



Department for
Communities and
Local Government

Extending mandatory licensing of Houses in Multiple Occupation

A Government Response Document



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Introduction

The Housing Act 2004 provisions on the licensing of large Houses in Multiple Occupation (HMOs) had a positive impact on improving conditions in larger properties. In particular it helped tackle overcrowding, poor property management and the housing of illegal migrants. Partly as a result of these improvements, the issues have now moved to smaller HMOs. This is because the market has grown and rogue landlords are choosing to let smaller HMOs to avoid the licensing requirements of larger properties and the attention of enforcement authorities.

The private rented sector has recently seen rapid growth and is now the second largest tenure 19% (4.3 million) of households in England after home ownership, however increased demands on the sector have opened it up to exploitation by rogue landlords who let HMOs. HMOs provide accommodation for tenants who are unable to afford to rent a flat or house (i.e. self contained accommodation) who want more affordable accommodation and, in some cases, tenants who prefer to live in an HMO. Most tenants in HMOs are unrelated, live separate lives and have different expectations and standards. These differing demands and expectations can make the management of an HMO much more challenging than a single let property. The majority of landlords do a good job of managing these properties, but this is not the case in all properties.

Because of increased demand placed on the sector there is a minority of unscrupulous landlords who feel the rewards of poorly managing their HMOs outweigh the risks. This poor behaviour can include: housing illegal migrants, failure to meet the required health and safety standards, over-crowding, and ineffective management of tenant behaviour. Such issues can lead to negative harmful impacts on a local community either through environmental anti-social behaviour from excessive waste or noise, or anti social behaviour, which can include threatening behaviour and the intimidation of local residents. In addition, many tenants can be vulnerable and open to exploitation by rogue landlords.

The Government published a technical discussion paper on 6 November 2015 *Extending mandatory licensing of Houses in Multiple Occupation*¹ in England. The document invited views on a range of potential measures to improve standards in the HMO sector and drive out the rogue landlords who let out unsafe, overcrowded HMOs and exploit their tenants.

We received 449 complete responses. These were received from a range of organisations and individuals across the sector, including landlord associations, housing charities, local authorities as well as individual landlords and tenants. This document summarises the responses to the key questions raised in the technical discussion paper and describes what will happen next.

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

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

Threshold for mandatory licensing: number of storeys and households

The discussion document acknowledged that the current definition of a large HMO needed to be updated. The original definition introduced in 2004 was designed to tackle issues of fire safety, which were more prominent in buildings of three storeys or more. In the years since, the licensing of these larger buildings has been a success, but partly because of this some unscrupulous landlords who want to evade local authority enforcement have moved into letting large one and two storey HMOs.

Views were invited on the following questions.

Q1. Should mandatory HMO licensing:

- (a) cover all relevant HMOs regardless of their number of storeys?**
- (b) only apply to buildings of two storeys?**

Question 1 Should mandatory HMO licensing:	(% in favour)
(a) cover all relevant HMOs regardless of their number of storeys	78%
(b) only apply to buildings of two storeys	22%

Government Response

The Government proposes to extend mandatory licensing to cover all relevant HMOs regardless of the number of storeys (i.e. option (a)). The Government agrees with the views of those against limiting this to two storeys or more, who said it would not fully address issues of overcrowding or capture the landlords who avoid the attention of local authority enforcement by letting out single storey properties. Consultation responses did not provide strong evidence that there would be a large cost increase to landlords by extending to single storey properties, as opposed to only two storeys or above, as the number of additional properties subject to a licence would not be large. The answers to question 2 set out in the table below, highlight this point. Furthermore, limiting mandatory licensing to buildings of two storeys or more (option b) only attracted 22% support from respondents.

To help understand the scale and impact of extending mandatory licensing we asked local authorities the following questions.

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

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

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

Question 2	National average per LA²
<i>local authority respondents only</i> how many additional HMOs would be covered in their area by extending the scope of mandatory licensing to:-	
(a) include two storey buildings occupied by at least five persons?	371
(b) two and single storey buildings occupied by at least five persons?	434

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

Question 3	Yes	No
Is five people in at least two separate households the correct threshold? If no, please state what you think the threshold should be		
	45%	55%

This question drew 426 responses; 225 respondents wished to see a different threshold although 26 of those did not state what they thought the threshold should be. Of the 199 who did state a preference, 84 (19.7%) wanted to see the threshold lowered to three

² The data was cleaned to remove any responses that were either inconsistent or incomplete i.e. in all cases responses to part a) will be less than or equal to part b); where this was not the case, the response was removed. To prevent authorities with disproportionately high figures unduly affecting the averages, the averages here only represent answers within the 20th-80th percentile.

persons from two households in order to achieve consistency with the definition of an HMO in the Housing Act 2004. A number of other thresholds were also proposed by smaller numbers of respondents, including:

- 4 persons – 46 (10.7%) respondents
- 6 – 8 persons - 38 (8.9%) respondents
- 9+ persons – 4 (0.9%) respondents

However, none of these provided compelling reasons why these thresholds should be adopted in place of the existing one. In addition 22 responses requested the threshold remain the same and 5 stated licensing should be abolished.

