



## Approval steps for additional and selective licensing designations in England



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Department for Communities and Local Government

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**Introduction**

**Annex A**

## Introduction

The Government values the private rented sector and wants to see a strong, healthy and vibrant market. The sector has an important role in providing housing options for those not wishing or able to consider home ownership, or for those to whom social housing is not an option. Through its flexibility and speed of access, it can help to oil the wheels of housing and labour markets and contribute to the social and economic well being of the country.

The Government is keen to ensure that the sector is encouraged to meet, in a professional way and with decent quality accommodation, the demands placed upon it by the housing needs of the wide range of tenants it services. It strongly supports voluntary arrangements such as accreditation and landlords forums.

However, the sector does have some problems for which statutory regulation, particularly licensing, has been seen to be required. Houses in multiple occupation (HMOs) are amongst the more difficult to manage properties in the sector. In some HMOs the standards of management and living conditions can be poor. In renewal areas where there is a low demand for housing and where, in these and other areas, there are problems with anti-social tenants local authorities have a need to identify and engage with landlords. In particular they need to engage with the less responsible private landlords who do not proactively manage their properties, nor address the unacceptable behaviour of their tenants.

The Housing Act 2004 (“the Act”) (and the secondary legislation made under it) provides local housing authorities (LHAs) with a range of tools with a view to encouraging private sector landlords to improve management, amenity and safety standards of their properties, and to tackle anti-social behaviour, which in turn will help to improve living standards and improve areas of low demand. The provisions include:

- Mandatory licensing of certain HMOs
- Discretionary licensing of other HMOs and other privately rented property (including section 257 HMOs)
- Mandatory and discretionary powers to take over the management of HMOs and other privately rented properties, through the management order regime in part 4 of the Act.

Mandatory licensing seeks to target those HMOs that are at the highest risk, namely those of three storeys or more and occupied by five or more persons, who are not living together as a single family or other household.<sup>1</sup> These HMOs often pose the greatest management challenges and sometimes fail to achieve adequate amenity and safety standards in relation to the number of occupants.

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<sup>1</sup> See sections 258 (5) and 259 and Regulations 3 and 4 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. (SI 2006/373) for the definition of other households (and persons to be regarded as a member of such a household).

However, the Government recognises that problems of poor management and facilities in an HMO are not confined to the larger ones (subject to mandatory licensing). It also recognises that poor management and associated problems exist elsewhere in the private rented sector and are not simply a phenomenon of HMOs. For this reason the Act gives LHAs powers to require certain other rented accommodation to be licensed in specified circumstances.

## Additional HMO licensing

Section 56 of the Act gives powers to LHAs 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 licensing.

LHAs should be aware that those HMOs that fall within the definition of section 257,<sup>2</sup> converted blocks of flats, are not subject to mandatory licensing, and those that wish to license such properties will need to follow the approval steps for additional HMO licensing.

The power does not permit LHAs to require buildings listed or referred to in Schedule 14 to the Act that have been exempted from the definition of HMO<sup>3</sup> to be made subject to such additional licensing.

## Selective licensing

Section 80 of the Act gives powers to LHAs to designate areas, or the whole of the area within their district, as subject to selective licensing in respect of privately rented accommodation, provided certain conditions are met. The power does not permit LHAs to require licensing of houses that have been exempted under the Selective Licensing of Houses (Specified exemptions) (England) Order 2006, or a property that is subject to a tenancy or licence granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996.

## Conditions applying to additional HMO licensing

Before making an additional HMO licensing designation for a particular type of HMO, or for a particular area, a local authority must:

- (a) consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public<sup>4</sup>

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<sup>2</sup> See section 257, The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (SI 2007/1903) and The Houses in Multiple Occupation (Certain Converted Blocks of Flats) (Modifications to the Housing Act 2004 and Transitional Provisions for section 257 HMOs) (England) Regulations 2007 (SI 2007/1904).

<sup>3</sup> See also the list of exempted properties in schedule 1 to The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373). and The Houses in Multiple Occupation (Specified Educational Establishments) (England) (No 2) Regulations SI 2006/2280.

<sup>4</sup> Housing Act 2004 Section 56(2)

- (b) have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question<sup>5</sup>
- (c) consider whether there are any other courses of action available to them (of whatever nature) that might provide an effective method of dealing with the problem or problems in question
- (d) that making the designation will significantly assist them to deal with the problem or problems (whether or not they take any other course of action as well).<sup>6</sup>
- (e) consult persons likely to be affected by the designation.

## Conditions applying to selective licensing

A selective licensing designation may be made if the area to which it relates satisfies one or both of the following conditions:

- The area is one experiencing low housing demand (or is likely to become such an area)<sup>7</sup> and the LHA is satisfied that making a designation will, when combined with other measures taken by the LHA, or by the LHA in conjunction with others, would contribute to an improvement in the social or economic conditions in the area<sup>8</sup>
- The area is experiencing a significant and persistent problem caused by anti-social behaviour and that some or all private sector landlords in the area are not taking appropriate action to combat the problem that it would be appropriate for them to take; and the making of a designation, when combined with other measures taken by the LHA, or by the LHA in conjunction with others, will lead to a reduction in, or elimination of, the problem.<sup>9</sup>

## Further conditions applying to additional and selective licensing

Whenever considering whether to make an additional or selective licensing designation LHAs must also

- ensure that the exercise of the power is consistent with their overall **housing strategy**<sup>10</sup>; and
- seek to adopt a **coordinated approach** in connection with dealing with homelessness, empty properties and anti-social behaviour affecting the private rented sector as regards combining licensing with other action taken by them or others.<sup>11</sup>

