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Houses in Multiple Occupation (HMOs) England and Wales

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Summary

The private rented sector, of which Houses in Multiple Occupation (HMOs) form part, has undergone significant growth. It is now the second largest tenure in the UK and houses around 4.5 million households in England. HMOs offer accommodation that is typically cheaper than other private rental options and often house vulnerable tenants. There were an estimated 497,000 HMOs in England and Wales at the end of March 2018.

Part 2 of the *Housing Act 2004* introduced a two-tier approach to the regulation of HMOs: mandatory licensing for larger 'high risk' properties, and additional (discretionary) licensing for smaller HMOs. Since 6 April 2006 it has been mandatory for large HMOs with three or more storeys and five or more occupants who do not form a single household, to be licensed in England and Wales. Conditions in smaller HMOs have been subject to specific management regulations. Although there are varying views on the effectiveness of licensing, the Government considers that it has helped "tackle overcrowding, poor property management and the housing of illegal migrants".

From 1 October 2018, the Government extended the scope of mandatory HMO licensing in England so that it applies to HMOs with five or more occupiers living in two or more households regardless of the number of storeys. At the same time, the Government introduced new mandatory conditions in HMO licences to regulate the size and use of rooms as sleeping accommodation and to require the licence holder to comply with their local authority domestic refuse scheme. This change was introduced as it was suggested that licensing larger HMOs led 'rogue' landlords to focus their operations on smaller HMOs. It was estimated that this would bring an additional 177,000 HMOs into the mandatory licensing regime in England.

The Welsh Government had already legislated to provide for all landlords to be registered, and for those carrying out certain letting functions to be licensed in addition to the licensing provisions for HMOs.

In England, the *Housing and Planning Act 2016* has given local authorities additional enforcement powers in the form of civil penalties (up to £30,000) which can be imposed as an alternative to prosecuting landlords, and extended Rent Repayment Orders. The 2016 Act also provides for changes to the 'fit and proper' person test that applies to landlords of licensable HMOs and for English local authorities to access information held by the Tenancy Deposit Schemes in order to, amongst other things, identify non-licenced HMOs.

Local authorities in England can seek to control growth in the number of HMOs in their areas by requiring planning applications for the conversion of residential properties into HMOs. The Welsh Government, with effect from 25 February 2016, gave planning authorities the power to require planning consent for new HMOs, and to consider the effect

such dwellings might have on local areas, before deciding whether to approve planning permission or refuse it.

This briefing paper sets out the legal framework in England and Wales for controlling standards in HMOs and outlines the powers available to local authorities to carry out enforcement work.

1. The legal framework

Part 2 of the *Housing Act 2004* contains provisions relating to the management of Houses in Multiple Occupation (HMOs) in England and Wales. The revised definition of an HMO came into force on 18 January 2004. The other provisions were brought into force on 6 April 2006, with the enforcement provisions coming into force in July 2006. Regulations to tackle conditions in one particular type of HMO, i.e. properties converted entirely into self-contained flats where the conversion does not comply with Building Regulations and more than one-third of the flats are let on short tenancies (often referred to as section 257 HMOs) came into force in England on 1 October 2007.[1]

The 2004 Act introduced a two-tier approach to the regulation of HMOs in the private rented sector: mandatory licensing for larger 'high risk' HMOs, and additional (discretionary) licensing schemes for smaller HMOs.

The Housing Health and Safety Rating System (HHSRS), set out in Part 1 of the 2004 Act, is the tool used by environmental health officers (EHOs) to address defects and deficiencies in all residential accommodation that may give rise to hazards,[2] while the *Management of Houses in Multiple Occupation (England) Regulations 2006* (SI 2006/372) are the means through which poor day-to-day management in all HMOs is tackled in England. In Wales, the relevant Regulations are *The Management of Houses in Multiple Occupation (Wales) Regulations 2006*.

Housing policy is devolved and private rented sector policies in England and Wales are diverging. In England, from 1 October 2018, the Government extended the scope of mandatory HMO licensing to include smaller HMOs and introduced new licence conditions (see section 5 of this paper).[3] New provisions to help identify rogue landlords and property agents and prevent licences being granted to them were also included in the *Housing and Planning Act 2016*.[4]

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1 *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) & *The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007* (SI 2007/1903)

2 For information on the HHSRS see House of Commons Library briefing paper 1917.

3 The relevant Regulations are: *The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018* (SI 2018/221); and *The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018* (SI 2018/616).

4 As at 20 September 2019, section 125 of the H*ousing and Planning Act 2016* (Licenses for HMO and other rented accommodation: additional tests) was not in force.

1.1 Definition of an HMO

The definition of an HMO is contained in sections 254-259 of the *Housing Act 2004.* A building, or part of a building, is an HMO if it satisfies:

- the standard test;
- the self-contained flat test;
- the converted building test; or
- if an HMO declaration is in force under section 255 of the 2004 Act; or
- it is a converted block of flats to which section 257 applies.[5]

Not all HMOs are licensable. A licence is mandatory under Part 2 of the *Housing Act 2004* if the property meets the relevant criteria (see section 2 of this paper) or is covered by a discretionary local authority additional licensing scheme (see section 3.4 of this paper).[6]

Annex A to the consultation paper Houses in multiple occupation and residential property licensing reforms (October 2016) contains a section with HMO definition tips.

The standard test

This test covers most HMOs, e.g. bedsitting room accommodation, shared houses and hostels. To pass the test, the building or part of the building must consist of one or more units of living accommodation that is not a self-contained flat or flats. The living accommodation must be occupied by more than one household[7] who share one or more of the basic amenities (toilet, washing facilities and cooking facilities), or the accommodation is lacking in one or more of these amenities. The occupiers must occupy the living accommodation as their only or main residence[8] and their occupation must constitute the only use of that accommodation. At least one of the occupiers must pay rent or provide some other consideration in respect of the occupation.

The self-contained flat test

This test is concerned with flats in multiple occupation. The only difference between this and the standard test is that the relevant premises for consideration must be a self-contained flat, rather than a building or part of a building.

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5 Section 254 of the *Housing Act 2004.*

6 Paragraph clarified 31 July 2023.

7 Section 258 defines 'persons not forming a single household' – briefly, persons are regarded as not forming a single household unless they are either all members of the same family or their situation falls within circumstances prescribed in the *Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) England Regulations 2006* (SI 2006/373)

8 This is defined in section 259 and the *Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) England Regulations 2006* (SI 2006/373)

Converted building test

This test is concerned with buildings (or parts of buildings) which have been partly converted into self-contained flats, but which also contain living accommodation that is not within a self-contained flat. A converted building is a building, or part of a building, consisting of living accommodation in which one or more units of such accommodation have been created since the building (or relevant part) was constructed. The definition applies to any premises which have been converted or adapted to include residential accommodation. For a building to satisfy this test it must:

- be a converted building;
- contain one or more units of living accommodation which are not self-contained flats;
- have living accommodation occupied by [3 or more] persons who do not form a single household;
- they must occupy the accommodation as their only or main residence;
- their occupation must be the sole use of the accommodation; and
- rents or other consideration must be payable by at least one of the occupiers.

In contrast to the standard test, there is no requirement that the occupiers share a basic amenity or that there is an amenity lacking.

HMO declaration

The fluctuating nature of the population in certain properties means that a property can move in and out of the three tests described above. Where a building, or part of a building, is partly occupied by persons as their only or main residence, but is also partly occupied otherwise than as a residence,[9] the authority may declare the building an HMO if it is satisfied that the occupation by persons as their only or main residence is a significant use of the building, or part of the building.

The purpose of serving a notice, against which the owner or person managing or controlling[10] the building may appeal, would be to remove doubts about a property's status.

Converted blocks of flats (section 257 HMOs)

Where a converted building solely consists of self-contained flats it is only an HMO if, when converted, it failed to comply with 'appropriate building standards'[11] and it still does not comply, and less than two-thirds of the self-contained flats are owner-occupied. The second element of this test means that a converted block can fulfil the definition of an HMO at certain times and not at others. Separate and

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9 For example, a Bed and Breakfast establishment providing accommodation for either homeless people or asylum seekers or holidaymakers.