Government Response

The discussion document stated the Government's view that five people (in two households) should be the appropriate number of persons for the threshold to apply for smaller HMOs. Therefore the Government was looking for particularly strong evidence of the need to change the threshold if it was to do so. However, there was no compelling evidence put forward to increase this number and it remains the Government's view that lowering the threshold is not necessary because removing the storey rule will ensure that smaller sized but higher risk HMOs are brought within the regime. In addition lowering the threshold to three people (as a large proportion of respondents suggested) would capture nearly all HMO properties within the licensing regime, which would have very large cost implications when there is no strong evidence of the usual HMO problems in smaller rented properties occupied by only three people. Instead the policy would unfairly penalise compliant landlords. If a local authority is experiencing localised problems in properties with this number of people, additional licensing is available³. Going forward the Government is not proposing to change this threshold.

Treatment of poorly converted blocks⁴ of flats

Mandatory licensing of 'poorly converted blocks' received a high level of support from respondents answering either 'yes' or 'no' to the question; see response to question 4 in the table below. However, of the 428 responses to question 4 only 34 (8%) respondents provided any evidence in support or opposition to the proposal. Eight of these were from local authorities who cited poor management, health and safety concerns, fire risk, and in one case, a particular problem with very small rooms. Seven other responses were strongly against the proposals, challenging whether all these properties were actually 'poorly converted' simply because they did not meet modern building regulations. Others

³ <http://www.legislation.gov.uk/ukpga/2004/34/part/2/crossheading/designation-of-additional-licensing-areas>

⁴ Section 257 HMOs are regarded as a special category of HMO. These are buildings that have been converted into self contained flats, but at the time of conversion did not meet the relevant building regulations standards (and still do not comply with them). There is a further requirement that more than one third of the flats are occupied by tenants (not long leaseholders)

made the point that enforcing licensing in such properties may be difficult, as it has been suggested that the freehold of houses are often held by persons other than the leaseholder of a flat. Furthermore the freeholder may be unaware if the flat is let to tenants or occupied by the leaseholder. The remainder, although cautiously supporting the proposal, suggested the definition of poor conversions is difficult to understand. In addition, the evidence provided in response to question 5 shows that applying mandatory licensing to these properties would bring into scope a very large number of ordinary converted houses, particularly Victorian and 1930s houses; see response to question 5 in the table below.

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

Question 4	Yes	No
Should poorly converted blocks of flats be brought within the scope of licensing?	81%	19%

Local authorities were asked to give an estimation of the number of conversions that would fall within the scope of extended mandatory licensing:

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

Question 5	National Average per LA
Local authority respondents only	
How many additional properties in your local authority area would be affected if poorly converted blocks of flats were subject to mandatory licensing? (Please provide a numerical estimate)	317

Government Response

In this instance although the majority of respondents thought ‘poorly converted blocks should be subject to mandatory licensing, the Government does not agree. Licensing is a tool designed to tackle unsafe and poor conditions where management standards are inadequate. Section 257 HMOs are subject to management regulations and local housing authorities can make them subject to additional licensing where they are problematic. The limited evidence provided through the narrative responses does not suggest that this type of accommodation is so problematic and widespread across the country that they should

all be made subject to mandatory licensing. Moreover, some of the narrative responses presented arguments why this should not be pursued. Notably, that some properties met the conversion rules in place when the conversions took place. We are, therefore, not convinced that the case for mandatory licensing has been made. We remain open to views on this and may act at a later time should more or stronger evidence of a widespread problem come to light.

Treatment of flats in multiple occupation above and below business premises

Mandatory licensing applies to large flats in multiple occupation (comprising more than two storeys) and other flats above and below business premises (if the building is more than 2 storeys) because they pose a greater risk in relation to fire spread and escape. The Government proposed extending mandatory licensing to these types of premises occupied by the threshold number of persons, regardless of how many floors they have. This proposal received significant support; see response to question 6 in the table below

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

Question 6	Yes	No
Should mandatory licensing be extended to include all flats in multiple occupation above and below business premises?	79%	21%

We asked local authorities to provide a numerical estimate of the number of properties that might be affected by these changes.