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<sup>5</sup> Housing Act 2004 Section 56(5)

<sup>6</sup> Housing Act 2004 Section 57(4)

<sup>7</sup> Housing Act 2004 Section 80(3)(a)

<sup>8</sup> Housing Act 2004, Section 80(3)(b)

<sup>9</sup> Housing Act 2004, Section 80(6)

<sup>10</sup> Housing Act 2004, Sections 57(2) and 81(2)

<sup>11</sup> Housing Act 2004, Sections 57(3) and (81(3)

- consider whether there are any **other courses of action** available to them (of whatever nature) that might provide an effective method of achieving with the objective or objectives that the designation would be intended to achieve, and
- consider that making the designation will **significantly assist** them to achieve the objective or objectives (whether or not they take any other course of action as well).<sup>12</sup>

Other courses of action that a local authority might instead consider (as an alternative to, or in addition to, additional or selective licensing) include voluntary measures such as accreditation. Accreditation schemes are a set of standards (or code) relating to the management or physical condition of privately rented accommodation, that recognise and reward landlords who manage their properties to a good standard. For further information on developing accreditation schemes please visit [www.communities.gov.uk](http://www.communities.gov.uk)

Local authorities may also wish to consider using other tools available under the Housing Act 2004 such as Interim Management Orders for non-licensable HMOs (see below) or Special Interim Management Orders with regard to anti-social behaviour (see below) if problems are associated with a small number of properties.

## How to make a designation for additional or selective licensing

### Additional licensing – Identifying the factors affecting an area

Section 56 (2) of the Act states that in making a designation for additional licensing the LHA should be able to show that it considers a “significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.”

Examples of properties being managed sufficiently ineffectively, and as a result having a detrimental affect on a local area, include;

- Those whose external condition and curtilage (including yards and gardens) adversely impact upon the general character and amenity of the area in which they are located.
- Those whose internal condition, such as poor amenities, overcrowding etc, adversely impact upon the health, safety and welfare of the occupiers and the landlords of these properties are failing to take appropriate steps to address the issues.
- Those where there is a significant and persistent problem of anti social behaviour affecting other residents and/or the local community and the landlords of the HMOs are not taking reasonable and lawful steps to eliminate or reduce the problems.

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<sup>12</sup> Housing Act 2004, Sections 57(4) and 81(4)

- Those where the lack of management or poor management skills or practices are otherwise adversely impacting upon the welfare, health or safety of residents and/or impacting upon the wider community.

The above examples are not exhaustive, nor are the categories mutually exclusive. An area may suffer from a mixture of the problems identified and individual properties may suffer from a combination of them.

## Section 257 HMOs

A section 257 HMO is 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.

LHAs that wish to cover section 257 HMOs in an additional scheme should consider the examples mentioned above when establishing whether such properties are being managed sufficiently ineffectively. However, as a targeted measure, a scheme must be limited to the types of HMO which fall within the definition where the problems identified manifest themselves. It would not therefore usually be appropriate for a LHA to adopt a scheme that covered all section 257 HMOs in its area.

LHAs should consider that the licensing provisions are concerned with regulating private rented accommodation, protecting occupiers of such accommodation and the impact that such lettings can have on others. Although a scheme could therefore apply to section 257 HMOs where there are a significant proportion of owner occupied flats (less than two thirds), it will usually be exceptional for this to be the case. The legislation is not concerned with regulating owner-occupied properties, even if their management is problematic. Where there are management problems with leasehold blocks these should be addressed through the leases and the provisions in leasehold legislation.

Additional licensing schemes should therefore only apply to section 257 HMOs that are mainly or wholly tenanted, including those with resident landlords, or where a significant proportion of what would otherwise be owner occupied flats have been let by the owners.

## Interim Management Orders

An additional licensing designation should not be made if the problems are associated with a single or small numbers of properties, although in the latter case if those properties form an identifiable area there may be a case for making a limited designation. Therefore an additional licensing designation could be limited to a particular street or it could extend to a whole ward. LHAs should be aware that it would be more appropriate to tackle isolated problematic properties through Interim Management Orders (IMOs) under part 4 of the Act.<sup>13</sup>

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<sup>13</sup> Housing Act 2004 Section 103

An IMO transfers the management of a residential property to the LHA for a period of up to twelve months and can only be made if approved by the Residential Property Tribunal. The tribunal may not authorise an IMO in respect of a non-licensable property unless it is satisfied that in the case of an HMO the Health and Safety Condition test<sup>14</sup> is satisfied (*that the order is necessary to protect the health, safety and welfare of occupants of the property, or persons occupying or owning property in the vicinity*). It must also have regard to the extent to which the property has been managed in accordance with any approved code of practice for the management of HMOs.

In relation to conditions of HMOs (internal or external) the LHA must first consider whether the problems can be addressed by taking a course of action available to it under the provisions in Part 1 of the Act (*The Housing, Health and Safety Rating System*) or Part IX of the Housing Act 1985 (*relating to Demolition Orders*). And, where appropriate, the LHA should take that course of action rather than by making an additional licensing designation.

Forms for applying for Interim Management Orders can be found at [www.rpts.gov.uk](http://www.rpts.gov.uk)

## Selective licensing – identifying the factors affecting an area

### Low housing demand

When deciding if an area is suffering from, or likely to become, an area of low housing demand, section 80 (4) of the Act requires LHAs to consider the following factors:

- The value of residential premises in the area, in comparison to the value of similar premises in other areas which the authority considers to be comparable (whether in terms of type of housing, local amenities, availability of transport).
- The turnover of occupiers of residential premises. (in both rented and bought sectors).
- The number of residential premises which are available to buy or rent, and the length of time for which they remain unoccupied.

