



General consents for licensing schemes under Parts 2 and 3 of the Housing Act 2004

Consultation

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General consent for discretionary licensing schemes under Parts 2 and 3 of the Housing Act 2004: Consultation Paper

Introduction

1. The Government values the private rented sector. The sector plays an important role in providing choice and flexibility at all levels across the housing market. We are keen to ensure that the sector provides decent quality accommodation, particularly as privately rented properties such as houses in multiple occupation (HMOs) are a key source of housing for significant numbers of people often including some of the most vulnerable people in society.
2. While the majority of private landlords are professional in the management of their properties, there remains a minority of landlords who fall short of the standard expected. In order to address the most severe problems statutory regulation, and licensing in particular, is sometimes required. It was against this background that the Housing Act 2004 introduced a new national mandatory HMO licensing regime, which came into force in April 2006, and is aimed at improving the controls on larger higher risk HMOs, thereby raising the quality of accommodation offered. These properties often pose the greatest management challenges, and sometimes fail to achieve adequate amenity and safety standards in relation to the number of occupants.
3. However, the Government also recognised that the problems of poor management and facilities in such properties were not just confined to the larger HMOs, and that poor management and associated problems exist elsewhere in the private rented sector. They are not simply a phenomenon of HMOs. It was for this reason that the Act also introduced the discretion for local authorities to license other types of HMO and privately rented property in areas where such issues manifest themselves.
4. At the time the legislation was implemented the Government wanted local authorities to focus on complying with their new statutory duty to licence the larger higher risk HMOs in their area. Discretionary licensing schemes are therefore currently subject to approval by the Secretary of State. However, it was always the intention to move to a general consent for such schemes, in line with the Government's policy on giving greater freedoms and flexibilities to local government. We consider the time is now right to consult on the move towards a general

consent for discretionary licensing regimes. This short consultation paper therefore sets out a range of options for introducing such a general consent for local authorities in England to establish and operate discretionary licensing schemes under Parts 2 and 3 of the Housing Act 2004.

Licensing under the Housing Act 2004

5. The provisions in the Housing Act 2004 ('the Act') relating to the licensing of HMOs and other private rented residential accommodation have now been in force since 6 April 2006. The provisions were not intended to reduce the number of HMOs or privately rented properties, or to change their use, but were aimed at increasing the quality of existing stock in the private rented sector in terms of both physical conditions and management standards.
6. The Act¹ describes the different types of HMO that exist. In summary the following would fall within the definition of a HMO:
 - an entire house or flat which is let to three or more tenants who form two or more households and who share a kitchen, bathroom or toilet
 - a house which has been converted entirely into bedsits or other non-self-contained accommodation and which is let to three or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities
 - a converted house which contains one or more flats which are not wholly self contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by three or more tenants who form two or more households
 - a building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies.
7. Local authorities are now under a statutory duty² to licence HMOs that are of three or more storeys housing five or more persons forming two or more households. This is known as *mandatory HMO licensing*.
8. The Act also provides for two forms of discretionary licensing in order for local authorities to tackle particular problems within the private rented sector stock in specific areas within their jurisdiction. These are:

¹ See sections 254 to 257 for the definition of HMO.

² Part 2 of the Act. And SI No 2006/371

Additional HMO licensing

9. Part 2 of the Act gives the power to local authorities to designate areas, or the whole of the area within their district, as subject to additional licensing in respect of some or all of the HMOs in its area that are not already subject to mandatory HMO licensing.

Selective licensing of other privately rented property

10. Part 3 of the Act gives powers to local authorities to designate areas, or the whole of an area within their district, as subject to selective licensing in respect of private rented accommodation provided that the area;
 - suffers or is likely to suffer from low housing demand; and/or
 - suffers from significant and persistent anti-social behaviour related to the private rented stock.

Impact of introducing a licensing scheme

11. All private landlords with properties that they rent within an area designated as subject to an additional HMO or selective licensing designation will require a licence from the local authority for each of their rented properties. They will need to be identified by the local authority as 'fit and proper' persons in terms of their suitability to manage their properties. The local authority will be able to impose conditions on licences. In the case of additional HMO licensing these may relate to management issues and property condition, whilst conditions on a selective licence must only relate to management issues. Local authorities may also charge a fee to cover the costs of licensing and this is set at their discretion.

The current approval process

12. Local authorities currently have to seek approval from the Secretary of State (delegated to officials) to introduce such schemes. In order to gain approval local authorities are required to follow the procedures as prescribed by the legislation³ and set out in the Departmental guidance document *Approval Steps for Additional and Selective Licensing Designations in England*⁴. The legislation and guidance sets out in detail the steps local authorities must follow when establishing such schemes. In summary local authorities applying for approval must

³ Sections 56 to 60 of the Act (additional HMO licensing) and 80 to 84 of the Act (selective licensing).

⁴ *Approval Steps for Additional and Selective Licensing Designations in England* guidance document published in November 2006 (revised in October 2008).

establish the evidence base and fully consult with those persons likely to be affected by a licensing designation.