10 Defined in section 263 of the 2004 Act – this will usually be the landlord but could also be a managing agent.

11 For conversions before 1 June 1992 the appropriate standards are the *Building Regulations 1991* (SI 1991/2768). After this date the building must comply with the equivalent Building Regulations that applied at the time.

specific regulations to govern conditions in these HMOs came into force on 1 October 2007.[12]

1.2 Exemptions

Subsection 254(5) and Schedule 14 to the 2004 Act provide that a building, or part of a building, will **not** be an HMO for the purposes of the mandatory licensing scheme, the management regulations made under section 234, or the service of overcrowding notices under section 139, **if**:

- it is managed by a local authority, private registered provider of social housing (including profit-making registered providers)[13], co-operative society (that meets certain conditions) or other specified public sector body;
- it is subject to other regulatory regimes (specified in regulations);
- it is a student hall of residence;
- it is a building occupied by religious communities;
- it is predominantly occupied by owner-occupiers (the appropriate level is specified in regulations);
- it is only occupied by two people who form two households; or
- it is occupied by a resident landlord and a maximum of two other households who are not part of the landlord's household.[14]

These exemptions have no effect for the purposes of determining whether a property is an HMO in relation to enforcing housing standards under Part 1 of the 2004 Act (the Housing Health and Safety Rating System, see section 3.2 of this paper).

Student accommodation

The exemption of certain HMOs from mandatory licensing proved controversial as the *Housing Bill 2003-04* progressed through Parliament, particularly in relation to student accommodation. The then Minister for Housing, Keith Hill, gave the following reasons for excluding certain student and local authority owned dwellings:

> The hon. Member for South-West Bedfordshire asked whether halls of residence were covered. The answer is no, because we do not believe that it is necessary to apply the legislation to public bodies, such as universities, which we expect to behave in a way that is cognisant of the law and obedient.[15]

In recognition of students' concerns over the standard of their accommodation, paragraph 4(4) of Schedule 14 to the 2004 Act provides that accommodation managed by colleges of higher and

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12 *The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007* (SI 2007/1903) and *The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007* (SI 2007/3229 (W.281)

13 Added by the *Housing and Regeneration Act 2008*.

14 Thus, if a resident landlord lets out three rooms in his or her home to three people who are not part of the same household, the dwelling may fall under the HMO definition. This exemption does not apply to section 257 HMOs.

15 SC(E) 22 January 2004 c159

further education is only exempt from the definition of an HMO, and the various controls that this implies, if they comply with a code of practice approved under section 233 of the Act.

Three codes of practice are approved for use in England:

- The Universities UK/Guild HE Code of Practice for the Management of Student Housing, dated 1 May 2019.
- The ANUK/Unipol Code of Standards for Larger Developments for Student Accommodation Managed and Controlled by Educational Establishments, dated 1 May 2019.
- The ANUK/Unipol Code of Standards for Larger Developments for Student Accommodation NOT Managed and Controlled by Educational Establishments, dated February 2006.[16]

Baroness Andrews, then Parliamentary Under-Secretary of State at DCLG, set out the purpose of these codes of practice:

> The codes reflect a Government commitment to improve housing conditions for students who will see a positive change in the way accommodation run by universities and colleges is managed on and off-campus.
>
> Those who sign up to the codes will do so as part of their commitment to providing students with a first-class housing service, by providing quality student accommodation that encompasses health and safety, security measures, and tenancy information, including deposits and the means of resolving disputes. Clearly students, their parents and the universities and colleges themselves, will be greatly reassured as to how such accommodation is managed under these codes.
>
> Only colleges of higher and further education whose accommodation is specifically listed in the first of these two codes will be granted an exception from HMO licensing. Commercial providers who comply with the third code may expect lower licensing fees because their voluntary compliance with the ANUK code should ensure high management standards and so reduce the burden for local authorities of managing their licensing arrangements.[17]

Private providers of purpose-built student accommodation have lobbied the Government for an exemption from HMO licensing, contending 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.[18]

The Government consulted on possible changes to the licensing regime for these providers in October 2016.[19] The consultation response, published in December 2017, confirmed that the Government would not require local authorities to provide discounts for licences issued to

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16 *The Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order* (2019/884).
17 DCLG Press Release 2006/0049, 16 March 2006
18 DCLG, Extending mandatory licensing of houses in multiple occupation: a government response document, November 2016, p18
19 DCLG, Houses in Multiple Occupation and residential property licensing reforms: A consultation paper, 18 October 2016

certain private providers of purpose-built student housing, but would keep this under review:

> The Government notes that the majority of respondents agree that discounts should be awarded, but a significant minority do not. The issue is whether the discount should apply where there is little local authority intervention because the landlords adhere to a code which ensures standards are maintained.
>
> In response to earlier questions there were significant numbers of responses to the effect that there was little local authority intervention and recognition that a code ensures standards are maintained.
>
> However, those responses were received before the tragic fire at Grenfell Tower, and the consequent investigations into fire safety in purpose built blocks, including those in the student sector. In light of Grenfell and those investigations it cannot be said with certainty that local authorities would not now be more proactive in ensuring licence conditions in PBSAs were complied with, or required updating.
>
> In the Government's view because fire safety in HMOs is of paramount importance we do not intend to introduce any steps which might be seen as a barrier to local authorities in carrying out investigations and if necessary enforcement action through HMO licensing going forward.
>
> For those reasons we do not propose, for the time being at least, to require local authorities to provide mandatory discounts for HMO licences to private providers of PBSAs that comply with approved codes of practices.[20]

[20] DCLG, Houses in Multiple Occupation and residential property licensing reforms Government response, 28 December 2017, pp37-38

2. Mandatory licensing of HMOs

2.1 Which HMOs must have a licence?

With effect from 6 April 2006, persons managing or controlling[21] certain prescribed HMOs have had to have a licence in order to continue to rent out these properties.[22]

Mandatory licensing in England and Wales originally applied to HMOs consisting of three storeys or more and occupied by five or more people living in two or more households.

Mandatory licensing was initially restricted to 'high risk' larger HMOs on the grounds that these properties presented the greatest risk to occupiers:

> Research for the Department by Entec Ltd identified several factors, in addition to the number of occupants, which influence the risk from fire in HMOs. These include: the number of storeys - HMOs of three or more pose a significantly higher risk; the nature of the occupancy - HMOs housing dependant or vulnerable persons pose a higher risk than those housing the able bodied and cognisant; the quality of management in the HMO; and a number of factors relating to the internal design of the HMO, such as the degree of self-containment of the units of accommodation, and the number of escape routes and their fire rating.
>
> The risk of death from fire in HMOs will vary considerably, as all these factors will interact differently in each individual case. However, Entec found that in several types of HMO the risk is considerably higher than in comparable single occupancy dwellings. For example, occupants of houses comprising bedsits are about six times more likely to die as a result of fire than adults in an ordinary house. But in other cases, for example two storey shared houses and houses with lodgers, there may be little or no additional risk.[23]

The 2006 definition of an HMO subject to mandatory licensing still applies in Wales.[24]

In England, from 1 October 2018, mandatory licensing was extended to include smaller HMOs (with one or two storeys) which are occupied by five or more people living in two or more households.[25] (Section 5 of this briefing paper explains the HMO reforms in England in more detail).

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21 Defined in section 263 of the Act - this will usually be the landlord but could also be a managing agent.

22 Unless the HMO is subject to either a temporary exemption notice under section 62 of the Act or an interim for final management order under Chapter 1 of Part 4 to the Act.

23 Department of Environment, Transport and the Regions, *Licensing of Houses in Multiple Occupation,* April 1999

24 *The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006* (SI 2006/1712).