LHAs should also consider other factors that may include:

- A lack of mixed communities in terms of tenure, for example, a high proportion of rented property, low proportion of owner occupied properties.
- A lack of local facilities, for example, shops closing down.
- The impact of the rented sector on the local community, for example, poor property condition, anti-social behaviour etc.
- Criminal activity.

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<sup>14</sup> See Housing Act 2004, Section 104

The second set of factors above are examples of the types of characteristics which an area suffering from low demand, or is likely to become such an area, could demonstrate. These examples are clearly not exhaustive characteristics of an area in low demand, neither are the factors mutually exclusive.

**An area that is likely to become an area of low demand is much more difficult to define. LHAs will have to take account of local housing trends and demonstrate how these, along with other factors, are contributing towards the growth of low demand over a period of time. Selective Licensing is not a protective measure, and as such LHAs must be able to demonstrate how the designated area is changing and will continue to change.**

## Anti-social behaviour

Section 80 (6) (a) of the Act gives LHAs the power to make a Selective Licensing designation if “the area is experiencing a significant and persistent problem caused by anti-social behaviour.”

An area can be deemed to be suffering from significant and persistent anti-social behaviour if it suffers from:

- **Crime:** tenants not respecting the property in which they live and engaging in vandalism, criminal damage, burglary, robbery/theft and car crime.
- **Nuisance neighbours:** intimidation and harassment; noise, rowdy and nuisance behaviour; animal related problems; vehicle related nuisance. Tenants engaged in begging; anti-social drinking; street prostitution and kerb-crawling; street drugs market within the curtilage of the property.
- **Environmental crime:** tenants engaged in graffiti and fly-posting; fly-tipping; litter and waste; nuisance vehicles; drugs paraphernalia; fireworks misuse in and around the curtilage for their property.

Section 80 (6) (b) of the Act requires LHAs to consider that:

- Some or all of the private sector landlords who have let premises in the area are failing to take action to combat such problems that it would be appropriate for them to take.

A landlord has responsibility to ensure persons he has permitted to reside at a property do not cause an annoyance or nuisance to other persons residing in it, or other persons living, working or visiting the immediate neighbourhood. If anti-social behaviour is being carried out within the immediate vicinity of the property and is being caused by the occupiers of it, then it would be reasonable to expect a landlord to ensure that those persons are not conducting themselves in a way that is adversely impacting on the local community. This applies equally to visitors to the property.

Therefore if an LHA wishes to make a designation based on anti-social behaviour they will need to establish that the problem is directly attributable to the behaviour of the occupiers of, or visitors to, a property and that these landlords are failing to deal with their tenants' behaviour.

A landlord will not normally have responsibility for the conduct of occupiers of his property, and certainly never visitors to it, if the misconduct is not being carried within its vicinity (unless, for example, there is reasonable suspicion that the landlord is encouraging the conduct for whatever reason). This is because it will generally be difficult to establish a link between the anti-social behaviour and the letting. Therefore, if an area suffers from general anti-social behaviour that occurs outside the curtilage of certain properties, a local authority should consider whether this is a symptom of low housing demand.

LHAs should be aware how the making of a designation on the grounds of anti-social behaviour will tie in with the government's RESPECT agenda. It will be for the LHA to determine what "significant and persistent" anti-social behaviour is and this is something that licensing officials should consider with the local anti-social behaviour coordinator in their area.

For further information on the Respect agenda please visit [www.respect.gov.uk](http://www.respect.gov.uk)

## Special Interim Management Order

It will not be appropriate to make a selective licensing designation to address isolated individual problems of anti social behaviour which nevertheless seriously impacts upon the local community. In such cases LHAs should consider making a special interim management order (SIMO) under part 4 of the Act.<sup>15</sup>

An SIMO transfers the management of a residential property to the LHA for a period of up to twelve months and can only be made if approved by the Residential Property Tribunal. The tribunal may not authorise a SIMO in respect of a property unless, in the case of non-HMOs, there is **anti-social behaviour** emanating from the property, that the landlord is failing to take appropriate action to deal with the problem and that it is necessary to make the order to protect the health, safety or welfare of persons occupying, visiting or engaged in lawful activities in the locality of the house.

Forms for applying for Special Interim Management Orders can be found at: [www.rpts.gov.uk](http://www.rpts.gov.uk)

## Applying factors

### Additional and selective licensing

Sections 57 and 81 of the Act requires LHAs to identify how an additional or selective licensing designation will improve an area, and how the designation will work alongside other existing policies or measures that are already being taken.

LHA will have to show how such a designation will be part of the overall strategic borough wide approach, and how it fits with existing policies on:

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<sup>15</sup> The criteria for making such an order is set out in SI 2006/369- The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006

- Homelessness
- Empty homes
- Regeneration
- Anti-social behaviour

LHAs will also have to demonstrate the role of other partners (if any), such as the Police or Social Services, in ensuring the designation reaches its goal.

The LHA must show:

- it has considered whether there are any other courses of action available to them that might provide an effective method of achieving the objectives that the designation is intended to achieve, and;
- how the making of the designation will significantly assist the LHA in achieving their objectives (whether or not in conjunction with those other measures).

It is important for LHAs to demonstrate how licensing will work in conjunction with existing initiatives (such as accreditation) and partnerships. Licensing in itself is not a stand alone tool, and LHAs should take account of this. For example, landlords will need adequate support to help them deal with problem tenants. LHAs should ensure that their schemes are adequately resourced and include services such as active outreach support programmes to engage with landlords and tenants who need their assistance.