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

Question 7	National average per LA
Local authority respondents only	
How many flats in your local authority area would be affected if flats in multiple occupation occupied by at least five persons were subject to mandatory licensing	107

Government response

The Government is proposing to proceed with extending the scope of mandatory licensing to flats above and below business premises where there are less than three flats in the building, i.e. flats above shops on traditional high street type locations (as opposed to more modern developments with large purpose built blocks of flats above commercial premises). Currently mandatory licensing only applies to large flats in multiple occupation above and below business premises which comprise more than two storeys. These flats pose a greater risk, particularly in relation to fire spread and escape than to occupiers of conventional flats in residential blocks. This type of accommodation represents some of the most affordable accommodation on the rental market and is used to house some of the most vulnerable people in society; many of whom have little knowledge of their rights. Rogue landlords exploit these tenants, by letting accommodation which is in poor condition, poorly managed and are often subject to overcrowding; this leads to corridors being used as ad-hoc storage facilities which obstruct critical fire escape routes. Licensing these properties will prevent rogue landlords from manipulating this type of accommodation under the presumption that they will draw little attention from enforcement authorities.

The consultation responses showed strong support for this measure, with 79% of respondents in favour. Support is lower amongst landlords and property agents (48%). However, Government believes the issues affecting these properties are significant and need to be addressed through more effective enforcement of existing standards.

Impact on tribunal service

To assess the impact of extending mandatory licensing on the tribunal service we also asked local authorities the following questions to obtain information on the frequency of HMO appeal decisions.

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

We received 162 responses to this question of which 159 gave a numerical answer; 128 respondents stated there were no appeals against HMO decisions in their area. The average number of appeals in the 31 areas that did receive some was 2.2 per year.

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

Question 9	Yes	No
Local authority respondents only		
Do you think extending the scope of mandatory licensing will result in more appeals being made in your local authority area? If yes how many do you estimate?	57%	43%

Just over half of those who responded to this question think there will be further appeals if mandatory licensing is extended but most thought that any increase would be small, ranging between 1 -10 a year. In contrast 43% of respondents do not think there will be any increase in appeals against HMO decisions.

Part 2: raising standards in the HMO sector

To better understand the scale of the problems faced by local authorities and to ascertain whether licensing helps to improve standards, we asked a series of questions to enable some comparison of the frequency of issues between licensed and non-licensed HMOs. The responses received demonstrate a greater occurrence of issues in non-licensed properties rather than licensed properties.

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

We received a wide range of responses to this question, many of which were precise figures which were made available by local authorities, whereas others were an estimation or a judgement over a number of years from a range of respondents including letting agents, resident associations, private individuals and landlords. As a result, there was some variation in the numbers offered, reflecting a difference in time over which an estimation is based. Therefore it was not possible to offer an overall average of enforcement action. The type of response received is as follows:

- None as only informal action was taken - NE Derbyshire District Council
- 750 since 2010 - London Borough of Redbridge
- 2,500 (no time frame) - Blackpool City Council

Q11. How does this compare with licensed HMOs?

50% of respondents stated non-licensable HMOs have a greater number of enforcement activities for hazards compared to licensed HMOs. Whereas 27% said it was less and 23% said it was about the same.

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

A wide range of answers was provided for this question, which again reflected a difference in time over which the figures were based. The number of incidents per area ranged from 0 – 794 per area. On this basis it is not possible to offer an overall average per area. The type of response received is as follows:

- 1 in the last two years – Borough Council of Wellingborough
- 293 in the last four years – Liverpool City Council
- 794 (no time frame) – London Fire Brigade

Q13. How does this compare with licensed HMOs?

45% of respondents stated that non-licensable HMOs have a greater number of fires compared to licensed HMOs. 35% of respondents stated this to be the same and 20% thought it to be less.

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

This question elicited a range of responses, but the most common raised were:

- Fire Safety Measures (134 respondents);
- Poor management (94 respondents);
- Overcrowding (82 respondents);
- Excess Cold/Insulation (72 respondents);
- Electrical and gas safety (30 respondents);
- Lack of Amenities (29 respondents);
- Waste/Refuse Issues (27 respondents); and
- Safety Measures (13 respondents).

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

The question elicited a limited range of responses and did not present any new activities beyond what LAs already do. Costs varied between each option mentioned.

