Selective licensing of private rented housing in England and Wales

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Summary

Sections 79, 80 and 81 of the Housing Act 2004 provided for the introduction of a scheme of selective licensing of private landlords in a local housing authority’s area. The provisions came into force in April 2006 and apply in England and Wales.

The power for authorities to introduce selective licensing was intended to address the impact of poor-quality private landlords and anti-social tenants. It was primarily developed with the need to tackle problems in areas of low housing demand in mind – although the Act also allows for selective licensing in some other circumstances. Many of the provisions relating to selective licensing are similar to those that apply to the mandatory and discretionary licensing of Houses in Multiple Occupation (HMOs), regimes also introduced by the 2004 Act.

Following the issue of a General Consent in March 2010 by the Secretary of State, local authorities in England did not have to seek approval for the introduction of a selective licensing scheme provided all necessary conditions were complied with. However, in March 2015 the Coalition Government introduced amendments. Since 1 April 2015 local authorities have had to seek confirmation from the Secretary of State for any selective licensing scheme covering more than 20% of their geographical area or affecting more than 20% of privately rented homes in the local authority area. These requirements do not apply in Wales. Local authorities argue that the requirement for approval is contrary to the spirit of localism. In contrast, landlord bodies welcomed the change.

In an area subject to selective licensing, all private landlords must obtain a licence. If they fail to do so, or fail to achieve acceptable management standards, the authority can take enforcement action. The London Borough of Newham introduced a selective licensing scheme covering all private rented properties in the borough in January 2013 – a number of authorities followed suit before the changes introduced in April 2015 came into effect. Selective licensing was slow to take-off after 2006 but an increasing number of authorities now operate schemes. This interest appears to be linked to the growth of the private rented sector – it is now the second largest tenure in England.

Two Select Committee inquiries into the private rented sector over 2012-13 and 2017-18 recommended a reformed approach to selective licensing. Julia Rugg and David Rhodes of the Centre for Housing Policy at the University of York published a follow-up to their 2008 review of the private rented sector in 2018, The Evolving Private Rented Sector: Its Contribution and Potential, in which they note that evidencing the impact of selective licensing remains “problematic”. On 20 June 2018, the Government announced an independent review of selective licensing to see how it is being used and to assess how well it is working. The final report is due in Spring 2019.

This paper explains the history and operation of selective licensing schemes for private rented properties since authorities acquired the power to introduce them in April 2006. Background information on the origins of the scheme can be found in Library Research Paper 04/02, The Housing Bill. Other relevant Library papers include: Anti-social behaviour in private housing and Houses in multiple occupation.
1. Selective licensing: the rationale

Section 80 of the Housing Act 2004 allows local authorities to apply for selective licensing of privately rented properties in areas experiencing low housing demand and/or suffering from anti-social behaviour. The main provisions in respect of selective licensing came into force in April 2006. The same Act also introduced a new licensing regime for Houses in Multiple Occupation (HMOs). The selective licensing provisions in the 2004 Act apply in Wales and England.

The explanatory notes to Part 3 of the Act make it clear that selective licensing was strongly linked to the then Government’s anti-social behaviour agenda – the notes provide some further background to the scheme:

Low house prices in areas of low demand have resulted in an influx of unprofessional landlords purchasing properties to rent. These people frequently show no interest in managing their properties properly, often letting to anti-social tenants who cause a range of problems. This, in turn, can create misery for the local community and cause further destabilisation of these areas.

Although these problems tend to be concentrated in areas of low housing demand, other districts also suffer from the activities of poor landlords and anti-social tenants. Accordingly this power will be available to LHAs [local housing authorities] to tackle problems of anti-social behaviour in areas that do not experience low housing demand.

The Act provides a discretionary power, subject to carrying out consultation and to the approval of the appropriate national authority, for LHAs to license all private landlords in a designated area with the intention of ensuring that a minimum standard of management is met. In order for a scheme to be approved, such a selective licensing scheme must be shown to be co-ordinated with an authority’s wider strategies to deal with anti-social behaviour and regeneration.1

As an article in the November/December 2005 edition of Adviser magazine noted, selective licensing extended anti-social behaviour policy initiatives beyond the usual domains:

Whereas the majority of measures available to tackle anti-social behaviour to date have been targeted at the police, local authorities and social landlords, this measure extends the reach of the fight against anti-social behaviour to the private rented sector in an attempt to tackle its bad landlords and tenants.2

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1 Explanatory note to Housing Act 2004, paras 26-28
2. The application process

2.1 Which areas can be subject to selective licensing?

Pre-April 2015 (England)

Initially, local housing authorities were able to designate their entire district, or an area within a district, for licensing subject to the proposed area meeting one or more of the following conditions:

- The area is one which is experiencing (or is likely to experience) low housing demand and the local housing authority is satisfied that ‘designating’ an area will, when combined with other measures, lead to improved social and economic conditions in the area.