25 *The Licensing of Houses in Multiple Occupation (Prescribed Description) England Order 2018* (SI 2018/221)

2.2 The licensing process & the fit and proper person test

Where a local housing authority already operated an HMO licensing scheme prior to 6 April 2006, owners of licensed HMOs that met the criteria for mandatory licensing were simply passported straight into the national mandatory scheme without having to apply and at no additional cost. These licences lasted until the date that they would have expired under the old scheme. All other owners of HMOs subject to mandatory licensing had three months from 6 April 2006 in which to apply for a licence.

The licence is granted to the person managing or having control of the dwelling. Thus, if ownership changes any existing licence cannot be transferred to the new owner.

Applications for a licence (which, if granted, normally lasts five years) must be made to the local housing authority. Regulations specify matters concerning applications, e.g. their contents and the manner in which they should be made..[26]

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Amendment) (England) Regulations 2012 (2012/2111) reduced, with effect from 10 September 2012, the information requirements in respect of licence renewal applications for HMOs requiring a licence under Part 2 of the *Housing Act 2004*. The aim of the change was to make it easier for landlords and their agents to renew licences to operate HMOs.

On receipt of an application, the authority must decide whether to grant or refuse a licence in accordance with the requirements set out in the 2004 Act and associated regulations. Authorities do not have to inspect every licensable HMO before issuing a licence, but all licensable HMOs have to have a Housing, Health and Safety Rating System inspection carried out within five years of a licence application being made.[27] The licensing application form contains questions which enable the local housing authority to decide whether or not the landlord and the property meet the criteria and can be given a licence.

Local authorities are able to grant or refuse a licence based on whether:

- the property in question is reasonably suitable for occupation by the number of persons or households specified in the application;[28]
- the proposed licence holder is a 'fit and proper' person;

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26 *The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006* (SI 2006/373) (as amended) and *The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006* (SI 2006/1715 (W.177))

27 Section 55(6)(b) of the *Housing Act 2004*

28 The amenity standards on which this decision is based are set out in *The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Order 2006* (SI 2006/373) – local authorities can adopt their own amenity standards which may not be lower than the minimum prescribed standards.

- the proposed manager of the HMO or an agent or employee of that person is a 'fit and proper' person; and
- the proposed management arrangements are satisfactory.[29]

In this context, the fit and proper person test involves a check on whether the licence holder, proposed manager, or agent/employee has:

- Committed an offence involving fraud or other dishonesty, or violence or drugs or any offence listed under Schedule 3 to the *Sexual Offences Act 2003* (section 66(2)(a) of the *Housing Act 2004*).
- Practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in or in connection with the carrying on of any business (section 66(2)(b) of the *Housing Act 2004*).
- Contravened any provision of the law relating to housing or landlord and tenant law (section 66(2)(c) of the *Housing Act 2004*).
- Acted otherwise than in accordance with a Code of Practice under section 233 of the Act (regarding the management of HMOs) (section 66(2)(d) of the Housing Act 2004).

Applicants have to declare relevant information for the fit and proper test. It is an offence to provide false or misleading information or to conceal relevant information. Declaration of an unspent conviction will not necessarily mean that the applicant is not a 'fit and proper' person.

Housing and Planning Act 2016 amended the provisions in sections 63 (HMO licence applications) and 87 (selective licence applications) of the 2004 Act to provide that any licence application in England must be accompanied by specified evidence. The measure enables the Secretary of State to specify that evidence must be provided as to the applicant's criminal record status and that of any other person whom it is proposed would manage the property. The 2016 Act also amended sections 66 and 89 of the 2004 Act to provide that the licence holder will not be a fit and proper person if they:

- require permission to enter or remain in the United Kingdom and do not have it (i.e. he/she is an illegal immigrant); or
- have received civil penalties, or have been convicted of an offence, for renting to a disqualified person (i.e. an illegal immigrant under Part 3 of the Immigration Act 2014); or
- are insolvent or an undischarged bankrupt.[30]

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[29] In deciding whether the management arrangements are satisfactory the authority will consider whether any person involved in the management of the property is sufficiently competent; whether they are a fit and proper person; and whether the proposed management structures and funding arrangements are satisfactory. The duties on managers of HMOs are set out in *The Management of Houses in Multiple Occupation (England) Regulations 2006* (SI 2006/372) and *The Management of Houses in Multiple Occupation (Wales) Regulations 2006* (SI 2006/1713 (W.175))

[30] Section 125 of the *Housing and Planning Act 2016*

These provisions are intended to help identify potential rogue landlords and property agents, and prevent licences being granted to them. As at 20 September 2019 the provisions were not in force.

In October 2016, the Government sought views on whether regulations should be made to require a criminal record certificate be obtained for all licence applicants in England (local authorities currently have the power to require an applicant to provide a certificate but it is not a mandatory requirement). Following an analysis of consultation responses, the Government decided not to mandate the requirement to obtain criminal record certificates. It considered that this could increase costs and delay licensing, and in the longer-term information held in the national database of rogue landlords and property agents would replace the need for criminal record checks.[31]

It is possible for an authority to grant a licence including certain conditions, e.g. to carry out necessary works within a given period.

Before granting a licence the authority must serve on the applicant and any other relevant persons (including tenants with fixed term leases), a notice stating that it proposes to grant a licence. A copy of the proposed licence must be included, setting out the main terms and the consultation period (the time within which representations can be made). If the authority accepts modifications a further notice must be issued. Before refusing a licence a similar process must be followed, but the notice must give the proposed reasons for refusal.

A licence may be varied by the authority with the agreement of the licence holder, such as in situations where a new manager is agreed. Variations may occur without agreement where new information is discovered.[32]

2.3 Licence fees

Local authorities are free to set their own level of fees for licence applications. The fees should reflect the actual cost of administering the licensing scheme.

The then Housing Minister, Yvette Cooper, responded to a PQ on the average fees charged by local authorities in respect of mandatory licensing in May 2006:

> The regulatory impact assessment (RIA) for licensing of houses in multiple occupation which was published in February 2006 estimated that the average fee for mandatory licensing would be approximately £500. When this cost is averaged out over the five-year life of a licence, this would result in an annual cost of around £100. The estimate was based on a sample survey of local housing authorities carried out in December 2005.[33]

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31 DCLG, Houses in Multiple Occupation and residential property licensing reforms: Government response, 28 December 2017, p30

32 Section 69(1) of the 2004 Act

33 HC Deb 25 May 2006 c2049W

The 2015 Government said "Fee levels should be consistent within the local authority policy, which should be transparent and clear as to how they are calculated and what costs are taken into account."[34]

2.4 Sanctions

Refusal/revocation of a licence

The most important sanction available to authorities is the refusal or revocation of a licence. This prevents the landlord from letting the property unless the authority is satisfied that suitable alternative management has been put in place. Landlords letting property in breach of licensing provisions commit an offence punishable by a fine of up to £20,000.

Where a landlord is deemed not to be 'fit and proper' they have the option of putting an alternative manager in place, e.g. a local managing agent, if this is satisfactory to the local authority. Where no alternative can be found and the property is occupied, the authority has to make an interim management order (see below). This will ensure that the property is properly managed until a longer-term solution can be found. If a solution cannot be found within 12 months, the authority can make a final management order which will place the longer-term management of the property in the hands of the authority.

Rent repayment order

A rent repayment order is an order made by a First-Tier Tribunal (Property Chamber) on application by a local authority. Under such an order the authority can recover any Housing Benefit paid in respect of an HMO during any period when it ought to have been licensed, but was not. The maximum an authority may claim is twelve months' Housing Benefit, during any period that a dwelling was not licensed.