13. For example, when applying for an additional HMO licensing designation local authorities are required to establish that a significant proportion of the HMOs that the designation is intended to cover are being managed ineffectively so as to give rise, or likely to give rise to problems either for those occupying the HMOs or for members of the public⁵. In the case of a selective licensing designation, when establishing whether an area suffers from low housing demand local authorities must consider the value and turnover of occupiers of residential premises in the area, the number of residential premises which are available to buy or rent, and the length of time for which they remain unoccupied⁶. If establishing that an area suffers from anti social behaviour they will need to provide evidence that the problem is directly attributable to the behaviour of the occupiers of, or visitors to, privately rented properties and those private landlords are failing to deal with their tenants' behaviour⁷.
14. Discretionary licensing designations are intended as highly targeted measures and therefore local authorities must demonstrate that their proposals fit in with their overall strategic approach to dealing with problems in the private rented sector. Discretionary licensing designations are not a 'panacea' to the issues local areas face and local authorities must therefore demonstrate how the designations fit with existing schemes/strategies designed to address problems in the private rented sector⁸.
15. Under the current approval arrangements the role of the Department is to facilitate the approval process. The Department works with local authorities to help develop the most appropriate solution for the problems they have identified. Where a local authority presents a scheme that has been properly developed and meets the criteria set out in the Housing Act 2004 the aim is to turn round approval within thirty working days.
16. On approval licensing schemes last a maximum of five years. Local authorities are then required to monitor the impact of designations to identify whether the issues the licensing designation is intended to tackle, such as management standards in privately rented properties, have been addressed.

⁵ Section 56(2) of the Act.

⁶ Section 80(4) of the Act.

⁷ Section 80(6) of the Act.

⁸ Section 57 of the Act (additional HMO licensing) and section 81 of the Act (selective licensing)

A general consent for HMO and selective licensing designations

17. When the Housing Act 2004 was introduced, it was made clear that the ultimate aim was a general consent allowing local authorities to establish discretionary licensing designations without seeking approval from the Secretary of State. Sections 58 (additional HMO licensing) and 82 (selective licensing) of the 2004 Act give the Secretary of State the power to grant general consents to a specified local authority or to a specified description of local authorities.
18. The intention to issue a general consent for those local authorities that were 'Excellent' or 'Good' under the old comprehensive performance assessment (CPA) regime was made public in November 2004, as part of the Regulatory Impact Assessment (RIA) which accompanied Parts 2 and 3 of the Housing Bill. However, such consents were not granted at the time of implementation in order to enable local authorities to focus their resources on their statutory duty to licence the larger mandatory licensable HMOs.

Why move to a general consent?

19. The move to consult on a general consent is part of the wider Government commitment to ensure decisions on local matters are made as close to the people affected by them as possible. A report entitled *Consent Regimes – Reducing Unnecessary Bureaucracy* in March 2006 set out the Government's intention to reduce red tape and improve the local authority consent regime system. It recommended that all departments should conduct regular reviews of consent regimes to assess their validity and appropriateness. It is in light of this report that this consultation is being conducted.
20. The licensing provisions have also now been in force for three years and local authorities have made steady progress with regards to their statutory duties under the Housing Act 2004. With regards to mandatory HMO licensing local authorities have now received over 30,000 HMO licence applications and have licensed over 28,000 properties⁹. This is a clear demonstration of the level of knowledge that now exists within local authorities of the licensing provisions and represents good progress since implementation of the Housing Act 2004.
21. To date 16 local authorities have been granted approval to operate discretionary licensing schemes. Approval has been granted to Peterborough City Council and the London Boroughs of Hounslow, Hillingdon and Ealing to operate additional HMO licensing schemes in

⁹ Data obtained from National Register of Licensed Houses in Multiple Occupation (ROLHMO) in December 2009

parts of their area. The Department has also approved 17 selective licensing designations in 12 local authority areas. These are Salford City Council (two designations), Middlesbrough Borough Council, Manchester City Council (three designations), Gateshead Council (two designations), Sedgefield Council, Burnley Borough Council, Bolton Council, Easington District Council, Blackburn with Darwen Council (two designations), Hartlepool Borough Council, Leeds City Council and London Borough of Newham.

22. This demonstrates that local authorities, having complied with their statutory duties under the Act in relation to mandatory licensing of larger HMOs, are now considering the other tools available to them to tackle problems such as poor management standards, property condition and anti-social behaviour in their local private rented sector.

What would the effect of a general approval be?

23. A general consent would remove the Department's role in approving designations. This would be in line with our overall policy of retaining specific consents only where absolutely necessary. It would not, however, remove any of the other requirements on local authorities, and they would be open to judicial review if, for example, they did not properly consult, or did not produce robust evidence in support of their case. Proposed licensing designations will therefore need to remain compliant with the legislation.
24. A general approval does not mean that a local authority can in any way reduce the amount of preparation and consultation which must be undertaken before making a designation. Nor does it mean that any scheme which they implement may not be challenged if it fails to comply with these requirements.
25. On the basis of the knowledge that now exists within local authorities we would expect that good or excellent authorities would be competent to evaluate their work and ensure that they have fully met all the necessary requirements before making their designations.
26. We recognise that the provisions under the Housing Act 2004 relating to the licensing of privately rented property are still bedding in. However, we recognise the need to give local authorities greater flexibility in order to tackle problems in the local private rented sector.
27. Of course it was never envisaged that all local authorities would adopt additional HMO licensing or selective licensing designations. The Building Research Establishment (BRE) baseline survey of the licensing provisions prior to implementation stated that 17 per cent of local authorities were considering applying for additional HMO licensing

and 12 per cent for selective licensing designations¹⁰. The small number of designations in place to date and the even smaller number in the pipeline do not suggest that a general consent would lead to widespread licensing activity.