- The area is experiencing a “significant and persistent” problem caused by anti-social behaviour and that some or all private landlords in that area are not taking appropriate action to tackle this. Moreover, the designation in combination with other measures would lead to a reduction in or elimination of the problem.3

Sub-section 80(4) of the Housing Act 2004 requires the authority to consider the following factors when judging if an area is “subject to low housing demand”:

- the value of residential premises in the area, in comparison to the value of similar premises in other areas which the authority consider to be comparable (whether in terms of types of housing, local amenities, availability of transport or otherwise);

- the turnover of occupiers of residential premises; and

- the number of residential premises which are available to buy or rent and the length of time for which they remain unoccupied.

Additional Department for Communities and Local Government (DCLG) guidance (now archived) suggested that an authority might also consider other factors, for example:

- A lack of mixed communities in terms of tenure, for example, a high proportion of rented property, low proportion of owner occupied properties.

- A lack of local facilities, for example, shops closing down.

- The impact of the rented sector on the local community, for example, poor property condition, anti-social behaviour etc.

- Criminal activity.4

The guidance acknowledged that it was more difficult to define an area likely to become one of low housing demand. In this case, the onus

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3 Section 80(9) of the Act also allows alternative ‘conditions’ – e.g., qualifying criteria – to be specified through Regulations
4 DCLG, Approval steps for Additional and Selective Licensing Designation in England, January 2008, p8 [now archived]
was on the authority to provide evidence of local trends contributing to the growth of low demand over a period of time.

When defining whether an area meets the second set of conditions relating to anti-social behaviour, the Act says the following criteria must be met:

- that the area is experiencing a significant and persistent problem caused by anti-social behaviour;
- that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and
- that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem.

There is no definition of anti-social behaviour in the Act (or related Regulations) but DCLG guidance (archived) suggested the following as examples of what may be taken into account:

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

Before making a decision to designate an area for selective licensing an authority had to consider whether there were alternative means of addressing the issues – for example, through the introduction of a voluntary accreditation scheme for landlords. It also had to ensure that any proposed licensing scheme fitted with its overall housing strategy and policies on homelessness and empty dwellings.

**Post-April 2015 (England)**

On 11 March 2015 the then Housing Minister, Brandon Lewis, wrote to all local authorities in England advising that, from 1 April, “local authorities will have to seek confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area.”

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6 Housing Minister letter to local authorities, 11 March 2015
New DCLG guidance was published on 27 March 2015: Selective licensing in the private rented sector: a guide for local authorities. This guidance provides advice for authorities on how to seek confirmation for proposed schemes above the 20% thresholds. All applications are considered on a case by case basis.

In addition to amendments to the General Approval,7 the Coalition Government expanded the criteria for selective licensing:

This is in response to concerns expressed by many local authorities who have suggested that the current criteria for selective licensing are too restrictive and do not give local authorities enough discretion to take account of local circumstances. It has, therefore, been decided to expand the criteria for selective licensing. Regulations have been laid before Parliament which will, subject to parliamentary approval, extend the criteria for selective licensing to cover areas experiencing poor property conditions, large amounts of inward migration, a high level of deprivation or high levels of crime. These changes will help ensure that local authorities have the right tools to help target enforcement action where it is most needed.8

The accompanying Explanatory Memorandum to the Selective Licensing of Housing (Additional Conditions) (England) (Order) 2015 (SI 2015/977)said:

This instrument specifies conditions which if a local authority considers are satisfied in relation to an area, the local authority is able to designate the area as subject to selective licensing. Such a designation would have the effect of requiring landlords of private rented sector properties in the designated area to obtain a licence for their property. The instrument sets out that for an area to be designated as subject to selective licensing, the area must contain a high proportion of properties in the private rented sector, in relation to the total housing accommodation in that area, and that these properties must be occupied under assured tenancies or licenses to occupy. Further, it requires that one or more of the four additional sets of conditions must be satisfied. These relate to poor property conditions, current or recent experience of large amounts of inward migration, areas which have a high level of deprivation, or areas which have high levels of crime. The conditions specified in this Order are in addition to the two sets of general conditions under which an area can already be designated as subject to selective licensing, as contained in section 80 of the Housing Act 2004 ("the 2004 Act").9