- Enforcement (70 respondents);
- Emergency Remedial Actions (59 respondents);
- Licensing (31 respondents);
- Inspections (15 respondents);
- Landlord Accreditation (14 respondents);
- Minimum Room Sizes (9 respondents);
- Prosecutions (6 respondents);
- Landlord Accountability (3 respondents); and
- Energy Performance certification (2 respondents).

From this we have concluded that extending mandatory licensing will uncover landlords letting properties below an acceptable standard and enable local authorities to require landlords to make improvements to the conditions of vulnerable tenants.

Section 2: other potential changes to licensing – minimum room sizes

Section 326 of the Housing Act 1985 specifies a minimum room size for sleeping accommodation to be 6.5m² (70 ft²). Statutory overcrowding may result if a person causes or permits an adult to sleep in a room with a floor area of less than 6.5m²; anything smaller than this space standard is deemed to be unsuitable for an adult to occupy as sleeping space. This standard is of general application. Due to a recent ruling by the Upper Tier Tribunal (Lands Chamber) *Clark V Manchester City Council* (2015) UKUT 0129(LC) local authorities are uncertain whether the standard applies to HMOs, enabling rooms that would fail the overcrowding standards being suitable to be licensed for sleeping in. We proposed in the discussion paper to remove this uncertainty and allow local authorities to assert the statutory minimum requirements. We asked the following questions on this:

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

This question showed strong overall support (79% of respondents); with just over half of landlords and property agents (51%) in favour as well as 94% of local authorities.

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

Again this question showed strong overall support (76%) and amongst the different sectors, with 86% of tenants and tenant groups supporting the recommendation, 69% of landlords and property agents, and 70% of local authority respondents.

Government Response

The Government remains of the view that illegal activity should not be overlooked in HMOs and has decided to clarify the recent uncertainty caused by the Upper Tribunal ruling as to whether the standard applies to HMOs, opening the possibility of rooms that would otherwise fail the overcrowding standards being suitable to be licensed for sleeping in. The Government wishes to remove such uncertainty by clarifying that compliance with the minimum space standard is a mandatory condition when a local authority grants an HMO licence. The measure attracted overwhelmingly strong support from local authorities and was backed by the majority of landlords and property agents. The Government does not accept the arguments put forward by those who did oppose this measure that some tenants, including students and others on a low income, are content to occupy smaller rooms as no evidence was put forward by tenants or students themselves to support this point of view. Nevertheless, we recognise that there will be parents living in bedsits or letting rooms (or possibly in a room in a shared house) with a baby or young child. We want to strike the right balance of protecting families' interests and ensuring standards are maintained and help prevent overcrowding. To get a better understanding of the impact of these proposals on families we will seek further views.

Removal of exemption from selective licensing: letting to family members

There have been concerns that some landlords are claiming unrelated tenants or very distant family as family members to avoid licensing. Therefore we asked:

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

Government Response

72% of responses received were in favour of removing the exemption, but those that provided narrative responses (beyond 'yes' or 'no') stated that the exemption should apply to immediate family only and that removing the exemption could prejudice landlords who are legitimately letting to family members. The Government does not want to place unnecessary burdens on good landlords who legitimately let their property to family members. Moreover, it wants to avoid using a disproportionate instrument which imposes costs on landlords across the whole country for a problem which has a greater frequency in localised pockets of the country. The Government has therefore decided not to make any changes at this stage to family exemptions but remains open to views on this and may act at a later date should more and stronger evidence come to light of a widespread problem.

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

This series of questions sought views on whether and how to improve and streamline the licensing regime so that it is less burdensome for landlords.

The information requirements in relation to applications are set out in the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. Schedule 2 of the 2006 regulations provides detail on the current minimum information that must be provided as part of a HMO licence application.

Schedule 2 information

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

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

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

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

The majority of respondents (79%) thought the information required to be deemed necessary, but there were a number of responses (21%) which stated the process could be streamlined which were:

- prevent duplication of form filling for landlords with a number of properties;
- risk assessment be retaken by LAs; and
- details other than the landlord's name and address can be recorded by the local authority on inspection of the property.

The discussion point on expanding or changing the information required for a licence was opposed by 62% of respondents. However some respondents suggested the following to be necessary:

- an energy performance certificate for the building
- better proof of identity for validation (DOB, NI number); and
- tax convictions.

58% of respondents thought the process could not be simplified. Those that did think it possible commonly cited the greater use of online application forms.

59% of respondents were in favour of information being removed from subsequent applications. The common suggestions made were:

- landlords to have an online account and their personal details prepopulated into subsequent applications; and
- some suggested a time frame where online account details must be updated periodically e.g. 2 years.