28. The move towards a general consent therefore represents a change to the process of establishing discretionary licensing schemes as opposed to a legislative change. The Department would therefore continue to work closely with Local Authority Co-ordinators of Regulatory Services (LACORs) to develop and broaden local authorities' knowledge and expertise of the requirements under the Act should a general consent be introduced. The Department would also continue to provide additional help to local authorities, such as workshops, training and seminars that consider introducing designations.

The Rugg Review: possible additional criteria for selective licensing schemes

29. In our response to the Rugg Review of the private rented sector published in May 2009 we consulted on possible additional criteria for selective licensing schemes. This was in order to establish whether there were circumstances, other than low housing demand and anti-social behaviour, where licensing of all privately rented property within a designated area could be used to help address particular problems. We intend to publish the responses to the consultation shortly, however as we are now consulting on the move towards a general consent for both additional HMO licensing and selective licensing we would continue to welcome views on possible additional criteria for such schemes.

Consideration

30. Of course whilst there are strong reasons for introducing a general consent for discretionary licensing schemes we have an open mind and are therefore seeking views on the widest possible range of options for introducing such consent and the form that any future consent could take.
31. We would therefore welcome your comments on the following proposals:

¹⁰ *Evaluating the Impact of Houses in Multiple Occupation and Selective Licensing: The baseline before licensing in April 2006* published in August 2007

Should the existing approval process be kept in place for either additional HMO licensing and/or selective licensing?

32. Local authorities would continue to be required to submit applications to the Department for approvals for discretionary licensing designations, following the requirements under the Housing Act 2004 and accompanying Departmental guidance.

Should we introduce a general consent for all local authorities in England?

33. Under such consent no local authority in England would be required to apply for Secretary of State approval to introduce discretionary licensing designations. The Department would continue to play an advisory role and would continue to work closely with Local Authority Co-ordinators of Regulatory Services (LACORs) to develop and broaden local authorities' knowledge and expertise of the requirements under the Act.

Should we introduce a general consent for specific local authorities based on their experience of using the licensing powers?

34. Should such consent be issued the Department would continue to assist and advise local authorities who apply for a discretionary licensing designation for the first time in order to ensure that the criteria for designating an area have been properly considered and that the provisions in the Act are being complied with. Those local authorities, who have discretionary licensing designations in place, would be deemed to have the sufficient knowledge and experience to ensure that their licensing proposals meet the relevant criteria.

Should a general consent for specific local authorities based on specific criteria such a performance under comprehensive area assessment (CAA) be introduced?

35. Such consent would be in line with the previous intention to issue a general consent to those local authorities who were rated as 'Excellent' or 'Good' under the previous comprehensive performance assessment (CPA) regime. This could mean that local authorities with existing designations may be required to continue to apply to the Department for approval, whereas other local authorities introducing its first discretionary licensing designation in its district would not be required to do so.

What additional criteria, if any, should be introduced for establishing selective licensing schemes?

36. As we made clear in our response to the Rugg Review the criteria for selective licensing schemes (low housing demand and anti-social behaviour) reflected the experience of the private rented sector markets at the time. Whilst we would not want to remove them, we are conscious that current market conditions might have thrown up new challenges that could be addressed through selective licensing schemes.

Next steps

37. Please note that we propose to conduct this short consultation over a six week period and will contact key stakeholders to look closely at the proposals outlined within this document. We will contact them directly to ensure their views are accounted for. Of course we would also welcome the views of all those who have an interest in licensing policy.

How to respond to this consultation

38. Please send your response to this consultation by no later than 12 March 2010. Responses should be sent to:

Tom Quinlan
Private Sector Renewal Team
Communities and Local Government
1/J6 Eland House
Bressenden Place
London
SW1E 5DU
0303 444 43697

Or by email to: tom.quinlan@communities.gsi.gov.uk

Length of consultation period

39. We are conducting a short consultation as the move to a general consent represents a procedural change to the process for establishing discretionary licensing schemes and reflects a longstanding policy commitment to do so.

Impact assessments

40. A full impact assessment on the licensing provisions under Parts 2 and 3 of the Housing Act 2004 was produced when the provisions came into affect in April 2006. The move to a general consent represents a procedural change to the process of establishing discretionary

licensing schemes and we therefore do not propose to produce a new impact assessment.

Territorial extent of the proposals in the response

41. A move to a general consent is a devolved matter and will, therefore, only apply in England.

About this consultation

This consultation document and consultation process have been planned to adhere to the *Code of Practice on Consultation* issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

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