It is also important for LHAs to consider some of the possible affects of making a designation, and to include any risk assessment they may have carried out. For example, has an assessment of the likelihood of possible displacement of unprofessional landlords to other areas within the local authority's jurisdiction or to neighbouring local authorities.

## Consultation

### Additional and selective licensing

Sections 56 (4) and 80 (9) of the Act states that when considering designating an area as either an additional or selective licensing designation the LHA must:

- Take reasonable steps to consult persons who are likely to be affected by the designation, and,
- Consider any representations made in accordance with the consultation.

LHAs will be required to conduct a full consultation. This should include consultation of local residents, including tenants, landlords and where appropriate their managing agents and other members of the community who live or operate businesses or provide services within the proposed designation. It should also include local residents and those who operate businesses or provide services in the surrounding area outside of the proposed designation who will be affected. LHAs should ensure that the consultation is widely publicised using various channels of communication.

During consultation, LHAs must give a detailed explanation of the proposed designation, explaining the reasons for the designation, how it will tackle specific problems, the potential benefits etc. For example, in the case of selective licensing, LHAs must be able to demonstrate what the local factors are that mean an area is suffering from low demand and/or anti-social behaviour, how those factors are currently being tackled, and how the selective licensing designation will improve matters. Affected persons should be given adequate time to give their views, and these should all be considered and responded too.

Once the consultation has been completed the results should then be published and made available to the local community.

## How to apply

Applications for discretionary licensing designations should be submitted to Communities and Local Government, the relevant government office, and should use the following structure.

- Introduction, mentioning the strategic significance of the proposed area.
- A detailed description of the proposed area: number and types of properties affected, including a map of the area.
- Additional Licensing: Current position with regards to tackling **management problems** in the types of HMO you wish the designation to cover, demonstrating how the area would benefit from the combination of existing policies, schemes, initiatives with additional licensing. It will be important to highlight that issues relating to the bad management of the properties are affecting an area and not just a few problem properties (in which case Interim Management Orders may be more appropriate).
- Selective Licensing: Current position with regards to tackling **low demand and/or anti-social behaviour**, demonstrating how the area would benefit from the combination of existing policies and selective licensing.
- Stakeholder Consultation: a copy of the consultation document, a summary of the responses received (i.e. those within the proposed area, and also those in the area surrounding the proposed designation), and demonstrate how these have either been acted on or not, giving reasons. The consultation should inform local residents, landlords, letting agents and other businesses about the proposed designation, giving the reasons for proposing it, why alternative remedies are insufficient, demonstrating how it will tackle specific problems, and describing the potential benefits.

- Conclusion, addressing the relevant issues that were raised in the stakeholder consultation and details as to what the long term impact of the scheme will be on the proposed area.

LHAs should be aware that as this is a new process, on receipt of your application to Communities and Local Government we may request further information relating to the proposed designation. For example, the Department would expect a LHA to target their resources in implementing mandatory licensing in the first instance, and may therefore request information on the progression of the mandatory scheme where applicable. However, it is the department's aim to facilitate the consent process and our aim is to work with LHAs in order for designations to be granted approval.

Applications to Communities and Local Government should be submitted to:

William Tandoh  
Private Renting and Leasehold  
Communities and Local Government  
Zone 1/J6  
Eland House  
Bressenden Place  
London SW1E 5DU  
E-mail: William.Tandoh@communities.gsi.gov.uk  
Tel: 030 344 43699

A designation for additional or selective licensing cannot come into force until it has been confirmed by the appropriate national authority.<sup>16</sup> The Act enables the appropriate national authority to grant general approvals to specified LHAs. The Department does not intend to exercise that power initially as it wishes to take a view on the purposes for which all authorities are using licensing. This will help frame any general approval the Department would be minded to grant in the future.

In order for consent to be granted all applications should be submitted to Communities and Local Government who will consider them in consultation with the relevant government office.

## Consent granted: duration and notification

### Additional and selective licensing

Once a designation has been granted approval it will come into force three months after the date of approval. Once a designation comes into force it will last a maximum of five years.

Sections 59 and 83 of the Act require LHAs to publish a notice of the designation once it has been granted. An LHA must:

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<sup>16</sup> In England, the appropriate national authority is the Secretary of State. Applications for confirmation should be sent to the Department for Communities and Local Government.

- Publish a notice within the designated area within seven days of the designation being confirmed.
- Notify all those consulted on the proposed designation within two weeks of the designation being confirmed.

Further information on the publication requirements relating to additional and selective licensing designations can be found in Statutory Instrument No. 373 “The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006” which can be found on the Office of Public Sector Information website [www.opsi.gov.uk](http://www.opsi.gov.uk)

## Consent granted: review

Sections 60 and 84 of the Act require LHAs to:

- Review the operation of a designation made by them, and:
- If following a review they consider it appropriate to do so, they may revoke the designation.

Licensing is not intended to be an end in itself. It is a means to an end. It is about improving management standards in the private sector in areas where those standards are sorely needed to be improved, for the benefit of occupiers and the wider community. Therefore after making a designation LHAs must continue to monitor designations to show that they are achieving the desired effect. For example, if a selective licensing designation is deemed to have worked, and the problems of low demand and/or anti-social behaviour have been resolved in an area, the LHA may consider that the designation is no longer needed and should be revised or revoked. Alternatively, if a designation is failing to tackle the issues it is meant to address, the LHA may consider that the designation should be revised or revoked and alternative measures considered to address the issues. The Government recognises that licensing may have to be a long term strategy and that it will not provide instant solutions. It also appreciates that, if in the initial phase there has been little improvement in an area, this does not necessarily mean that a designation is a failure.