The Coalition Government set out an intention to review the operation of these conditions in 2017.10

Wales

In Wales, the National Assembly exercised its powers under the 2004 Act to stipulate (through Regulations) additional conditions for designating an area as subject to selective licensing. The Regulations allow local housing authorities in Wales to apply for selective licensing

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7 The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2015
8 Housing Minister letter to local authorities, 11 March 2015
9 Explanatory Memorandum to the Selective Licensing of Housing (Additional Conditions) (England) (Order) 2015, 2015 [emphasis added]
10 Ibid., para 12
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designation where: a district, or an area in that district, comprises a minimum of 25% of housing stock let by private sector landlords; or a local housing authority has provided assistance to any person in accordance with an adopted and published policy under articles 3 and 4 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 (power of local housing authorities to provide assistance); or a local housing authority has declared an area as a renewal area under section 89 of the Local Government and Housing Act 1989.11

The Housing (Wales) Act 2014 established mandatory landlord licensing in Wales. The scheme, known as Rent Smart Wales, launched on 23 November 2015 and landlords were given 12 months to comply. The deadline passed on 23 November 2016 so enforcement has now started. Landlords with a licence for a selective licensing scheme must also obtain a licence under RentSmart Wales. This means that in some cases, landlords in Wales require two licences.

2.2 Consultation
The 2004 Act requires authorities considering designating an area as subject to selective licensing to:

- take reasonable steps to consult persons who are likely to be affected by the designation, and,
- consider any representations made in accordance with the consultation.12

The archived DCLG guidance13 suggested that this consultation should include: local residents – for example, tenants, landlords and managing agents where appropriate; other members of the community who live or operate businesses or services in the proposed designated area; and local residents and businesses in the surrounding area who would be affected. A minimum consultation period of 10 weeks was required under the General Consent issued by the Secretary of State in March 2010.

In December 2014, the High Court quashed a selective licensing scheme which the London Borough of Enfield was planning to apply borough-wide. This decision was reached on the basis that Enfield had failed to consult for a sufficiently long period and had also failed to consult those outside the borough that were likely to be affected (e.g. neighbouring boroughs).14

2.3 Granting of designation and notification
Initially, local authority applications had to be approved by the ‘appropriate national authority’ – in England this is the Secretary of State, and in Wales, the National Assembly for Wales. The National

12 The Housing Act 2004 Section 80(1)(9)
13 DCLG, Approval steps for Additional and Selective Licensing Designation in England, January 2008, p12 [now archived]
14 R (Regas) v LB Enfield[2014] EWHC 4173 (Admin), December 2014
Assembly subsequently issued a General Consent so that Welsh authorities might establish selective licensing schemes provided they met the criteria set out by the Welsh Assembly Government.

The Act enables the Secretary of State to grant General Approvals to specific local housing authorities – these approvals would allow them to designate particular areas within their districts without having to seek approval in each case. The Labour Government said that it did not intend to exercise this power immediately as it wished to “take a view on the purposes for which authorities are using licensing.” However, on 27 January 2010 the then Government announced a consultation exercise on the issuing of a General Consent to cover discretionary and selective licensing schemes:

I can also announce the publication today of a short consultation on potential changes to the consent regime for discretionary licensing schemes under the Housing Act 2004. The licensing provisions under the Housing Act 2004 represent another local power available to local authorities in tackling problems associated with HMOs and other privately rented accommodation. I propose the introduction of a general consent, enabling local authorities to introduce discretionary licensing schemes without seeking approval from my Department. I believe it is right that these local decisions should be made by those who know their area best and who are directly accountable to local communities. The consultation will close on Friday 12 March, and any future general consent will come into effect from the common commencement date of 6 April 2010.

A key driver behind this proposal was the “wider Government commitment to ensure decisions on local matters are 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. Of the 87 responses received, both landlord and tenant organisations were opposed to the introduction of a General Consent and to linking it to the Comprehensive Performance Assessment (CPA) results, respondents also opposed use of its successor, Comprehensive Area Assessment (CAA), even though this had not been proposed.

A General Consent was issued on 30 March 2010 and came into effect on 1 April 2010 in England. It was not linked to either CPA or CAA results. Before using the Consent to impose additional licensing requirements authorities were required to take all reasonable steps to consult persons likely to be affected (2004 Act, ss.56(3)(a) and 80(9)(a); 2010 Order, para. 4). The consultation period had to run for a minimum of 10 weeks (2010 Order, para. 4).