In addition, an occupier (or former occupier) may also be able to apply for a rent repayment order in respect of rent paid (less any Housing Benefit).[35]

The Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013 (S.I. 2013/630) provide for the housing costs element of Universal Credit (which is replacing Housing Benefit) to be repayable in the same manner as Housing Benefit currently is where a rent repayment order is granted.[36]

The circumstances in which an authority can apply for a rent repayment order were extended in England with effect from 6 April 2017.[37]

Civil Penalties

Since 6 April 2017, local authorities in England have had the option of imposing a civil penalty of up to £30,000 on a landlord/agent as an

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34 DCLG, Extending mandatory licensing of Houses in Multiple Occupation (HMOs) and related reforms: a technical discussion document, November 2015, para 7

35 Sections 73, 74 and 97 of the 2004 Act and *The Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007* (SI 2007/572)

36 In Wales the relevant regulations are the *Universal Credit (Consequential Provisions) (Childcare, Housing and Transport) (Wales) Regulations 2013*

37 DCLG, Rent repayment orders under the Housing and Planning Act 2016, April 2017

alternative to prosecution for certain HMO offences. Civil penalties were introduced using powers contained in the *Housing and Planning Act 2016.*[38]

Additional control provisions

Part 4 of the 2004 Act contains additional provisions for enforcement action in respect of properties that are licensable under Parts 2 and 3.[39] The mechanisms that authorities have at their disposal include interim management orders and final management orders.

Interim Management Orders

A local authority can make an interim management order (IMO), lasting for 12 months, for the purpose of securing that certain steps are taken in relation to a property licensable under Part 2 of the Act. An IMO requires immediate steps to be taken to protect the health and safety of the persons occupying the property, or persons occupying or with an interest in any properties within the vicinity. An IMO may also specify any other steps that the authority thinks appropriate to secure proper management of the house pending a licence being granted, or the making of a final management order (FMO).

Section 102 of the 2004 Act sets out the circumstances in which an IMO **must** be made. These include where an HMO ought to be licensed but is not and there is no reasonable prospect of it being licensed in future, or where the health and safety condition (defined in section 104) is met. It is also possible to issue an IMO where a house *is* licensed but the authority intends to revoke the licence and there is no reasonable prospect of it becoming licensed again in the near future.

When an IMO is made, the authority has to take immediate steps to protect the health and safety and welfare of the occupiers. It must also take steps to put in place long-term management arrangements and ensure that the property is properly managed until these arrangements are determined. On the expiry of an IMO the authority concerned has to either grant a licence or make an FMO.

IMOs enable authorities to take over many of the rights and obligations of the landlord in respect of the property. Although they can manage the properties or authorise a manager to do so on their behalf, they do not acquire ownership of the legal estate (sections 107-110). Authorities can permit others to take up occupation of the properties with the written consent of the legal owner.[40] Occupiers retain the same rights as they had before the IMO was made (section 124) – although the dwelling may be managed by a local authority the tenants do not become council tenants.[41] The effect of an IMO on the immediate landlord and others, e.g. mortgagees, is covered in Section 109.

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38 MHCLG, Civil penalties under the Housing and Planning Act 2016, last updated April 2018

39 Part 3 of the Bill covers the selective licensing of other residential accommodation, i.e. privately rented properties that are not necessarily HMOs.

40 Although they are effectively renting from a local authority, these tenants do not acquire the 'secure tenant' status of other council tenants.

41 This is also the case if an FMO is granted.

While an IMO is in force the authority can spend rent and other payments on 'relevant expenditure' in relation to the property. The balance must be paid to the relevant landlord. The authority must account for any income and expenditure.

It is possible to vary IMOs (section 111) or revoke them in certain circumstances (section 112).

Final Management Orders

Final management orders (FMOs) can be made in order to secure the proper management of properties on a long-term basis in accordance with a 'management scheme' that is set out in the orders themselves. FMOs last for no longer than 5 years (section 114).

Authorities have to make an FMO where an IMO is ending and the house is licensable but a licence cannot be granted.

When an FMO is in force, the authority has to take steps to secure the proper management of the house through the management scheme. The authority must review the order and scheme from time to time (section 115). Section 119 provides that an FMO must contain a management scheme and sets out what *must* and what *may* be included in the scheme, such as financial arrangements between the landlord and the authority, and a description of how the authority intends to manage the house. Landlords have a right of appeal against anything in a management scheme (Schedule 6).

It is possible to vary (section 121) or revoke (section 122) FMOs in certain circumstances. As with IMOs, occupiers of a property subject to an FMO retain the legal status they had before the order was made (Section 124).

Section 125 sets out the effect of a management order on existing agreements between the immediate landlord and the suppliers of services or facilities to the dwelling. Section 129 provides for the financial arrangements on the termination of a FMO, such as how any surplus rent should be dealt with.

Local authorities have power to enter a house subject to an IMO or FMO for certain purposes, e.g. to carry out works. It is an offence for an occupier, having received notice, to obstruct the authority in entering the property for these purposes (subject to a fine of up to £5,000) (section 131).

3. Controlling conditions in non-licensable HMOs

Local authorities have various powers available to them to control conditions in properties that are defined as HMOs but which are not required to be licensed. These powers are described in the following sections.

3.1 Converted blocks of flats (section 257 HMOs)

Separate and specific regulations to govern conditions in these HMOs came into force on 1 October 2007.[42]

3.2 The Management Regulations

The *Management of Houses in Multiple Occupation (England) Regulations 2006* (SI 2006/372) apply to all HMOs[43] and are the means through which poor day to day management is tackled. The regulations impose certain duties on managers and occupiers of HMOs; broadly these duties include a requirement that:

The manager:

- provides his or her contact details to the occupiers;
- keeps means of escape from fire free from obstruction and in repair and maintains firefighting equipment and alarms;
- takes reasonable measures to ensure that the occupiers of the HMO are not injured on account of its design and structural condition;
- ensures there is adequate drainage from the HMO and an adequate water supply and such supply is not unreasonably interrupted;
- supplies annual gas safety certificates (if gas is supplied) to the council when requested, carries out safety checks on electrical installations every five years and ensures the supply of gas (if any) and electricity is not unreasonably interrupted;
- keeps in repair (including decorative repair) and good order the common parts (including any fixtures and fittings within it);
- maintains any shared garden and keeps in repair any structures belonging to the HMO;
- keeps in repair the occupiers' living accommodation within the HMO, including fixtures and fittings; and

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42 *The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007* (SI 2007/1903) and *The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007* (SI 2007/3229 (W.281)

43 Other than converted blocks of flats to which section 257 of the Housing Act 2004 applies.

- provides suitable facilities for the disposal of rubbish.

The occupiers:

- do nothing to hinder or prevent the manager from carrying out his or her duties under the regulations;
- take reasonable care not to damage anything for which the manager has a duty to repair, maintain, keep in good order or supply under the regulations;
- dispose of rubbish in accordance with the arrangements made by the manager; and
- comply with all reasonable instructions from the manager relating to fire safety.

The 'manager' in these Regulations includes the landlord or a person responsible for the management of the HMO. Failure to comply with the Regulations without reasonable excuse can result in the manager or occupier being prosecuted and liable to a fine of up to £5,000. Since 6 April 2017 a breach could lead to a local authority in England imposing a civil penalty of up to £30,000.

In Wales the relevant Regulations are *The Management of Houses in Multiple Occupation (Wales) Regulations 2006* (SI 2006/1713 (W.175)). Currently, enforcement in respect of breaches of HMO Management Regulations in Wales is limited to prosecution.[44]

3.3 Additional (discretionary) HMO licensing

Local housing authorities have the power to introduce an additional licensing scheme that may apply to non-licensable HMOs in the local authority area or any part of it.[45] Such schemes may apply to any category of HMOs as the authority considers appropriate. Before introducing such a scheme authorities have to be satisfied that a significant proportion of the HMOs meeting the category description within the designated area are being mismanaged to such an extent as to give rise, or be likely to give rise, to one or more particular problems, either for those occupying the HMOs, or for members of the public, e.g. anti-social behaviour.[46]

In reaching a decision over whether to introduce an additional licensing scheme, the authority must consult with those likely to be affected by it and must identify the extent to which those HMOs have been managed in accordance with any approved code of practice. The authority must ensure that the making of a scheme is consistent with its overall housing strategy and consider whether there is any other course of action available. Initially, the consent of the Secretary of State was required before an additional scheme could be established (see below).