## Annex A: Template for designation of an area for selective licensing

### The [Council Name] Designation of an Area for Selective Licensing [Insert number if appropriate] 200X.

The [name of Council] in exercise of their powers under section 80 of the Housing Act 2004 (“the Act”) hereby designates for selective licensing the area described in paragraph 4.

### CITATION, COMMENCEMENT AND DURATION

1. This designation may be cited as the [name of Council] Designation for an Area for Selective Licensing [Insert number if appropriate] 200X.
2. This designation is made on [ ] and shall come into force on [***This date will not be earlier than three months after the designation has been confirmed by Communities and Local Government – leave blank as it will be inserted by Communities and Local Government in consultation with the applicant authority***]
3. This designation shall cease to have effect on [***Date to be inserted by Communities and Local Government – normally five years from the date the designation came into force, unless the applicant authority has requested approval for a scheme of a shorter duration***] or earlier if the Council revokes the scheme under section 84 of the Act.

### AREA TO WHICH THE DESIGNATION APPLIES

4. This designation shall apply to [***specify geographical area to which scheme is to apply, which may be the whole area or a part of the area of the district of the Council***] as delineated and edged red on the map at annex a.

### APPLICATION OF THE DESIGNATION

5. This designation applies to any house<sup>1</sup> which is let or occupied under a tenancy or licence within the area described in paragraph 4 unless –
  - (a) the house is a house in multiple occupation and is required to be licensed under Part 2 of the Act<sup>2</sup>;
  - (b) the tenancy or licence of the house has been granted by a registered social landlord<sup>3</sup>;

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<sup>1</sup> For the definition of “house” see sections 79 and 99 of the Act

<sup>2</sup> Section 55 of the Act defines which Houses in Multiple Occupation are required to be licensed under the Act. See also The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2005 (SI 2006/371)

<sup>3</sup> Section 79 (3) of the Act. For the definition of a Registered Social Landlord see Part 1 of the Housing Act

- (c) the house is subject to an Interim or Final Management Order under Part 4 of the Act;
- (d) the house is subject to a temporary exemption under section 86 of the Act; or
- (e) the house is occupied under a tenancy or licence which is exempt under the Act<sup>4</sup> or the occupation is of a building or part of a building so exempt as defined in annex b;

## EFFECT OF THE DESIGNATION

- 6. Subject to sub paragraphs 5(a) to (e) every house in the area specified in paragraph 4 that is occupied under a tenancy or licence shall be required to be licensed under section 85 of the Act.<sup>5</sup>
- 7. The [name] Council will comply with the notification requirements contained in section 83 of the Act and shall maintain a register of all houses registered under this designation, as required under section 232 of the Act.<sup>6</sup>

Date and authentication by the Council. [***The date is the date the Council resolved to make the scheme***]

The Secretary of State for Communities and Local Government under the power conferred on her by section 82(2) of the Act hereby confirms the scheme described above.

Signed

An officer authorised by the Secretary of State

Date

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1996

<sup>4</sup> Section 79 (4) of the Act and SI 370/2006

<sup>5</sup> Section 86 of the Act provides for certain temporary exemption. As to suitability see section 89. Note, if the house is not suitable to be licensed the Council must make an Interim Management Order-see section 102.

<sup>6</sup> Section 232 of the Act and paragraph 11 of SI 373/2006

## Annex a – Paragraph 4: Map of Designated Area

## Annex b – Paragraph 5(d): Exempted Tenancies or licences<sup>1</sup>

### **Prohibition of occupation by law**

1. A tenancy or licence of a house<sup>2</sup> or a dwelling<sup>3</sup> within a house where the house or the dwelling is subject to a prohibition order made under section 20 of the Act the operation of which has not been suspended under section 23.

### **Certain tenancies which cannot be assured tenancies**

2. A tenancy which cannot be an assured tenancy by virtue of section 1 (2) of the Housing Act 1988 comprised in Part of Schedule 1 of the Act and which is:
  - (a) a business tenancy under Part II of the Landlord and Tenant Act 1954
  - (b) a tenancy under which the dwelling-house consists of or comprises premises, which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of Section 14 of that Act) for consumption on the premises<sup>4</sup>
  - (c) a tenancy under which agricultural land, exceeding two acres, is let together with the house<sup>5</sup>
  - (d) a tenancy under which the house is comprised in an agricultural holding or the holding is comprised under a farm business tenancy if it is occupied (whether as tenant or as a servant or agent of the tenant), in the case of an agricultural holding, by the person responsible for the control of the farming of the holding, and in the case of a farm business tenancy, by the person responsible for the control of the management of the holding<sup>6</sup>.

### **Tenancies and licences granted etc by public bodies**

3. A tenancy or licence of a house or dwelling within a house that is managed or controlled<sup>7</sup> by:
  - (a) a local housing authority
  - (b) a police authority established under section 3 of the Police Act 1996 or the Metropolitan Police Authority established under section 5B of that Act

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<sup>1</sup> See The Selective Licensing of Houses (Specified Exemptions) (England) Order 2006 SI 370/2006

<sup>2</sup> Sections 79 (2) and 99 of the Act

<sup>3</sup> For the definition of a dwelling – see section 99 of the Act

<sup>4</sup> See paragraph 5 of Schedule 1 of the 1988 Act as amended by section 198 (1) and paragraph 108 of schedule 6 of the Licensing Act 2003

<sup>5</sup> For the meaning of “agricultural land” section 26 (3) (a) of the General Rate Act 1967

<sup>6</sup> See paragraph 7 of Schedule 1 of 1988 Act as amended by section 40 and paragraph 34 of the Schedule to the Agricultural Tenancies Act 1995

<sup>7</sup> For the definition of “person managing” and “person having control” see section 263 of the Act

- (c) a fire and rescue authority under the Fire and Rescue Services Act 2004;
- (d) a health service body within the meaning of section 4 of the National Health Service and Community Care Act 1990.

