 is reactive because it is only concerned with situations where the facilities are deemed by a court to be inadequate, if the local authority has chosen to prosecute. A condition of a licence, on the other hand, would proactively require the provision of adequate facilities in the first instance.

We, therefore, propose to include a mandatory condition in all HMO licences (mandatory and additional) going forward, relating to the provision of suitable facilities for refuse storage and disposal.

Q.25 Do you think the terms of the condition are reasonable and appropriate?

What the consultees said:

There were 266 responses to this question; of which 191 (71%) thought the terms of the condition were reasonable and appropriate, 75 (29%) thought they were not.

Many of the narrative responses duplicated their response to question 24 rather than addressing the terms of the conditions.

Those who commented on the terms of the proposed conditions thought it needed to be flexible enough to reflect such matters as the lack of curtilage space for some properties, variations in local conditions, such as narrow alleys and the need for local authority discretion when applying the terms.

The Government response:

We agree there is a need for the condition to be flexible to reflect both local rules applying for waste collection and local conditions. Clearly a prescriptive approach across England applying to all HMOs regardless of the circumstances is not the way forward. Local authorities must take account of local conditions.

For that reason we propose the mandatory condition will require the licence holder to comply with a scheme or directions (if any) issued by the local authority. These directions will prescribe the numbers and use of receptacles for the storage and disposal of domestic waste generated from the HMO.

However, local authorities should be mindful that HMOs are residential properties, and as such, they should provide a comprehensive and frequent waste collection service for such households which is free at the point of use; this includes HMOs which are occupied by students. Accordingly, it would not be appropriate for local authorities to levy commercial waste charging on such residential properties, or seek to impose such charging via any scheme or direction.

Q.26 Do you think that such a condition would impose additional costs on licence holders? If so please provide an estimate of how much compliance with such a condition might cost and give your reasons.

What consultees said:

There were 252 responses to this question; just over half (57%) 145 respondents thought that the condition would impose additional costs on licence holders.

26 consultees offered a quantitative estimate of costs. 9 responses estimated the cost providing a bin/wheelie bin, which ranged from free to £100, the most frequent estimated cost was £32 - £38 (4 responses). 4 responses estimated the cost of providing a bin store would range between £100 and as much as £750 for large HMOs. Other estimations provide a mix of total costs and frequency costs, per week, month and year.

Government Response:

The Government is grateful to those consultees that provided quantitative estimates of costs. Those costs relate to the provisions of extra bins and the provision of storage space for those bins. As stated above some consultees estimated that there would be no additional cost in the provision of bins because these would be provided free of charge by the local waste authority. Others thought new bins would cost up to £100. Estimates on the cost of bin stores varied from £100 to £750 based on the size of receptacle provided.

The difficulty in quantifying costs across HMOs in England is that where adequate facilities are already provided no additional costs will be incurred. Furthermore, depending on each local authority scheme or directions, additional provision may or may not be required, or if required will be provided free of charge or at cost to the landlord. In particular, it is not possible to assume (as responses to the previous questions have pointed out) there is sufficient curtilage to store bins.

Nevertheless we estimate using the costs above that on average, for landlords whose facilities are inadequate; there will be a one off additional expense of between £30 - £500 depending on whether there is a need for a bin or a bin store. However, as many HMOs will be compliant or that the condition will not require additional provision at cost, we consider only around one third of landlords of licensed HMOs will incur an additional one off cost ranging between £30 - £500. (Average £265).

Purpose built student housing

Q.27. Is local housing authority intervention in purpose built licensed student accommodation currently minimal?

What consultees said:

168 responses were received to this question; of which 141 (83%) of the consultees thought intervention was minimal, whilst 27 (17%) thought it was not.

The majority of written responses thought intervention was minimal because Purpose Built Student Accommodation (PBSA) is built to modern standards and should be fully compliant with existing building regulations. Furthermore the buildings are thought to have good management structures in place which ensures the welfare and safety of the students; but also provides an effective procedure for addressing student complaints. Four local authority responses stated they did not actively inspect PBSA accommodation once it had received building control approval. Others commented that there was the need for intervention, where PBSAs were in breach of local authority standards or posed a risk to students.

Government Response:

We note that across the range of consultees, most thought PBSA were well managed and safe places to live in and that local authority intervention was indeed minimal. Although some respondents thought that intervention might be necessary, we clarify that there is no intention to remove the ability of local authorities to intervene using their statutory powers, where necessary.

Q.28 Do you think that membership of a code of practice approved under section 233 ensures acceptable management practice and standards?

What consultees said:

188 responses were received to this question; of which 133 (71%) answered in the affirmative, whilst 55 (29%) of the respondents did not agree.

Those who agreed and gave reasons broadly endorsed a code of practice as a means of ensuring acceptable standards. A couple of respondents made the point that a code of practice was no guarantee that management practices would be problem free, but adherence to a code indicated a commitment to achieving these standards. Two other consultees agreed, but stated such providers should not be exempted from the licensing requirements. One response queried why one code is deemed to be better than another; that it should be up to the local authorities to accredit the codes as they see fit and offer a discount accordingly.