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44 Welsh Government, *Houses in Multiple Occupation: Practice Guidance*, 31 March 2017

45 Sections 56 to 60 of the Housing Act 2004.

46 DCLG, Approval Steps for Additional and Selective Licensing Designations in England guidance document published in November 2006 (revised in October 2008 and February 2010 – now archived)

The schemes remain in force for a maximum of five years and must be kept under review.

On 27 January 2010 the Labour Government announced a consultation exercise on the issuing of a general consent to cover discretionary licensing schemes:

> The Minister also published plans for councils, giving them extra flexibility to license landlords, requiring safe and quality rented accommodation in neighbourhoods where large numbers of substandard properties can be a magnet for community problems.
>
> In a consultation published today, John Healey proposes to give a general consent for councils to introduce licensing schemes, without seeking permission from central Government, in hotspot areas where landlords do not maintain or manage their properties properly. A general consent would ensure that decisions on the quality of rented homes are made by those who are aware of the local issues and needs of the community. In the future, tenants will see improved standards and councils will be better able to deal with the worst landlords that drag down the neighbourhood.[47]

A key driver behind this proposal was the "wider Government commitment to ensure decisions on local matters were made as close to the people affected by them as possible." Full information can be found in the consultation paper General consents for licensing schemes under Parts 2 and 3 of the Housing Act 2004. This consultation closed on 12 March 2010. DCLG published a summary of responses on 1 April 2010.

Following the consultation, the 2010 Coalition Government published a general consent which is applicable to all local housing authorities in England. Before using the consent to impose additional licensing requirements, authorities are required to take all reasonable steps to consult persons likely to be affected; the consultation period must run for a minimum of 10 weeks.[48]

3.4 Interim/Final Management Orders

In certain limited circumstances authorities can take enforcement action against properties that are not licensable.

Authorities can apply to a First-Tier Tribunal (FTT) (Property Chamber) in England for special interim management orders in respect of HMOs, or other houses that are not licensable, if they consider that there is a risk to the health, safety or welfare of the occupiers of the HMO or other persons within the vicinity. Section 103 of the 2004 Act sets out the conditions the FTT must have regard to in granting a special IMO. On the expiry of the IMO, the authority concerned must make a decision as to whether any further action is necessary. Authorities have the power to make a final management order (Section 113) where appropriate. Authorities will not normally revoke an order unless satisfied that the

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47 DCLG Press Notice, 27 January 2010

48 2004 Act, ss.56(3)(a) and 80(9)(a); *The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015*, para.5.

circumstances that led to it being made have been resolved and are unlikely to reoccur.

3.5 Overcrowding notices

Section 139 of the 2004 Act enables an authority to serve an overcrowding notice in respect of HMOs that are not licensable or subject to an IMO or FMO. Overcrowding in larger HMOs is covered in Part 2 of the Act, since a licence only permits a house to be licensed for a specified number of occupants.

It is only possible to serve an overcrowding notice if it is considered, having regard to the number of available rooms, that there are, or are likely to be, an excessive number of occupants in the house. Section 140 provides for the content of an overcrowding notice. It must state the maximum number of persons who may occupy each room, or specify that a room is not suitable for occupation. Section 141 requires the relevant person not to allow a room to be occupied as sleeping accommodation other than in accordance with the notice. Section 142 prevents overcrowding being created by new residents. Landlords may appeal against an overcrowding notice within 21 days of service. It is possible, on application by the relevant person, to revoke or vary an overcrowding notice.

Currently, contravention of an overcrowding notice is punishable with a fine of up to £2,500. Section 127 of the *Housing and Planning Act 2016* removed that cap so that anyone who contravenes an overcrowding notice in England will be subject to an unlimited fine. This will bring unlicensed HMOs in line with the penalty that applies in the case of overcrowding of licensed properties. As at 20 September 2019 this provision was not in force. As an alternative to prosecution, since 6 April 2017 local authorities in England can impose a civil penalty of up to £30,000 for failing to comply with an overcrowding notice.

3.6 Housing Health and Safety Rating System (HHSRS)

The HHSRS, contained in Part 1 of the 2004 Act, replaced the old housing fitness standard with effect from 6 April 2006. The HHSRS is not a pass or fail test, it is concerned with avoiding or, at the very least, minimising potential *hazards*.

When environmental health officers inspect a dwelling they look for any risk of *harm* to an actual or potential occupier of a dwelling, which results from any *deficiency* that can give rise to a hazard.[49] They judge the severity of the risk by thinking about the *likelihood* of an occurrence that could cause harm over the next twelve months, and the range of harms that could result. The officers make these judgements by reference to those who, mostly based on age, would be most vulnerable

[49] An example of the cause of a hazard could be a badly maintained ceiling – the hazards that this deficiency could result in include excess cold, increased risk of the spread of fire and noise.

to the hazard, even if people in these age groups are not actually living in the property at the time.

The HHSRS score is calculated following an inspection. Officers use the formal scoring system within HHSRS to demonstrate the seriousness of hazards that can cause harm in dwellings. The scoring system for hazards is prescribed by the *Housing Health and Safety Rating System (England) Regulations 2005* (SI 2005/3208). If there are risks to the health or safety of occupants that the officer thinks should be tackled they have various powers at their disposal to achieve this.[50] If the officer finds a serious hazard (i.e. one in the higher scoring bands A – C, referred to as Category 1 hazards) the local authority is **required** to take one of the courses of action outlined in the enforcement guidance, e.g. service of an Improvement Notice on the owner of the premises. Category 2 hazards (i.e. those in scoring bands D - J) are those that are judged to be less serious. Authorities can still act to tackle these hazards where it is believed necessary.

Following a scoping review of the HHSRS, the Government announced on 11 July 2019 that it will take forward work to "make the system easier to understand for landlords and tenants, correct the disconnect between the HHSRS and other legislative standards, and facilitate the effective enforcement of housing standards by local authorities".

More information on the HHSRS can be found in Commons Library briefing paper: The Housing Health and Safety Rating System (HHSRS).

[50] For example: service of an improvement notice, prohibition order, hazard awareness notice, demolition order or clearance action.

4. Additional registration and licensing requirements in Wales

Part 2 of the *Housing Act 2004*, which governs mandatory licensing of large HMOs and additional (discretionary) licensing, also applies in Wales. There are some differences in Wales, for example, a designation for additional licensing does not need the Welsh Government's approval. Also, the additional enforcement measures introduced by the *Housing and Planning Act 2016*, such as Civil Penalties, do not apply in Wales.

The Housing (Wales) Act 2014 introduced new requirements with a view to improving management standards across the private rented sector. The registration of all private sector landlords was launched in November 2015, landlords had a year to comply with the new requirements before enforcement action could be taken. In addition, landlords and agents who carry out certain activities are required to obtain a licence in order to operate.