### **Tenancies, licences etc regulated by other enactments**

4. A tenancy, licence or occupation of a house which is regulated under the following enactments:
- (a) sections 87 to 87D of the Children Act 1989
  - (b) section 43 (4) of the Prison Act 1952
  - (c) section 34 of the Nationality, Immigration and Asylum Act 2002
  - (d) The Secure Training Centre Rules 1998<sup>8</sup>
  - (e) The Prison Rules 1998<sup>9</sup>
  - (f) The Young Offender Institute Rules 2000<sup>10</sup>
  - (g) The Detention Centre Rules 2001<sup>11</sup>
  - (h) The Criminal Justice and Court Service Act 2000 (Approved Premises) Regulations 2001<sup>12</sup>
  - (i) The Care Homes Regulations 2001<sup>13</sup>
  - (j) The Children's Homes Regulations 2001<sup>14</sup>;
  - (k) The Residential Family Centres Regulations 2002<sup>15</sup>.

### **Certain student lettings etc**

5. A tenancy or licence of a house or a dwelling within a house –
- (i) which is managed or controlled by a specified educational establishment or is of a specified description of such establishments and

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<sup>8</sup> SI 472/1998 as amended by SI 3005/2003

<sup>9</sup> SI 728/1999 as amended by SI 1794/2000, SI 1149/2001, SI 2116/2002, SI 3135/2002. SI 3301/2003 and SI 869/2005

<sup>10</sup> SI 3371/2000 as amended by SI 2117/2002, SI 3135/2002 and SI 897/2005

<sup>11</sup> SI 238/2001. Section 66 (4) of the Nationality, Immigration and Asylum Act 2002 provides that the reference to a detention centre is to be construed as a reference to a removal centre as defined in Part VIII of the Immigration and Asylum Act 1999

<sup>12</sup> SI 850/2001

<sup>13</sup> SI 3965/2001 as amended by SI 865/2001. SI 534/2003, SI 1590/2003, SI 1703/2003, SI 1845/2003, SI 664/2004, SI 696/2004, SI 1770/2004, SI 2071/2004 SI and SI 3168/2004

<sup>14</sup> SI 3967/2001 as amended by SI 865/2002, SI 2469/2002, SI 664/2004 and SI 3168/2004

<sup>15</sup> SI 3213/2002 as amended by SI 664/2004, SI 865/2004 and SI 3168/2004

- (ii) the occupiers of the house or dwelling are undertaking a full time course of further or higher education at the specified establishment<sup>16</sup> and
- (iii) the house or dwelling is being managed in conformity with an Approved Code of Practice for the management of excepted accommodation under section 233 of the Act<sup>17</sup>

### **Long leaseholders**

6. A tenancy of a house or a dwelling within a house provided that –

- (i) the full term of the tenancy is for more than 21 years and
- (ii) the tenancy does not contain a provision enabling the landlord (or his successor his in title) to determine it other than by forfeiture, earlier than at the end of the term and
- (iii) the house or dwelling is occupied by a person to whom the tenancy was granted or his successor in title or by any members of either of those person's family.

### **Certain family arrangements**

7. A tenancy or licence of a house or a dwelling within a house where –

- (i) the person who has granted the tenancy or licence to occupy is a member of the family of the person who has been granted the tenancy or licence and
- (ii) the person who has granted the tenancy or licence to occupy is the freeholder or long leaseholder of the house or dwelling and
- (iii) the person occupies the house or dwelling as his only or main residence (and if there are two or more persons at least one of them so occupies).

### **Holiday lets**

8. A tenancy or licence of a house or a dwelling within a house that has been granted to the person for the purpose of a holiday.

### **Certain lettings etc by Resident Landlord etc**

9. A tenancy or licence of a house or a dwelling within a house under the terms of which the person granted the tenancy or licence shares the use of any amenity with the person granting that tenancy or licence or members of that person's family. An "amenity" includes a toilet, personal washing facilities, a kitchen or a living room but excludes any area used for storage, a staircase, corridor or other means of access.

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<sup>16</sup> See the schedule to The Houses in Multiple Occupation (Specified Educational Establishments) (England) (No 2) Regulations 2006 for the list of specified bodies

<sup>17</sup> The relevant codes of practice are approved under SI 646/2006 – The Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2006

## Interpretation

10. In this annex:

- (a) a “person” includes “persons”, where the context is appropriate
- (b) a “tenancy” or “licence” includes “a joint tenancy” or “joint licence”, where the context is appropriate
- (c) “long leaseholder” in paragraph 7 (ii) has the meaning conferred in paragraphs 6 (i) and (ii) and in those paragraphs the reference to “tenancy” means a “long lease”
- (d) a person is a member of the family of another person if –
  - (i) he lives with that person as a couple
  - (ii) one of them is the relative of the other; or
  - (iii) one of them is, or is a relative of, one member of a couple and the other is a relative the other member of the couple  
  
and
  - (iv) For the purpose of this paragraph –
    - (1) “couple” means two persons who are married to each other or live together as husband and wife or in an equivalent arrangement in the case of persons of the same sex
    - (2) “relative” means a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin
    - (3) a relationship of the half-blood is to be treated as a relationship of the whole blood and
    - (4) a stepchild of a person is to be treated as his child

## Annex B: Template for designation of an area for additional HMO licensing

### The [Council Name] Designation of an Area for Additional Licensing of Houses in Multiple Occupation [Insert number if appropriate] 200X.