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15 DCLG, Approval steps for Additional and Selective Licensing Designation in England, January 2008, p13 [now archived]
16 HC Deb 27 January 2010 c55WS
17 General consents for discretionary licensing schemes under Parts 2 and 3 of the Housing Act 2004: Consultation - Summary of responses, 1 April 2010
18 DCLG Press Release, 1 April 2010
19 The Housing Act 2004: Licensing of Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation (England) General Approval 2010
Post-April 2015 (England)

As explained earlier in this paper, the Coalition Government amended the General Approval so that, since 1 April 2015, local authorities have had to seek confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area (see pages 6-7). The policy rationale for this was set out in the Minister’s letter to local authorities:

Licensing can play an important role when it is strictly focused on discrete areas with specific problems. However, the blanket licensing approach adopted by some local authorities has major drawbacks. This is because it impacts on all landlords and places additional burdens on reputable landlords who are already fully compliant with their obligations, thereby creating additional unnecessary costs for reputable landlords which are generally passed on to tenants through higher rents. The vast majority of landlords provide a good service and the Government does not believe it is right to impose unnecessary additional costs on them, or their tenants. Such an approach is disproportionate and unfairly penalises good landlords.20

Pre-existing licensing schemes were not affected by this change – the policy change was not retrospective. The key date for deciding whether a council’s scheme was caught by the change was the date when the selective licensing designation was made by the local authority, i.e. not the date when changes to the General Approval came into force.

The maximum period for which selective licensing can run is five years. During the designation period, the local authority must review the operation of the scheme from time to time.

Sections 59 and 83 of the 2004 Act stipulate that once a designation has been made, the authority must:

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

Borough-wide local authority schemes are affected by changes to the General Approval if they wish to continue with their schemes beyond the initial five-year term.

Regulations further stipulate what steps an authority must take to notify local residents and other interested parties; for example, they are required to publish notices in local newspapers and send copies of the designation to organisations which provide advice on tenancy or landlord issues, such as Citizens Advice.21

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20  Housing Minister letter to local authorities, 11 March 2015
3. Operation of selective licensing

3.1 Licence conditions – what is required of landlords?

Authorities have discretion to set the precise conditions of the licence as regards anti-social behaviour and general management of the property. These can include conditions relating to the use and occupation of the house (but see below), and measures to deal with anti-social behaviour of the tenants or those visiting the property. However, the conditions imposed must be ones which relate to the residential use of the property, they cannot, for example, place responsibilities on landlords to act where tenants may be committing crimes unrelated to their occupation of the property.

There are also certain mandatory conditions which must be included in a licence. For example, licensees are required to:

- present a gas safety certificate annually to the local housing authority, if gas is supplied to the house;
- keep electrical appliances and furniture (supplied under the tenancy) in a safe condition;
- keep smoke alarms in proper working order;
- supply the occupier with a written statement of the terms of occupation; and
- demand references from persons wishing to occupy the house.

In Brown v Hyndburn [2018] EWCA Civ 242, the Court of Appeal provided guidance on the use of conditions included in landlord licences issued by local authorities under a selective licensing regime:

Hyndburn Borough Council had used section 90 of the Housing Act 2004 to set conditions that required landlords to install a carbon monoxide monitor and ensure that the electrical installations met the prescribed standard. The landlord (Mr Brown) appealed those conditions to the First-tier Tribunal (FTT). The FTT set aside the electrical installations condition and replaced the carbon monoxide condition with a less stringent condition that only required the landlord to provide written confirmation as to whether the landlord or the tenant was responsible for maintaining it. However, on appeal, the Upper Tribunal reinstated the conditions. Mr Brown appealed this decision.

The Court of Appeal, in allowing the appeal, removed the conditions. It held that the power to regulate the “management, use or occupation” of a house does not entitle a local authority to impose conditions requiring the introduction of “new facilities or equipment”.

The advice to local authorities in light of this ruling is:

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22 Housing Caselaw – March 2018 update
3.2 Granting of licences

In deciding whether or not to grant a licence the authority will consider whether the landlord (or the managing agent) is a “fit and proper” person. The rules that must be followed in order to determine this are outlined in section 89 of the 2004 Act. The authority must have regard to any previous convictions relating to violence, sexual offences, drugs or fraud; whether the proposed licence holder has contravened any laws relating to housing or landlord and tenant issues; and whether the person has been found guilty of unlawful discrimination practices.