The provisions in the 2014 Act are additional and have not replaced the requirements in relation to HMOs set out in the 2004 Act:

> **I have a licensed House in Multiple Occupation in Wales; do I have to be registered and licensed with Rent Smart Wales?**
>
> Yes, the requirements of the Housing (Wales) Act 2014 are in addition to the licensing requirements for Houses in Multiple Occupation (HMO) in the Housing Act 2004. This new legislation in Wales does not repeal the Housing Act 2004; both are in place you must comply with both.
>
> The landlord of a licensed House in Multiple Occupation must register with Rent Smart Wales. As part of the registration process, the address of the House in Multiple Occupation must be declared, as well as any other rental properties in Wales for which the person is the landlord. Against each rental property the landlord must declare who is responsible for letting and managing the property.
>
> Whoever does the letting and management at the rental property must be licensed. This could be the landlord, the agent or both (if there is a split of responsibilities for letting and management). Licensing under Rent Smart Wales does not follow the same model as HMO licensing as a licence is not granted in relation to a specific rental property in Wales. A landlord or agent only needs to obtain one licence to cover them for any property in Wales.[51]

[51] Rent Smart Wales FAQs, [accessed on 6 September 2019]

5. Reforming HMO regulation (England)

In November 2015 the Conservative Government published Extending mandatory licensing of Houses in Multiple Occupation (HMOs) and related reforms: a technical discussion document in which it set out options for extending the requirement for an HMO licence, proposals to introduce national minimum room size standards, and proposals to streamline the process for licence applications. The stated rationale for further intervention was:

> …to make it easier for local authorities to raise standards in smaller HMOs where there is a need for improvement and identify the rogues who currently operate below the radar, letting out substandard and sometimes dangerous accommodation, whilst housing vulnerable people and sometimes illegal immigrants.[52]

The Government response to this process was published in October 2016: Extending mandatory licensing of houses in multiple occupation: a government response document. The response noted the "strong support" expressed for the extension of mandatory licensing from all respondents and said that the Government would:

- 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.[53]

No further action was proposed on the application process:

> 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.[54]

A further consultation paper was published alongside the Government response: Houses in multiple occupation and residential property licensing reforms. This paper sought views on the Government's detailed proposals for:

- the mandatory licensing of houses in multiple occupation;
- the assumptions made in its associated impact assessment;
- national room sizes;

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52 DCLG, Extending mandatory licensing of Houses in Multiple Occupation (HMOs) and related reforms: a technical discussion document, November 2015, para 15

53 DCLG, Extending mandatory licensing of houses in multiple occupation: a government response document, October 2016, p20

54 Ibid., p17

- the fit and proper person test;
- refuse disposal facilities; and
- purpose built student accommodation.[55]

The consultation closed in December 2016. The Government's consultation response, published on 28 December 2017, confirmed that the Government **would**:

- extend the scope of mandatory HMO licensing;
- introduce mandatory conditions in licences to regulate the size and use of rooms as sleeping accommodation in licensed HMOs; and
- introduce a mandatory condition in HMO licences requiring the licence holder to comply with their local authority domestic refuse scheme.[56]

These measures are discussed in more detail below.

The consultation response also confirmed that the Government:

- **would not** introduce legislation to mandate criminal record certificates to be provided in connection with applications for HMO licences, on the basis that local authorities already had discretion to do this should they so choose; and
- **would not** require local authorities to provide discounts for licences issued to certain private providers of purpose built student accommodation (as discussed in section 1.2 above).[57]

5.1 Extending the scope of mandatory HMO licensing

The Government's 2017 consultation response confirmed that the Government would extend the scope of mandatory licensing to bring smaller HMOs within the scheme.[58] It estimated that this would bring an additional 177,000 HMOs in England into the mandatory licensing regime.[59]

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (SI 2018/221) extended the scope of section 55(2)(a) of the *Housing Act 2004* **from 1 October 2018** so that mandatory HMO licensing applies to:

- HMOs with five or more occupiers living in two or more households regardless of the number of storeys. (i.e. the HMO

55 DCLG, Houses in Multiple Occupation and residential property licensing reforms: A consultation paper, 18 October 2016
56 DCLG, Houses in Multiple Occupation and residential property licensing reforms Government response, 28 December 2017
57 Ibid.
58 DCLG, Houses in Multiple Occupation and residential property licensing reforms Government response, 28 December 2017
59 Explanatory Memorandum to the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (S.I. 2018/221), Para 7.4

occupation requirement remains the same but the storey requirement is removed from the definition).

- This includes any HMO which is a building or a converted flat where such householders share or lack basic amenities such as toilet, personal washing facilities or cooking facilities.
- It also applies to purpose built flats where there are up to two flats in the block and one or both of the flats are occupied by five or more persons in two or more households. (This brings certain flats above shops on high streets within mandatory licensing as well as small blocks of flats which are not connected to commercial premises).

5.2 Minimum room sizes and waste disposal conditions

The Government's 2017 consultation response also confirmed that the Government would introduce new mandatory HMO licence conditions.[60]

Section 67(3) and Schedule 4 of the *Housing Act 2004* set out the mandatory conditions that local housing authorities must apply to HMO licences.[61] *The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018* (SI 2018/616) amended Schedule 4 of the 2004 Act to introduce new additional HMO licence conditions to apply **from 1 October 2018**, namely:

- **Minimum room sizes which may be occupied as sleeping accommodation in a HMO**. This condition is intended to reduce overcrowding in smaller HMOs; and
- **Compliance with the local authority's storage and waste disposal scheme (if one exists).** This condition requires the licence holder to comply with any scheme or directions issued by the local authority prescribing the number and use of receptacles for the storage and disposal of domestic waste generated from the HMO. It is intended to address the problems that can arise from inadequate waste disposal facilities at HMOs, such as rubbish accumulation and pest infestation.

Implementation

The extended mandatory licensing regime and new licence conditions came into force on 1 October 2018.

Both the Prescribed Description Order 2018 and the Mandatory Conditions of Licences Regulations 2018 included transitional provisions to enable a smooth transition to the new HMO regime. In particular, landlords who already had a licence under additional or selective licensing schemes were not required to apply for a mandatory licence until their existing licence expired.

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60 DCLG, Houses in Multiple Occupation and residential property licensing reforms Government response, 28 December 2017

61 Schedule 4 conditions apply to all licensed HMOs, under both mandatory and additional schemes.

The Government published additional guidance to local authorities on the extended mandatory licensing regime: Houses in Multiple Occupation and residential property licensing reform (June 2018).

6. High concentrations of HMOs

6.1 England

The question of whether planning controls can play a role in controlling the growth of HMOs in certain areas has been raised on several occasions:

> **Mr. Ellwood:** To ask the Secretary of State for Communities and Local Government what powers local authorities have in relation to the development of houses in multiple occupation in areas identified as tourist destinations.
>
> **Mr. Iain Wright:** There are no planning powers conferred on local authorities specifically in relation to the development of houses in multiple occupation in areas identified as tourist destinations. But local authorities may make use of their general planning powers in such areas.
>
> The Town and Country Planning (Use Classes) Order 1987 (as amended) is intended to be a deregulatory mechanism which removes the need for planning permission between certain specified uses by grouping into classes land uses which have similar implications for local amenity. The Use Classes Order defines dwelling houses under the C3 use class as houses used by a single person, any number of persons living together as a family, or by no more than six people living together as a single household.
>
> HMOs do not fall within any of the specified use classes, and therefore are "sui generis" (in a class of its own) in terms of use. Planning permission is needed for a change of use to or from a sui generis use. Therefore, planning permission would be needed for a proposed change of use from a private dwelling to a HMO, or if such is deemed to have occurred.
>
> The current definition of a dwelling house implies that up to six people living together as a single household should not, prima facie, be considered as a HMO. However local planning authorities may determine individual cases on the basis of "fact and degree" and may decide that a dwelling with fewer than six people living together other than as a single household constitutes a HMO.
>
> In addition, local authorities have powers under the Housing Act 2004 to licence certain HMOs. These measures concern the condition and management of these properties and, again, are not specifically related to areas identified as tourist destinations.[62]

In September 2008, DCLG published *Evidence Gathering - Housing in Multiple Occupation and possible planning responses* which reviewed the problems caused by high concentrations of HMOs in certain areas, a

[62] HC Deb 23 March 2009 cc72-3W

phenomenon sometimes referred to as 'studentification'. Announcing the report, Caroline Flint, then Minister for Housing and Planning, said:

> It is not acceptable that current rental practices allow unplanned student enclaves to evolve to such an extent that local communities are left living as ghost towns following the summer student exodus.
>
> Today's report has identified a series of proven steps councils and universities can take to reduce the dramatic effects of 'studentification' where Houses of Multiple Occupation (HMOs) cluster too closely together.
>
> I also want to consider further how the planning proposals might help councils change term time only towns into properly planned towns that blend the student populations into well mixed neighbourhoods that are alive all year round.[63]

Subsequently, in May 2009 DCLG published a consultation document, *Houses in multiple occupation and possible planning responses.* In this document DCLG sought views on three options for addressing the impact of high concentrations of HMOs:

