

EXPLANATORY MEMORANDUM TO
THE HOUSES IN MULTIPLE OCCUPATION (CERTAIN BLOCKS OF FLATS)
(MODIFICATIONS TO THE HOUSING ACT 2004 AND TRANSITIONAL
PROVISIONS FOR SECTION 257 HMOs) (ENGLAND) REGULATIONS 2007

2007 No. 1904

AND

THE LICENSING AND MANAGEMENT OF HOUSES IN MULTIPLE
OCCUPATION (ADDITIONAL PROVISIONS) (ENGLAND) REGULATIONS 2007

2007 No. 1903

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These statutory instruments make special provisions in respect of the licensing and management of houses in multiple occupation (“HMOs”) that are converted blocks of self-contained flats, where the building work undertaken in connection with the conversion does not comply with certain building standards and where less than two thirds of the flats are owner-occupied.
 - 2.2 The first instrument listed above (“the Modifications Regulations”) modifies Parts 2 and 4 and section 263 (in its operation in respect of those Parts) of the Housing Act 2004 (“the Act”) in respect of such HMOs.
 - 2.3 The second instrument listed above (“the Additional Provisions Regulations”) imposes duties on managers of such HMOs and corresponding duties on the occupants. The manager’s duties include the duty to take safety measures, the duty to maintain the water supply and drainage, to supply and maintain gas and electricity and have tested regularly gas and electricity installations, the duty to maintain common parts, fixtures and fittings and living accommodation. The Additional Provisions Regulations set out what occupiers must do with a view to assisting managers to undertake their duties. A person commits an offence if he fails to comply with a duty imposed by the Regulations.¹ The Regulations also amend The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (S.I. No. 2006/373) so that they now apply in relation to section 257 HMOs, and make other amendments to those Regulations that have effect in respect of all HMOs.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

¹ See section 234(3) of the Act.

4. Legislative Background

- 4.1 Part 2 of the the Act introduces licensing of HMOs. Section 61 of the Act requires every HMO to which Part 2 of the Act applies to be licensed under Part 2, unless a temporary exemption notice is in force in relation to it under section 62 of the Act, or an interim or final management order is in force in relation to it under Chapter 1 of Part 4 of the Act. A licence authorises occupation of the HMO concerned by no more than a maximum number of households or persons specified in the licence. By section 72 of the Act, a person who has control of, or is managing an HMO, that is required to be licensed under Part 2 commits an offence if the HMO is not licensed. Section 263 of the Act defines who is the “person having control” and “person managing” in relation to premises.
- 4.2 There are two ways in which Part 2 of the Act may apply to an HMO. First, it applies to HMOs that fall within a description prescribed in an order made by “the appropriate national authority” under section 55(3) of the Act². Secondly Part 2 of the Act applies to areas that are for the time being designated by the local housing authority under section 56 of the Act as being an area that is subject to additional licensing. In such cases it is the designation that describes the HMOs that are the subject of the additional licensing.
- 4.3 Sections 254 to 257 the Act define "house in multiple occupation". One type of HMO is a converted block of flats to which section 257 of the Act applies, or a “section 257 HMO”. Section 257 of the Act applies to a building or part of a building which has been converted into and consists of self-contained flats if the building work undertaken in connection with the conversion did not comply with appropriate building standards³ and still does not comply with them, and less than two thirds of the self-contained flats are owner-occupied. A flat is owner-occupied if it is occupied by a person who has a lease granted for a term of more than 21 years or by a person who has the freehold estate in the converted block of flats, or by a member of the household of a person within these two descriptions⁴.
- 4.4 Section 61(5) provides that the appropriate national authority⁵ may make regulations providing for any provision of Part 2 or section 263 of the Act (in its operation for the purpose of any such provision) to have effect in relation to a section 257 HMO with such modifications as are prescribed by regulations. Section 146(3) of the Act similarly provides that the appropriate national authority may make regulations providing for any provision of Part 4 or section 263 of the Act (in its operation for the purpose of any such provision) to have effect in relation to a section 257 HMO as are prescribed by regulations.

² The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (S.I. No. 2006/371 prescribed HMOs under section 55(3) of the Act but does not apply to section 257 HMOs. Consequently such HMOs are only licensable if they are designated by a local housing authority as being licensable.

³ Appropriate building standards are defined in section 257(3) of the Act.

⁴ Section 245(4) of the Act.

⁵ Under section 261 of the Act the “appropriate national authority” means, in relation to England, the Secretary of State.