The [name of Council] in exercise of their powers under section 56 of the Housing Act 2004 (“the Act”) hereby designates for additional licensing of Houses in Multiple Occupation (“HMOs”) the area described in paragraph 4.

### CITATION, COMMENCEMENT AND DURATION

1. This designation may be cited as the [name of Council] Designation for an Area for Additional Licensing of Houses in Multiple Occupation [Insert number if appropriate] 200X.
2. This designation is made on [ ] and shall come into force on [***The dates will not be earlier than three months after the designation has been confirmed by Communities and Local Government – leave blank as it will be inserted by Communities and Local Government in consultation with the applicant authority***]
3. This designation shall cease to have effect on [***Date to be inserted by Communities and Local Government – normally five years from the date the designation came into force, unless the applicant authority has requested approval for a scheme of a shorter duration***] or earlier if the Council revokes the scheme under section 60 of the Act.

### AREA TO WHICH THE DESIGNATION APPLIES

4. This designation shall apply to [***specify geographical area to which scheme is to apply, which may be the whole area or a part of the area of the district of the Council***] as delineated and edged red on the map at annex a.

### APPLICATION OF THE DESIGNATION

5. This designation applies to [***all HMOs***] [***the HMOs of the description specified in annex b***] within the area described in paragraph 4 unless -
  - (a) the building is of a description specified in annex c (Buildings that are not HMOs for the purpose of the Act - other than Part 1)
  - (b) the HMO is subject to an Interim or Final Management Order under Part 4 of the Act
  - (c) the HMO is subject to a temporary exemption under section 62 of the Act; or
  - (d) the HMO is required to be licensed under section 55 (2) (a) of the Act (mandatory

licensing).<sup>1</sup>

## EFFECT OF THE DESIGNATION

6. Subject to sub paragraphs 5(a) to (d) every HMO of the description specified in that paragraph in the area specified in paragraph 4 shall be required to be licensed under section 61 of the Act.<sup>2</sup>
7. The [name] Council will comply with the notification requirements contained in section 59 of the Act and shall maintain a register of all houses registered under this designation, as required under section 232 of the Act.<sup>3</sup>

Date and authentication by the Council. [***The date is the date the Council resolved to make the scheme***]

The Secretary of State for Communities and Local Government under the power conferred on her by section 58 (2) of the Act hereby confirms the scheme described above.

Signed

An officer authorised by the Secretary of State

Date

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<sup>1</sup> For the application of mandatory licensing see SI 371/2006 – The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006

<sup>2</sup> Section 62 of the Act provides for certain temporary exemption. As to suitability see section 64. Note, if the house is not suitable to be licensed the Council must make an Interim Management Order-see section 10

<sup>3</sup> Section 232 of the Act and paragraph 11 of SI 373/2006

## Annex a – Paragraph 4 :Map of Designated Area

## Annex b – Paragraph 5: HMOs subject to the designation

## Annex c – Paragraph 5(a): Buildings that are not HMOs for the purpose of the Act<sup>1</sup>

### **Buildings controlled or managed by public bodies etc<sup>2</sup>**

1. A building where the person managing or having control of it is<sup>3</sup>:
  - (a) a local housing authority
  - (b) a police authority established under section 3 of the Police Act 1996 or the Metropolitan Police Authority established under section 5B of that Act
  - (c) a fire and rescue authority under the Fire and Rescue Services Act 2004
  - (d) a health service body within the meaning of section 4 of the National Health Service and Community Care Act 1990
  - (e) a body which is registered as a social landlord under Part 1 of the Housing Act 1996.

### **Buildings regulated by other enactments<sup>4</sup>**

4. A tenancy, licence or occupation of a house which is regulated under the following enactments:
  - (a) sections 87 to 87D of the Children Act 1989
  - (b) section 43 (4) of the Prison Act 1952
  - (c) section 34 of the Nationality, Immigration and Asylum Act 2002
  - (d) The Secure Training Centre Rules 1998<sup>5</sup>
  - (e) The Prison Rules 1998<sup>6</sup>
  - (f) The Young Offender Institute Rules 2000<sup>7</sup>

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<sup>1</sup> Schedule 14 of the Act and SI 373/2006

<sup>2</sup> Paragraph 2 of schedule 14

<sup>3</sup> For the definition of “person managing” and “person having control” see section 263 of the Act

<sup>4</sup> Paragraph 3 of schedule 14 and paragraph 6 (1) and schedule 1 of SI 373/2006

<sup>5</sup> SI 472/1998 as amended by SI 3005/200

<sup>6</sup> SI 728/1999 as amended by SI 1794/2000, SI 1149/2001, SI 2116/2002, SI 3135/2002. SI 3301/2003 and SI 869/200

<sup>7</sup> SI 3371/2000 as amended by SI 2117/2002, SI 3135/2002 and SI 897/20

- (g) The Detention Centre Rules 2001<sup>8</sup>
- (h) The Criminal Justice and Court Service Act 2000 (Approved Premises) Regulations 2001<sup>9</sup>
- (i) The Care Homes Regulations 2001<sup>10</sup>
- (j) The Children's Homes Regulations 2001<sup>11</sup>
- (k) The Residential Family Centres Regulations 2002.<sup>12</sup>

### **Certain student lettings etc**<sup>13</sup>

#### 5. A building –

- (i) which is managed or controlled by a specified educational establishment or is of a specified description of such establishments and
- (ii) the occupiers of the house or dwelling are undertaking a full time course of further or higher education at the specified establishment<sup>14</sup> and
- (iii) the house or dwelling is being managed in conformity with an Approved Code of Practice for the management of excepted accommodation under section 233 of the Act.<sup>15</sup>