The previous Labour Government’s ‘Respect’ website suggested that authorities should not institute a blanket policy of carrying out Criminal Record Bureau checks (now DBS checks) on all new licence applicants:

Local Authorities (LAs) should not carry out criminal record checks on all new applicants in Selective Licensing areas. It is expected that some LAs will be familiar with some of the landlords operating in their areas and will be aware of those who might have relevant convictions. Therefore, it is advisable for authorities not to consider carrying out criminal record checks where landlords have properties which are registered with their registration or accreditation schemes, and also where the landlords have a history of compliance and engagement with the authority.

LAs should only carry out spot checks on the few licence applicants they have serious concerns about instead of subjecting every licence applicant to criminal record checks. In addition carrying out criminal record checks would require the consent of the applicant and where this is refused, this will not be justifiable ground for the authority to refuse to grant the applicant a licence.

In terms of new landlords, licence applicants will have an opportunity to declare their criminal convictions on the application form and they should be made aware that providing false information on the forms will be a criminal offence (Part 7 section 238 of the Housing Act 2004). This could be a basis for revoking their licence and making an interim management order.

Ministers have given a commitment that licensing will not be a burden on landlords, and therefore it is very important that the cost of licensing should be kept as low as possible. Carrying out checks on all landlords would increase costs.

As is the case with the granting of licences for HMOs, if the authority determines that the landlord is not ‘fit and proper’ it can refuse to grant a licence. The authority must give 14 days’ notice of its intention, during which time the landlord can appeal. The local authority can also withdraw a licence after issue if the licensee is no longer considered a ‘fit and proper’ person.

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23 Ibid
24 Home Office website – Criminal record checks on private landlords in selective licensing areas (archived).
Additionally, the authority must be assured that the person to whom the licence is granted is the most ‘appropriate’ person; for example, taking into account whether they live locally and have management responsibility. This is designed to ensure that unfit landlords cannot apply for licences using a third party.

The authority must also confirm that there are satisfactory management arrangements in place regarding the property; in doing so, it must have regard to a range of factors including: the competence of the manager; management structures; and soundness of the financial arrangements.

### 3.3 Sanctions

Section 126 and Schedule 9 of the *Housing and Planning Act 2016* have, with effect from 6 April 2017, enabled local authorities to impose a [civil penalty](#) as an alternative to prosecution for offences committed under Part 3 of the *Housing Act 2004* (section 95). The maximum penalty is £30,000. The amount of penalty is to be determined by the local housing authority in each case. Authorities should have reference to Ministry of Housing, Communities and Local Government (MHCLG) guidance when deciding on the level of penalty to impose: [Civil penalties under the Housing and Planning Act 2016](#) (2018). According to press reports, Newham Council was thought to be the first to impose a civil penalty on a landlord only days after the new power was introduced.  

The *Housing and Planning Act 2016* has also given local authorities the power to apply to a First-Tier Tribunal for a [banning order](#) which, if granted, prevents a person from:

- letting housing in England;
- engaging in letting agency work that relates to housing in England;
- engaging in property management work that relates to housing in England;
- doing two or more of those things;
- being involved in a body corporate that carries out activities from which the person is banned.

A banning order may be sought where a landlord/agent has committed a ‘banning order offence.’ These offences include offences in relation to licensing of houses under Part 3 of the 2004 Act.  

Section 96 of the 2004 Act provides for authorities to seek a [Rent Repayment Order](#) in respect of properties that should be licensed but are not. Section 95 of the Act provides that a person who commits an offence, such as breach of an obligation to licence under Part 3, could be liable to a fine on summary conviction. A breach of a licence condition can render a landlord liable to a fine for each offence.

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25 [London Property Licensing](#), 19 May 2017

26 The power to apply for a banning order came into force on 6 April 2018. There is MHCLG [Guidance for local authorities](#) on banning orders, April 2018
Part 4 of the 2004 Act contains additional provisions for enforcement action in respect of properties that are licensable under Parts 2 and 3 – including those licensable under selective schemes. The mechanisms that authorities have at their disposal include Interim Management Orders and Final Management Orders. More information on management orders can be found in Library paper 708 Houses in multiple occupation (HMOs).

3.4 Exemptions
Some types of tenancy are exempt from selective licensing schemes:

- those operated or administered by Registered Social Landlords (also referred to a Private Registered Providers of Social Housing) or local authorities;
- houses in multiple occupation (HMOs) subject to mandatory or discretionary licensing under Part 2 of the Act;
- those where a Temporary Exemption Notice (TEN) is in force; and
- those where a management order is in force under Part 4 of the Act.

Other categories of tenancy or licenses that are exempt from the licensing requirements are specified in Regulations.