Government Response

We are already seeing local authorities moving towards online forms and an avoidance of duplication in order to achieve improved efficiencies; and because they also recognise that personal details may change. Given the mixed views on this, and the fact that most of the suggestions made by respondents are already within the gift of local authorities, the Government has decided to take no further action at this stage on information requirements. We think local authorities are best placed to decide what information they require. However, we remain open to views on this and may act at a later date should more and stronger evidence come to light of the need to make changes.

Concluding question

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

This question invited respondents to offer any further evidence or raise additional points of view about the questions asked. Nearly everyone that responded to this question used it as an opportunity to elaborate on their previous answers or provide extra examples or evidence for the points that they wanted to make. We found this useful in analysing the responses and are grateful to respondents for taking the time to do this.

Others made additional points about licensing which were of interest but out of scope of the current policy discussion but we will keep them in mind for the future, including:

- Giving local authorities further powers to bring accommodation up to a licensable standard in order to increase the supply; and
- Introducing full landlord registration.

There were three other issues raised of particular note, which we have considered:

Purpose Built Student Accommodation

The consultation received a number of representations concerning purpose built student housing, which suggested the exemption from licensing available to education establishments should be extended to private providers. At present, the Secretary of State can approve codes of practice, which set out the standards of conduct and practice to be followed in the management of HMOs. Where Government approved codes of practice have been complied with by educational establishments, their buildings become exempt from licensing. Most providers of purpose built student accommodation are already members of the Government approved codes, but are also subject to licensing fees. It has been suggested that it is primarily the codes which are ensuring good standards and practice and that licensing simply imposes an additional charge on these providers without any perceived additional improvements or benefits. Government wants to develop a better understanding of this issue and will be seeking further views on the role of local authorities in licensing purpose built student accommodation.

Waste Disposal

Concern was expressed about inadequate waste disposal facilities in HMOs. This has led to problems of rubbish accumulation which blights the neighbourhood and poses a health and safety risk through pest infestation. Government wants to address this issue and will be consulting on whether it should be a mandatory condition of a licensee to provide adequate facilities for the storage and disposal of normal household waste.

Almshouses

We received representations from the National Alms House Association, suggesting that their members should be exempt from selective licensing. Around 20% of almshouses are registered providers and are as such, exempt from licensing since they are subject to other regulatory controls.

The remainder, although almost exclusively registered charities, are private landlords. As we have already mentioned charities are not automatically exempt from selective licensing and there is no compelling reason that private providers of almshouses should be exempt from selective licensing because of their charitable status. Whilst it can be argued that almshouses offer a unique access to housing for particular persons this does not change the status of the providers as private landlords. It may be argued that the standard of management and maintenance of such properties is satisfactory or even above the standards provided by other private sector landlords but the same arguments can be used by other private landlords to secure their exemption from licensing. Licensing is intended to apply to all private landlords operating in a particular area (subject to certain statutory exemptions) to raise standards in the sector generally and provide a level playing field between landlords in the area. Whilst accepting that alms-houses may not consider

themselves to be private landlords the majority are just that even if they have a unique letting policy.

Selective licensing has been available to local housing authorities as a tool to deal with certain problems in their areas since 2006. It has applied to private providers of almshouses since its inception. There is no strong case for making a statutory exemption now.

However, it appears that one of the major issues for almshouses providers is the requirement to pay licence fees. There is no statutory duty on local authorities to charge licence fees at all and they can set their own rates. It is, of course, understandable that local housing authorities will charge fees to cover their costs in administering a selective licensing scheme and may not be prepared to exempt certain landlords from paying. Nevertheless providers may want to consider talking with local authorities about licence fees for almshouses.

Conclusions and next steps

There was strong support from all respondents to extend the mandatory licensing of HMOs. On this basis Government is proposing to take forward the following measures:

- remove the reference to storeys from the prescribed description of large HMOs, so that all HMOs occupied by five or more people from more than one household, are included;
- include flats above and below business premises; and
- clarify that the minimum room size 6.5m² for sleeping accommodation does apply to all licensable HMOs.

This will provide tenants greater certainty over the quality of the accommodation to be rented and the good character of their landlord. Local authorities will have a better understanding of the stock in their area and be better placed to tackle compliance issues and rogue landlords who have been evading detection. Finally, legitimate landlords will benefit from a level playing field, where currently their businesses are undercut by rogue landlords or agents failing to maintain their properties to the required standard.

The Government is grateful for all the responses received to the technical discussion paper.

Next Steps

In addition to this response document the Government has simultaneously published a further consultation on the regulations that will bring these proposals in to law, and the draft regulatory impact assessment of the proposed measures. These are available via gov.uk.