- Option one is a non-legislative option which would involve local management solutions.
- Option two would involve amendments to the Use Classes Order to allow tighter planning controls over HMOs.
- Option three would involve the use of an article 4 direction to remove powers for properties to convert to HMOs.[64]

The consultation period closed on 7 August 2009 and the Labour Government announced its intention to amend the *Town and Country Planning (Use Classes) Order 1987* on 27 January 2010:

> In the light of the responses to this consultation I have decided to amend the Town and Country Planning (Use Classes) Order 1987, as amended, to provide for a specific definition of an HMO. Planning permission will then be required, where a material change of use occurs, to change the use of a property from C3 dwelling house to an HMO.
>
> At the same time as amending the Use Classes Order, I will amend the Town and Country Planning (General Permitted Development) Order 1995, as amended, to provide that a change from an HMO back to the C3 class dwelling house will not require planning permission.
>
> The consultation responses and research work have indicated that good practice alone cannot solve the problems encountered in a number of communities. This measure is strongly supported by responses to the consultation and it will enable local planning authorities to identify new HMOs with more certainty and act in particular neighbourhoods where there is concern about the mix and balance of communities and concerns about standards of conversion and maintenance of properties, to improve community balance.

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63 DCLG Press Release, *New report tackles neighbourhood studentification problem*, 26 September 2008

64 DCLG, *Houses in multiple occupation and possible planning responses,* 13 May 2009

> I intend to introduce the necessary secondary legislation in time for it to come into force on 6 April 2010.[65]

A summary of responses to the consultation process was also published on 27 January 2010.[66] Landlord associations expressed their opposition to amendments to the Use Classes Order.

On 17 June 2010 the new Housing Minister, Grant Shapps, announced the Government's intention to further amend the planning rules in regard to HMOs which had come into force on 6 April. The Government proposed to amend the HMO rules to allow changes of use between family houses and small, shared houses to take place freely without the need for planning applications. However, in those areas experiencing problems with uncontrolled HMO development, local authorities would be able to use their existing direction making powers to restrict change of use by requiring planning applications. Regulations brought these changes into effect on 1 October 2010 and DCLG published guidance in November 2010, Circular 08/10: Changes to Planning Regulations for Dwelling Houses and Houses in Multiple Occupation.

The House of Commons Library briefing paper: Houses in multiple occupation & planning restrictions (July 2017) provides further information.

6.2 Wales

The Welsh Government published research into the extent of concentrations of HMOs in Wales in April 2015.[67] The study found a relatively low incidence of concentrations of HMOs in Wales, although "substantial concentrations" were found in the four cities and towns with long established universities (Cardiff, Swansea, Aberystwyth and Bangor).

The study found that areas with high HMO concentrations in Wales had tended to introduce additional licensing schemes:

> Additional licensing schemes have commonly been introduced in authorities with significant HMO concentrations. All of the focus authorities have introduced additional licensing, generally in the specific localities with high HMO concentrations, but in Gwynedd and Wrexham this has been done across the whole authority area. Swansea, Ceredigion and Rhondda Cynon Taff have renewed their additional licensing schemes and Cardiff are considering whether to do so. With the English authorities included in the study, not all had introduced additional licensing, generally citing the detailed evidence gathering and consultation process as a reason for not doing so.[68]

The report made several recommendations for changes to enable local authorities to manage the development of HMOs in Wales. Subsequently, it was announced that planning authorities would be allowed to require planning consent for new HMOs, and to consider the

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65 HC Deb 27 January 2010 c55WS
66 DCLG, *Houses in multiple occupation and possible planning responses: summary of responses*, January 2010
67 Houses in Multiple Occupation Review, April 2015
68 Ibid.

effects such dwellings might have on local areas, before deciding whether to approve planning permission or refuse it. The changes came into effect on 25 February 2016.[69]

> As in England, Wales will now have a C4 planning use classification of HMO: "tenanted living occupation by 3 to 6 people, who are not related and who share one or more basic amenities, as their only or main residence." Before this, in Wales the C3 planning use classification applied to all dwelling houses up to and including six tenants. Landlords with seven or more tenants would have to apply for planning permission as an "HMO sui generis" ("of its own class") depending on the living arrangements of the seven tenants, i.e., if they are single household or not.
>
> Local Authorities will now be able to require landlords to obtain planning permission in order to convert their properties from a C3 (single household/ not more than 6 residents living as a single household) to a C4 (not more than 6 residents living as an HMO) property. Essentially, all properties with 3 to 6 (unrelated) tenants would require a change of use application to be made, at the recently increased fee of £380 with no guarantee of approval.
>
> The new law will also align the definition of HMO with the definition set forth in Section 254 of the Housing Act 2004, but not including a converted block of flats to which Section 257 applies.
>
> Lastly, the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2016 also comes into effect on February 25th, which will grant permitted development rights to allow a change of use so that buildings used as small scale HMOs (C4) shared by three to six people may subsequently be used as dwelling houses (C3) without requiring planning permission.[70]

The Welsh Government's Houses in Multiple Occupation: Practice Guidance (31 March 2017) outlines the legal framework and promotes good practice on dealing with problems in areas with high concentrations of HMOs in Wales.

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69 Welsh Government Press Release, 22 February 2016
70 RLA, New HMO rules effective in February, 22 February 2016

7. Impact and ongoing issues

There were an estimated 497,000 HMOs in England and Wales at the end of March 2018, of which 48,400 (10%) had HMO licenses. (nb. this data was collected before the extension of HMO mandatory licensing in England).

MHCLG asks local authorities to estimate the number of HMOs in their area, as well as the number that are likely to be subject to mandatory licensing. Based on these estimates, there were approximately 477,700 HMOs in England at the end of March 2018. Of these, around 68,500 (14%) were thought to be subject to mandatory licensing requirements. Local authorities also reported that around 45,600 properties had mandatory HMO licenses at the end of March 2018 – around two-thirds of the estimated number of licensable HMOs. [71]

Around 2,800 properties in Wales had mandatory HMO licenses at the end of March 2018. [72] Welsh local authorities estimated that there were around 19,300 HMOs in Wales on that date, but an estimate of the number that were subject to mandatory licensing is not published. [73]

Mandatory licensing has not attracted universal support across the private rented sector. Issues have been raised around the fact that it is primarily a reactive, rather than proactive, approach. Good landlords will seek a licence to operate while 'rogue' landlords will not. It is argued that authorities should focus resources on identifying rogue landlords. The Government has pointed to measures in the *Housing and Planning Act 2016* which enable authorities to access information on licensable HMOs through information held by the Tenancy Deposit Schemes.[74] So, for example, where multiple deposits are registered against a single address which does not hold an HMO licence, a local housing authority will be able to investigate the property to identify whether any action needs to be taken under Part 2 of the *Housing Act 2004*.

The Communities and Local Government Select Committee report The Supply of Rented Housing (May 2008) highlighted issues with the implementation of HMO licensing:

> The private sector expressed significant concern over the implementation of HMO licensing. The main issue was the variation in approaches to implementation taken by different local authorities; the differences between the fee charged for the licences by different local authorities was also raised, as was the concern that local authorities were targeting the "easy" cases

71 MHCLG, Local authority housing statistics data returns for 2017-18, Table F (January 2019)
72 StatsWales, Dwellings licensed by local authority area and license type
73 StatsWales, Houses in multiple occupation by local authority area
74 Written Question 840, 5 July 2017. Section 128 of the Housing and Planning Act 2016 enables a local housing authority in England to obtain specified information held by tenancy deposit scheme administrators in order to carry out its functions under Parts 1 to 4 of the Housing Act 2004.