- 4.5 The Modifications Regulations make modifications to Parts 2 and 4 and to section 263 of the Act (in its operation for the purpose of provisions in Parts 2 and 4). This is the first time that these powers have been exercised in England.
- 4.6 Section 250(2) of the Act empowers the appropriate national authority, when making an order or regulations under the Act, to make such incidental, supplementary, transitory, transitional or saving provision as it considers appropriate.
- 4.7 The Housing Act 2004 (Commencement No 5 and Transitional Provisions and Savings) (England) Order 2006 (S.I. No. 2006/1060) commenced Parts 2 and 4 of the Act, with savings. It also commenced section 266 in so far as it related to certain repeals, including the repeals in Part 11 of the Housing Act 1985 concerning HMO registration schemes, which are replaced by the licensing provisions in Part 4 of the Act. Part 2 of the Schedule to S.I. No. 2006/1060 provides that the repeal of certain sections of the Housing Act 1985 does not have effect in respect of a relevant converted block of flats⁶ until regulations made under section 61(5) of the Housing Act 2004 come into force. The Modifications Regulations, therefore, trigger the repeal of the Housing Act 1985 provisions that are saved in relation to relevant converted blocks of flats. These Regulations make further savings provisions in relation to relevant converted blocks of flats.
- 4.8 Under Section 234 of the Act the appropriate national authority may make regulations that make provision for the purpose of ensuring that, in respect of every HMO of a description specified in the regulations, there are satisfactory management arrangements and satisfactory standards of management are observed. The Secretary of State is empowered to make such regulations in England⁷. In 2006 the Secretary of State made regulations⁸ under section 234 of the Act in respect of all HMOs other than section 257 HMOs. The Additional Provisions Regulations make such provisions in respect of section 257 HMOs.
- 4.9 Section 63, in respect of HMO licences under Part 2 of the Act, require applications for licences to be made to a local housing authority. Sections 63 gives power for regulations to make provision about the making of applications, including the manner and form in which they are to be made, the information that they should contain, requirements for copies of the application or other information to be provided to other persons, and the circumstances when fees may be charged or refunded.
- 4.10 Section 64 of the Act states that where an application is made to a local housing authority under section 63, the authority must either grant, or refuse to grant, the licence. It may grant a licence if it is satisfied that the house is reasonably suitable for occupation by not more than the maximum number of households or persons that is either specified in the application, or decided by the authority, or that it can be made so suitable by the imposition of conditions. The authority must also be satisfied that the proposed licence holder is a fit and proper person to hold a licence and is, out of all the persons reasonably available to hold a licence in respect of the house, the most appropriate person to be the licence holder. The authority must be satisfied that the proposed

⁶ A relevant converted block of flats is a building or part of a building to which section 257 of the Act applies and which is a house in multiple occupation for the purposes of Part 11 of the 1985 Act.

⁷ See section 261(1) of the Act.

⁸ See the Management of Houses in Multiple Occupation (England) Regulations 2006 S.I. No. 2006/372.

manager of the house is a fit and proper person to be the manager and that the proposed management arrangements are otherwise satisfactory.

- 4.11 Section 65(1) of the Act provides that a local housing authority cannot be satisfied that a house is reasonably suitable for occupation by a particular maximum number of households or persons if they consider that it fails to meet prescribed standards (“amenity standards”) for occupation by that number of households or persons. But the authority may decide that it is not reasonably suitable for occupation by that maximum number even if it does meet the standards. Section 65(3) provides that the regulations specifying the standards may include standards as to the number, type and quality of bathrooms, toilets, washbasins and showers, areas for food storage, preparation and cooking and laundry facilities which should be available in particular circumstances and standards as to the number, type and quality of other facilities or equipment which should be available in particular circumstances.
- 4.12 Section 232 of the Act requires every local housing authority to establish and maintain a register of all licences granted under Part 2 of the Act, which are in force, all temporary exemption notices served by them under section 62 or 86 of the Act which are in force, and all management orders made by them under Chapter 1 or 2 of Part 4 which are in force. Section 232(2) and (7) provides that the register may be in such form as the authority considers appropriate but must comply with any requirements prescribed in regulations.
- 4.13 In 2006 the Secretary of State made the Licensing and Management of Houses in Multiple Occupation (Miscellaneous Provisions) (England) Regulations 2006 (S.I. 2006/273) which contains provisions in respect of the matters referred to in paragraphs 4.9 to 4.12 (and other matters) in relation to licensing of all HMOs other than section 257 HMOs. Regulation 12 of the Additional Provisions Regulations amends S.I. No. 2006/273 so that those Regulations now apply to section 257 HMOs. They also amend the amenity standards, the content of the licence application and the content of the entries in the registers of licences and management orders.

5. Extent

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Government committed in its 1997 and 2001 manifestos to introduce in England and Wales licensing of HMOs by local housing authorities to raise the standards of such housing, which is often of poor quality and badly managed. The Government’s overall policy is to enable decent homes for all, and particularly to secure a larger, better quality, better managed private rented sector.
- 7.2 In April 1999, the Government sought views on a number of strategic issues on the scope and operation of HMO licensing in England in the consultation

paper, “Licensing of Houses in Multiple Occupation - England”. Key stakeholders were consulted including all local, police and fire authorities in England, landlords’ and tenants’ interest groups, other interested groups including mortgage lenders, the Law Society, The Royal Institution of Chartered Surveyors, the Housing Corporation and the Housing Ombudsman. A total of 579 responses were received of which 93% supported the proposals. Landlord groups such as the Small Landlords Association and the National Federation of Residential Landlords, and the National Housing Federation were against them.