Those who disagreed with the proposition queried the code's capacity to ensure good standards of accommodation and management. Others were concerned about

how the code can be effectively enforced and made to be complied with. A few respondents expressed concern that the codes of practice did not include any reference to standards of accommodation such as room sizes and sharing ratio of amenities. In addition, a number of responses said that some accommodation which was code compliant was in breach of local authority standards.

Government response:

The Government acknowledges that a significant majority of consultees thought that adherence to a code of practice ensures acceptable management standards and practices.

We would clarify that the proposals set out in the consultation paper did not suggest that HMO standards would not need to be met or that membership of the code qualifies for exemption from licensing.

Q.29 Do you agree that the Secretary of State should consider whether to approve a code of practice under section 233 which relates to purpose built blocks of flats exclusively providing accommodation for students?

What consultees said:

There were 201 responses to this question; of which 161 (80%) thought the Secretary of State should consider whether to approve a code of practice relating to PBSA, 40 (20%) of respondents thought no new code should be approved.

In written responses those consultees in support thought that a Secretary of State approved code would bring consistency to the sector, improve standards and “peace of mind for students”. A number of respondents qualified their support stating the need to verify compliance and how it should be enforced. A further comment made was the need for codes to prescribe space and physical standards as well as management standards.

Responses in opposition to the question cited the codes as a prelude for private providers to be exempted from licensing requirements, thereby leaving students open to exploitation. This stance is either due to concerns about the effectiveness of the codes’ enforcement or the perception that private providers profit motive would compromise the need to meet standards.

Government Response:

We are pleased that a significant number of respondents thought the Secretary of State should consider approving a code of practice for PBSA.

However, we have no plans at present to invite existing code providers (Universities UK and Accreditation Network UK/Unipol Code of Standards for Larger Residential Developments) to devise new codes of practice applying to blocks occupied

exclusively by students in full time education at universities and higher education establishments.

Q.30 Do you agree those private providers who comply with such a code should be entitled to a discount on the standard rate for a licence application?

What consultees said:

There were 198 responses to this question; of which 119 (60%) of the respondents thought that compliant providers should be entitled to a discount, 79 (40%) disagreed.

A number of respondents in support of the proposal thought that a discount would provide an incentive for providers to sign up to the code. Other support was qualified stating that a discount can only be awarded where code members can demonstrate and maintain compliance. There was a suggestion that lapsed code members should be re-charged where standards have not been maintained. A number of respondents thought code members should be exempt from paying licence fees altogether.

There were a significant number of comments from those who disagreed with a discount, which covered three areas of concern:

- it was unfair that some landlords be awarded a discount for something they should be compliant with, whilst also making a profit;
- it was inequitable that large providers were to receive a discount while smaller landlords who were providing good quality accommodation were required to pay the full rate and
- that the cost of the scheme would still need to be met; any such shortfall caused by the discounts would either have to be met by tax payers or smaller landlords.

The Government response:

The Government notes that the majority of respondents agree that discounts should be awarded, but a significant minority do not. The issue is whether the discount should apply where there is little local authority intervention because the landlords adhere to a code which ensures standards are maintained.

In response to earlier questions there were significant numbers of responses to the effect that there was little local authority intervention and recognition that a code ensures standards are maintained.

However, those responses were received before the tragic fire at Grenfell Tower, and the consequent investigations into fire safety in purpose built blocks, including those in the student sector. In light of Grenfell and those investigations it cannot be said with certainty that local authorities would not now be more proactive in ensuring licence conditions in PBSAs were complied with, or required updating.

In the Government's view because fire safety in HMOs is of paramount importance we do not intend to introduce any steps which might be seen as a barrier to local authorities in carrying out investigations and if necessary enforcement action through HMO licensing going forward.

For those reasons we do not propose, for the time being at least, to require local authorities to provide mandatory discounts for HMO licences to private providers of PBSAs that comply with approved codes of practices.

Q. 31 Do you think a 50% discount is appropriate?

What consultees said:

There were 191 responses to this question; of which 63 (33%) thought that a 50% discount was appropriate, whilst a significant majority 128 (67%) did not.

Those who supported the 50% discount thought it justified on the basis that it reflected the level of local authority involvement as PBSA posed no problems.

Most comments were received from those who disagreed with the proposed discount. The largest group of comments stated that a 50% was too much and that it should be much less with some consultees suggesting a discount amount of 30% or less. A significant number reiterated their opposition to any discount. A number of respondents thought it should be for local authorities to decide the discount as they are all structured differently and have different prices. In the opposite direction a number of respondents thought that 50% was too small a discount.

Government Response:

For the reasons explained above we no longer propose to mandate discounts and so quantification is no longer a live issue.

Q.32 What savings could a landlord expect by a reduction in fees of say 50%?

What consultees said:

Potential saving	Less than £100	£100 - £200	£200 - £250	£250 - £300	£300 - £350	£350 - £400	£400 - £450	£450 - £500	£500 +
No of responses	2	3	6	13	7	4	2	4	7

Government response:

For the reasons above this is no longer a live issue.

Next Steps

We now plan to lay the necessary secondary legislation in Parliament and subject to both Houses approving these measures we will bring them into force next year.