### **Religious communities**<sup>16</sup>

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

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<sup>8</sup> SI 238/2001. Section 66 (4) of the Nationality, Immigration and Asylum Act 2002 provides that the reference to a detention centre is to be construed as a reference to a removal centre as defined in Part VIII of the Immigration and Asylum Act 1999

<sup>9</sup> SI 850/2001

<sup>10</sup> SI 3965/2001 as amended by SI 865/2001. SI 534/2003, SI 1590/2003, SI 1703/2003, SI 1845/2003, SI 664/2004, SI 696/2004, SI 1770/2004, SI 2071/2004 SI and SI 3168/200

<sup>11</sup> SI 3967/2001 as amended by SI 865/2002, SI 2469/2002, SI 664/2004 and SI 3168/2004

<sup>12</sup> SI 3213/2002 as amended by SI 664/2004, SI 865/2004 and SI 3168/2004

<sup>13</sup> Paragraph 4 of schedule 14

<sup>14</sup> See the schedule to The Houses in Multiple Occupation (Specified Educational Establishments) (England) (No 2) Regulations 2006 for the list of specified bodies

<sup>15</sup> The relevant codes of practice are approved under SI 646/2006 – The Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2006

<sup>16</sup> Paragraph 5 of schedule 14

### **Buildings occupied by owners<sup>17</sup>**

7. A building which is only occupied by –

- (i) one or more persons who hold the freehold or a leasehold interest granted for a term of more than 21 years of the whole, or any part of, the building
- (ii) and/or any member of the household<sup>18</sup> of that person or persons but this exemption does not apply to a converted block of flats to which section 257 of the Act applies, except for ascertaining the status of any flat within the block.

### **Buildings occupied by resident landlord etc<sup>19</sup>**

8. A building which is occupied by a person or persons to whom paragraph 7 applies (subject to the proviso therein) and no more than two other persons<sup>20</sup>, not forming part of the owner's household.

### **Buildings occupied by two persons<sup>21</sup>**

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

### **Meaning of “building”**

10. In this annex a “building” includes a part of a building.

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<sup>17</sup> Paragraph 6 of Schedule 14

<sup>18</sup> For the definition of “household” see section 258 (2) and paragraphs 3 and 4 of SI 373/2006 Paragraph 6 of Schedule 14

<sup>19</sup> Paragraph 6 of schedule 14 and SI 373/200

<sup>20</sup> Paragraph 6 (2) of SI 373/200

<sup>21</sup> Paragraph 7 of schedule 1

# Approval steps for additional and selective licensing designations in England

## Annex C

<b>Contact Details</b>		
Name		
Address		
Telephone No		
E-mail Address		
Date Application received		
Date acknowledgement sent		
Date sent to Govt Office		
Contact details of Govt Office Official		
Applied for Additional/Selective or both		
<b>ADDITIONAL LICENSING</b>		
Is the application in the right format as detailed in the "Approval Steps for Discretionary Licensing Schemes in England" paper?		
What is the proposed area?		
What are the number and types of properties affected?		
Has a map of the area been included?		
Have the LA taken into consideration whether the problems can be resolved by another means ie IMO, Part 1 or Part IX of the Housing Act 1985 or in the case of section 257 HMOs leasehold legislation?		
Notes		

<b>ADDITIONAL LICENSING (continued)</b>		
Does management of the properties meet the criteria for Additional Licensing – see “Approval Steps for Discretionary Licensing Schemes” paper?		
Notes		
Has evidence been given to show how a scheme will fit in with: Homelessness; Empty Homes; Regeneration; ASB?		
Notes		
Has the LA demonstrated how other partners ie Police, Social Services etc will play a role in ensuring the scheme reaches its goals?		
Notes		
Has evidence been given as to how the scheme will significantly assist the LA in achieving their objectives?		
Notes		
Has the LHA demonstrated that the scheme will work in conjunction with existing initiatives ie accreditation and partnerships?		
Has a full consultation taken place?		
Was a summary of responses included in the application?		
Has the LHA given details of action taken on the issues raised in the consultation?		
Notes		

## SELECTIVE LICENSING

<b>SELECTIVE LICENSING</b>		
Is the application in the right format as detailed in the “Approval Steps for Discretionary Licensing Schemes in England” paper?		
What is the proposed area?		
What are the number and types of properties affected?		
Has a map of the area been included?		
Have the LHA considered the factors set out in the “Approval Steps for Discretionary Licensing Schemes in England” paper?		
Notes		
Does the low housing demand or LA want to make a scheme based on anti-social behaviour		
Notes		
If specifically for low demand has the LHA considered the indicators of low demand?		
Notes		
If specifically for ASB, can this be linked directly to certain properties and are landlords failing to take appropriate action?		
Notes		
Has evidence been given to show how a scheme will fit in with: Homelessness; Empty Homes; Regeneration; ASB?		
Notes		
Has the LHA demonstrated how other partners ie Police, Social Services etc will play a role in ensuring the scheme reaches its goals?		
Notes		

<b>SELECTIVE LICENSING (<i>continued</i>)</b>		
Has evidence been given as to how the scheme will significantly assist the LA in achieving their objectives?		
Notes		
Has the LHA demonstrated how the scheme will work in conjunction with existing initiatives ie accreditation and partnerships?		
Has a full consultation taken place?		
Was a summary of responses included in the application?		
Has the LHA given details of action taken on the issues raised in the consultation?		
Notes		