- 7.3 In March 2003, the HMO licensing proposals were published along with other proposals in “The Housing Bill - Consultation on draft legislation” for public consultation and pre-legislative scrutiny. The same group of stakeholders in England as well as their counter-parts in Wales were consulted on this occasion. 411 responses were received to this consultation. These proposals formed the basis of the Housing Bill which was introduced in January 2004 and which received Royal Assent at the Act in November of that year.
- 7.4 Details of the implementation of the proposals were published in the consultation document “Licensing in the Private Rented Sector - Consultation on the implementation of HMO Licensing” in November 2004. The same group of stakeholders were consulted in England and a total of 105 responses were received to the consultation.
- 7.5 There has been overwhelming support for the proposals to license HMOs, with the majority of respondents to the consultation exercises welcoming the licensing proposals as an effective way of regulating the sector.
- 7.6 The majority of instruments concerning the licensing and management of HMOs, which supplemented the provisions of the Act, came into force in April 2006.
- 7.7 There are two categories of licensing - mandatory and additional. Both types came into force on 6 April 2006. Mandatory licensing applies to HMOs of three storeys or more which are occupied by five or more persons (who form two or more households), but not HMOs that comprise entirely of self contained flats. Additional licensing applies to any other type of HMO where the local housing authority has identified a significant problem with the management of that type of HMO. Before making a scheme the authority must consult with local stakeholders, consider their representations and obtain approval from the Secretary of State.
- 7.8 The purpose of the Modifications Regulations and the Additional Provisions Regulations is to bring section 257 HMOs within the scope of additional licensing and management regulations under the Act. The Department for Communities and Local Government have worked closely with relevant stakeholders in establishing the key issues that needed to be addressed through the Regulations. This was carried out in the summer of 2006 and helped inform the development of the Regulations, which were again subject to ongoing discussion with key players in the industry and amongst practitioners, during 2007. The key players included the Residential Landlords Association, the National Landlords Association, the National Federation of Residential Landlords, the British Property Federation, the Association of Residential

Managing Agents, the National HMO network, the Chartered Institution of Environmental Health Officers, the Royal Institute of Chartered Surveyors and a number of local housing authorities who had experience of issues concerning converted blocks of flats, including Manchester City Council, Brighton and Hove City Council, Bolton Borough Council, Blackpool Borough Council and the London Borough Councils of the City of Westminster, Hammersmith and Fulham, Royal Borough of Kingston-upon-Thames and Croydon. Those that participated in the discussions provided invaluable advice in order for the Department for Communities and Local Government to formulate the Regulations as laid.

- 7.9 The policy intention is to enable local housing authorities to apply additional licensing to Section 257 HMOs that fall within designations made by them, but without such licensing having an invasive impact on the owner-occupier leasehold sector.
- 7.10 The Additional Provisions Regulations apply minimum standards of management to all section 257 HMOs. These are based upon the Management of Houses in Multiple Occupation (England) Regulations 2006, but are modified to meet the policy objective that HMO regulations should not apply to such parts of the HMO, e.g. flats held on a long leaseholds, where the manager cannot reasonably be expected to exercise control.
- 7.11 Regulation 12 amends the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 to ensure that relevant information about section 257 HMOs is provided in licence applications and registers held of licences and management orders, and that the amenity standards provisions reflect the nature of section 257 HMOs. However, the amendment in subparagraph (8) of that regulation also reflects the Government's further consideration of standards of amenities in all HMOs and its desire to give local housing authorities discretion in this area, having regard to the local factors appertaining. This amendment is expected to largely be welcomed by stakeholders and local housing authorities who considered the previous standards too restrictive and difficult to achieve or regulate.

8. Impact

- 8.1 A full regulatory impact assessment on the statutory instruments to supplement the provisions of the Housing Act 2004 in relation to the licensing of HMOs and the selective licensing of other private rented accommodation and management orders (Parts 2, 3 and Chapter 1 of Part 4 of the Housing Act 2004) was produced in February 2006, when instruments concerning the licensing and management of HMOs (other than section 257 HMOs) were laid before Parliament. These regulations were:

The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (S.I. No. 2006/371);

The Management of Houses in Multiple Occupation (England) Regulations 2006 (S.I. No. 2006/372; and

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (S.I. No. 2006/373).

8.2 The full regulatory impact assessment explains the impact of the legislation on all HMOs, including section 257 HMOs. A copy of that assessment is available from the contact address below.

8.3 The regulations have no direct impact on the public sector, since local housing authorities can recover their costs of setting up and administering an additional licensing scheme through the fees it can charge for licensing applications.

9. **Contact**

9.1 Robert Skeoch at the Department for Communities and Local Government Tel: 020 7944 3568 or e-mail: licensing@communities.gsi.gov.uk can answer any queries regarding the instrument.