3.5 Fees
As with the HMO licensing regime, landlords must pay a charge for a licence issued under a selective licensing scheme. Local authorities can set the level of the fee – the intention is that the rate should be transparent and should cover the actual cost of the scheme’s administration. The Explanatory Memorandum to the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 states:

> Once the schemes have been set up, they will be self-financing. Running costs of licensing schemes including costs of further training and development and enforcement costs will be covered by licence fees.

The Regulatory Impact Assessment on selective licensing made it clear that authorities could not use fee income to raise additional revenue:

> Following consultation the Government has decided not to cap the fees which the local authority can charge for licensing. Instead

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27 Part 3 of the Act covers the selective licensing of other residential accommodation, i.e., privately rented properties that are not necessarily HMOs.
28 A TEN can be issued in cases where a property is going to fall outside licensing requirements – for example, there is a sale pending or the dwelling will be owner-occupied. A TEN can be issued for three months in the first instance; the authority may issue a second TEN to last a further three months.
30 ODPM (March 2006) Regulatory Impact Assessment: Houses in Multiple Occupation and Selective Licensing and Management Orders
31 Explanatory memorandum to SI 2006/373, para B.2
local authorities are expected to set a transparent fee rate which is directly related to the actual cost of licensing a property. **Fees cannot be used to raise extra revenue for the local authority.**

In a 2013 **case** concerning the licensing of sex shops in Westminster, the Court of Appeal upheld a High Court decision that licensing fees can only cover the administration of licensing schemes (i.e. not enforcement). The implications of the decision are discussed in a Local Government Association **briefing** (10 July 2013).

The Residential Landlords Association (RLA) issued a **briefing note** on the charging of fees for HMO and selective licensing in June 2012. Following the *Hemmings* judgment, the National Landlords Association wrote to all local authorities in England to seek clarification on the way in which their licensing fees had been set. The letter also asked what mechanism had been put in place to reimburse landlords where an authority had deemed it necessary to adjust their fee setting method.

Further guidance on fees chargeable for licensing schemes arose from the High Court’s decision in *R(Gaskin) v LB Richmond Upon Thames (2018) EWHC* 1996 (Admin). The case was summarised by David Smith, a partner with Anthony Gold Solicitors:

Richmond were charging a fee per lettable unit which amounted in Mr Gaskin’s case to £1799. He considered this to be excessive and tendered a fee of £850. Richmond refused this and refused to licence the property.

This led to a complex argument about the EU’s Provision of Services Directive which is enshrined in UK law as the Provision of Services Regulations 2009. Mr gaskin argued that he was providing a service for the purpose of these regulations in that he was providing the service of letting and managing housing. The Court agreed with this. Accordingly, the local authority, as a regulatory body were obliged to treat him in accordance with the terms of this Directive and the UK implementation of it. The Directive and the UK regulations contain provision relating to fees for regulation which aim to keep those fees to the lowest reasonable level in order to keep the cost of regulation to businesses within limits. This has led to a ruling in relation to the licensing of sex shops that a fee for an application cannot include the cost of enforcement and management of the regime and can only include the cost of the application process itself. In the case of Mr Gaskin that meant that the fee he had paid was enough and the prosecution should not have been taken.

**Implications**

Local authorities normally include substantial elements of enforcement and management activity in their licence fees. This decision suggests that they cannot make these charges as part of an application fee. In other areas where the Provision of Services Directive applies local authorities have made charges in two tranches, a fee for the application and a further fee on approval. However, the Housing Act 2004 expressly states that the local authority can require applications to be accompanied by a fee, not

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32 Regulatory Impact Assessment, para 75
33 RLA, Fees for HMO and Selective Licensing, June 2012
34 NLA, Licensing fee letter, November 2013
that they can charge an application fee and a further separate fee. If this is correct then there are two possible outcomes. The first is that a local authority can charge a fee for applications which includes the management and enforcement elements but that they will then have to refund the enforcement and management components to those people who have not been granted a licence. In fact, people who have previously been refused licences are probably also entitled to have this money back. The second possibility is that local authorities are simply not able to make any charge in respect of the enforcement and general operation of licensing schemes at all. Given that most such schemes, especially additional and selective licensing are predicated on the most or all of the running cost coming from licensing fees this would mean that many of these schemes will be financially non-viable unless they are funded from other local authority funds. In the current circumstances with tight local authority budgets this is probably impossible and some of these schemes may be terminated early.