> rather than tackling the bad landlords who were more difficult to deal with.[75]

In contrast, Shelter told the Committee "Environmental Health Officers spend less time tracking down HMOs and more time taking action to improve their conditions and management."[76]

DCLG commissioned research from the Building Research Establishment (BRE) on the impact of the licensing regime. The first part of this study (published in August 2007) established a baseline position on what authorities were doing in relation to HMOs, their key problem areas, and their plans and expectations about the licensing arrangements. The study found that most authorities were disappointed that mandatory licensing was to be restricted to larger HMOs and that, at that time, 17% of authorities were considering applying for additional licensing powers to cover HMOs falling outside the mandatory definition – with an even higher proportion in London.[77]

The Labour Government commissioned a review of the wider private rented sector which was carried out by Julie Rugg and David Rhodes at the University of York – their report, The Private Rented Sector: its contribution and potential, was published at the end of October 2008. The report included the following comment on HMO regulations:

> Generally speaking, local authorities retain the principal responsibility for policing the private rented sector, but there is general consensus that their activities tend not to target the worst landlord activity. Indeed, some commentators have concluded that the new HMO regulations have created a context in which Environmental Health Officers (EHOs) have become overly absorbed by the processing of house in multiple occupation (HMO) licenses that have been submitted by landlords who are largely compliant.[78]

The Labour Government published its response to the Rugg review in May 2009[79] in which it set out an intention to introduce a national register of private sector landlords. This was not taken forward by the incoming Coalition Government, but the 2017 Conservative Government has committed to the regulation of all letting and property agents and to requiring all private landlords to be members of a redress scheme.

The second part of the BRE research was published on 27 January 2010 alongside draft guidance for authorities on licensing provisions:

> I am publishing today also the second part of research undertaken by the Building Research Establishment for the Department in 2008 into the implementation of HMO licensing following the 2004 Housing Act. This shows emerging evidence of improvements to the condition and management of properties as a direct result of HMO licensing, although it also indicates that

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75 HC 457-1, April 2008, para 184
76 Ibid., para 183
77 DCLG, *Evaluating the impact of houses in multiple occupation and selective licensing: The baseline before licensing in April 2006*, August 2007
78 Rugg & Rhodes, *The Private Rented Sector: its contribution and potential*, October 2008, p62
79 DCLG, *Government response to the Rugg Review*, May 2009

> local authorities have still to complete the task of licensing all HMOs subject to mandatory licensing. I am therefore reviewing the support available to local authorities in relation to regulation of the private rented sector, including publishing draft guidance on licensing provisions, and will put in place any changes before the commencement of the new powers I am announcing today. This work is part of our programme of reform and support for the private rented sector. We consulted last summer on a comprehensive package of proposals aimed at improving quality and professionalism in the sector and ensuring the best possible deal for tenants.[80]

Detailed information on the impact of the HMO licensing regime can be found in the BRE report, *Evaluation of the impact of HMO licensing and selective licensing.*

The Communities and Local Government Select Committee again considered standards in HMOs as part of its inquiry into The Private Rented Sector over 2013-14. As with the 2008 inquiry, the Committee received evidence suggesting that the definition of prescribed HMOs was too narrow. For example, Newcastle Council argued for licensing for "all classes and sizes of HMOs in line with the scheme operational in Scotland."[81] **The National Landlords Association (NLA) and others called for a review of the effectiveness of mandatory licensing** – the NLA referred to "a growing awareness that there has been very little review or assessment of the effectiveness of mandatory licensing since its implementation."[82] Persuaded by these arguments, the Committee concluded that the Government should conduct a review of mandatory licensing of HMOs to take account of its effectiveness, enforcement measures and whether the definition of a prescribed HMO should be modified.[83]

The Coalition Government rejected calls for a review:

> Mandatory licensing of larger housing in Multiple Occupation was introduced by the Housing Act 2004. It applies to properties with three or more storeys and used to house five or more individuals from two or more households. This requirement was introduced to reflect the inherent risks to occupiers in larger properties (for example, the higher risk of fire) and the impact they have on the local area. Government takes the view that this is a sensible and proportionate approach. Therefore we have no plans to change the current definition of a prescribed house of multiple occupation.[84]

The Government's response to it consultation on Extending mandatory licensing of houses in multiple occupation (October 2016) **highlighted the positive impact that licensing large HMOs has had on improving management and safety conditions in those properties,** in particular:

> …it helped tackle overcrowding, poor property management and the housing of illegal migrants. Partly as a result of these

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80 HC Deb 27 January 2010 c56WS
81 HC 50, First Report of 2013-14, The Private Rented Sector, 18 July 2013, para 57
82 Ibid para 57
83 Ibid para 58
84 Cm 8730, October 2013, recommendation 15

> 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.[85]

The scope of mandatory licensing in England was subsequently extended to include smaller HMOs from October 2018. It is too early to evaluate the effectiveness of this policy. However, the Government is required to carry out a regulatory review and publish a report of its conclusions by 6 April 2023.[86]

In 2018 the Housing, Communities and Local Government Committee conducted a follow-up inquiry into the private rented sector. The Committee report, published on 19 April 2018, did not identify any specific HMO licensing issues, **but did highlight local authority enforcement as a key issue:**

> We recognise that enforcement activity undertaken by local authorities is often informal in nature and not fully reflected in prosecution statistics. Nevertheless, the evidence is clear that enforcement levels—formal or otherwise—are far too low in the vast majority of local authorities. This strongly suggests that vulnerable tenants are being left without the protection to which they are legally entitled. The Government has introduced a range of new powers for local authorities to intervene in the private rented sector to address low standards. However, these powers are meaningless if local authorities do not, or cannot, enforce them in practice.[87]

The Committee identified three reasons for low levels of enforcement activity by local authorities: patchy and complicated legislation; insufficient resources; and a lack of political will to address low standards in the sector. The Committee made a number of recommendations for how enforcement rates might be improved.

The Government's response welcomed the Committee's recommendations around enforcement and outlined measures it was taking to support local authority enforcement activity:

> The report notes the underpinning role of local authorities in enforcement. We are considering carefully how to best support them in carrying out their enforcement activity on both a formal and informal basis. This includes:
>
> - Reviewing whether they have access to effective tools to carry out local enforcement action. As part of this, we will be reviewing selective licensing, as recommended by the Committee.
> - Supporting authorities to work together, to collaborate and to share best practice. During the course of the summer,

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85 DCLG, Extending mandatory licensing of houses in multiple occupation: a government response document. October 2016

86 *The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018* (SI 2018/221)

87 House of Commons Housing, Communities and Local Government Committee, *Private Rented Sector, Fourth Report of Session 2017–19*, HC 440, 19 April 2019, para 84

> we will be running a series of collaborative events for authorities focused upon the PRS.
>
> - Considering recommendations around financial support, including options for funding informal enforcement activity.[88]

Julie Rugg and David Rhodes conducted follow-up research into the private rented sector which was published in September 2018: The Evolving Private Rented Sector – Its Contribution and Potential.[89] **They identified improvements that could be made to the various licensing regimes to shift the burden of reporting poor conditions from tenants:**

> Existing regulation around mandatory, additional and selective licensing should be replaced by simpler regulation: all property used as a HMO should be registered as such with the local authority, on payment of a small fee set nationally. These properties would remain subject to 'MoT' requirements, suitably amended for shared property. Registering the property as a HMO would allow local authorities to monitor broader neighbourhood and planning impacts that travel beyond issues relating to internal property quality.
>
> These suggestions remove the burden of property oversight from local authorities and from tenants, and create a more neutral environment for judging property condition.[90]

Rugg and Rhodes highlighted issues with the definition of an HMO which would not, they said, encompass some properties in the worst condition. The extension to smaller properties from October 2018 will have helped with this but they note that "exceptions still apply, which means it is possible for some problematic shared properties evade scrutiny".[91]

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88 MHCLG, *Government response to the Housing, Communities and Local Government Select Committee Report: Private rented sector*, Cm 9639, July 2018, para 56

89 Rugg J; Rhodes D: The Evolving Private Rented Sector – Its Contribution and Potential, Centre for Housing Policy at the University of York, September 2018

90 Ibid., 14

91 Ibid., p100

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