This is about much more than fees. The Gaskin case says that the Provision of Services Directive applies to licensing schemes in full. This does a lot more than just talk about fees. For example, the Directive states that the principle of tacit approval should apply where a regulator does not deal promptly with an application. The transposition of this into the UK law states that regulators should set out how long it will take to carry out a licensing approval process and if they do not meet that timeline then approval should happen automatically. This tacit approval should only not occur where there is an overriding public interest in it not occurring but the reasons for this need to be set out. Currently, there is no local authority which allows for tacit approval of licence applications and very few set out the timeline for licence processing. In general, local authorities cite public safety as their rationale for not permitting tacit approval. However, this is a fairly weak justification. Given that the landlord can operate a property during the approval process and further that an authority can revoke a licence if an application contains serious inaccuracies, it seems unlikely that public safety is a strong justification for refusing to permit a tacit approval mechanism. This would have serious implications for the manner in which local authorities process licences.35

There was an expectation that Richmond Council would appeal the decision, possibly with the support of other local authorities. An alternative would be amendments to the 2004 Act to address the implications of the decision.

On 21 December 2018, the MHCLG shared a note with authorities on what the decision might mean for how they structure licence fees:

The cases, R (Gaskin) v Richmond-upon-Thames LBC and R (Hemming t/a Simply Pleasure) v Westminster CC, mean that fees local authorities charge for the licensing of houses in multiple occupation (HMO) and selective licensing schemes must be proportionate for the area to which they apply, and must be applied in two parts:

- Part one to cover the costs of administrating the application process

35 HMO and Selective Licensing Fees and Other Issues – blog, David Smith of Anthony Gold Solicitors, 15 August 2018
Part two, only on award of a licence, to cover the costs of running the scheme itself.

The Department’s view is that, post Gaskin, it is unlawful for a local authority to take a full HMO or Selective licensing fee upfront and then refund the second part of the fee to any unsuccessful applicants. Such an arrangement would be incompatible with Article 13(2) of the 2006 Directive and Regulation 18(4) of the 2009 Regulations.36

The note encourages authorities to seek their own legal advice on how best to meet the requirements.

In January 2019, PainSmith Solicitors published a blog on the implications of *Gaskin* which included the following comment on the MHCLG note:

The primary problem with the MHCLG note and the 2-stage payment is that in the *Gaskin* case the High Court only addressed the manner in which the local authority charged the HMO licence fee. The Court did not address the question of a 2-stage payment and so the legality of this process is uncertain.

Furthermore, what we understand to be the current situation is that some local authorities are only charging for the HMO licence application process and not charging for the operational costs which are paid from general local taxation. A second alternative appears to be to not charge for the application and only to seek a fee when the licence is in fact granted. Finally, there is, of course, the option to charge in 2 phases as referred to in the MHCLG note.

If an authority takes the second or third option, the difficulty is how to enforce the payment of the whole sum once the licence is granted or the second payment in the two-stage alternative. We do not know what local authorities will do if payment is not made but as soon as we hear of any progress we will update this post.37

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36 MHCLG, *Implications of legal rulings for licence fee structures*, 21 December 2018
37 Implications of Gaskin, PainSmith Solicitors – blog, 15 January 2019
4. How many licensing schemes are there?

The Government does not collect information on the number of authorities operating selective licensing schemes:

The Government only holds information on schemes that require the approval of the Secretary of State. Since 2015, schemes which cover more than 20 per cent of a local authority’s private rented stock or geographical area require approval. Eight schemes have been approved by the Secretary of State in the following local authority areas: Blackpool, Brent, Burnley, Hyndburn, Newham, Nottingham, Peterborough and Redbridge.38

The London Property Licensing website is a useful source of information on licensing schemes in the capital. An article in Environmental Health News (6 December 2013) contained information on where selective licensing schemes were operating at that time, enforcement action taken, and provided information on what some authorities were spending their licensing fees on: “Landlord Licensing drives up standards.”

While relatively slow to take-off after April 2006, there has been an increase in the number of authorities deciding to operate a selective licensing scheme. Several authorities followed in Newham’s footsteps and implemented borough-wide licensing for private landlords before the change to the General Approval in 2015. Some examples of authorities implementing selective licensing schemes are provided below:

LB Waltham Forest introduced borough-wide selective licensing in 2015 following a Cabinet decision in June 2014.

Liverpool City Council introduced city-wide licensing of private landlords from 1 April 2015.

Southwark Council consulted on an additional licensing scheme (for smaller HMOs) and a selective licensing scheme in October 2014 and is now operating selective licensing in some areas of the borough.

Croydon Council began a consultation process on selective licensing on 1 September 2014. The Council took the decision to extend the process in light of the decision in R (Regas) v LB Enfield [2014] EWHC 4173 (Admin), December 2014 (see section 2.2 of this paper). Croydon went on to implement borough-wide selective licensing from 1 October 2015.

Brent Council has also introduced a selective licensing scheme in certain parts of the borough.

Pre-existing borough-wide licensing schemes were not affected by the change to the General Approval in 2015. However, once the initial five-year term has expired, boroughs must apply for approval for the continuance of these schemes. Newham Council consulted on a new licensing scheme to begin in 2018 on the expiry of the original scheme.
on 31 December 2017. The Government approved the application in December 2017 but the new scheme, which subsequently began on 1 March 2018, excludes the East Village area (E20).

When addressing the Chartered Institute of Environmental Health’s housing and health conference on 17 May 2017, Rhona Brown, private rented sector programme manager for the Greater London Authority, said that the London Mayor, Sadiq Khan, “was seeking powers from government to authorise London boroughs to set up selective licensing schemes for private landlords.” If successful, this would involve a transfer of powers from the Secretary of State.39

In contrast to the growth in interest around selective licensing schemes, Manchester City Council, one of the first to introduce selective licensing, (not borough-wide) decided not to continue with the scheme after its initial five-year period expired. The reasons for this were cited in Liverpool Student Homes’ response to consultation on city-wide selective licensing in the area:

The model launched by Manchester City Council focused on a designated area for Selective Licensing. Following a period of 5 years Manchester City Council decided to withdraw the licensing scheme stating: “Both the legislation and the City Council’s approach to introducing Selective Licensing (SL) have created difficulties. Members and landlords have rightly criticised the scheme as being overly bureaucratic, with too much effort focussed on the paperwork and administration and not enough on tackling the poorer landlords through enforcement and prosecution.”

Furthermore, Manchester City Council stated: “An external evaluation was commissioned by the Manchester and Salford Pathfinder. The evaluation recognised that in some challenging areas SL could play a complementary role to general neighbourhood enforcement activity, providing that the associated landlord enforcement work is funded and the schemes are much more tightly focussed. However, the legislation does not allow SL fees to be used for this complementary activity and is only intended to be self-funding to cover the administration of the scheme.”40

Legal challenges
Although legal challenges were threatened when Newham proposed its original scheme, none materialised, see: Richard Lambert on the National Landlords Association’s Newham Campaign, 11 October 2012.

Some examples of legal challenges to selective licensing, and issues to consider when authorities are considering borough-wide licensing, are provided below:


Letting focus: Selective licensing of private landlords, 14 May 2012

39 Environmental Health News, 17 May 2017
40 Liverpool Student Homes, Response to consultation on city-wide licensing, April 2014
Residential Landlords Association: [How to handle selective licensing](updated November 2012)

*R (Regas) v LB Enfield [2014] EWHC 4173 (Admin), December 2014*

The court cases referred to in section 3.5 (fees) are also relevant.

## 5. Evaluating the impact of selective licensing

### 5.1 DCLG evaluation 2007

In August 2007 the DCLG published, *Evaluating the Impact of Houses in Multiple Occupation and Selective Licensing: The baseline before licensing in April 2006*. This report offered some observations on the expectations of local authorities before the introduction of the new measures.

Key findings in respect of selective licensing included:

- 12% of local authorities were considering or had decided to apply for selective licensing schemes. The main reasons stated for considering an application were “low demand; empty properties and poor housing conditions. Bad management and lack of interest by landlords were also mentioned, as were anti-social behaviour and issues with migrant workers. The most common tenant group in areas earmarked for selective licensing was unemployed people.”

- Case study authorities saw selective licensing as one of many tools for improving standards. Many officers were concerned that licensing was being seen by residents, council members or other departments as a ‘cure all’ solution.

- Selective licensing was felt likely to be resource intensive, not self-financing. Authorities were concerned about their ability to deliver services to landlords of the level and quality needed to support the schemes.

### 5.2 Building Research Establishment (BRE) research 2010

DCLG commissioned further research by the BRE into the impact of HMO and selective licensing which was published on 27 January 2010. The main conclusions on the impact of selective licensing at that time are reproduced below:

*What impact is selective licensing having?*

It is important to remember that only three of the case study local authorities had schemes active at the time of the study. These had been operating for a year or less at the time of the research, so it was still early days for the authorities concerned.

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41 See DCLG (August 2007) Housing Research Summary 239, *Evaluating the Impact of Houses in Multiple Occupation and Selective Licensing: The baseline before licensing in April 2006*

42 Ibid., p4
Housing markets and demand. The impact has been mixed and is very difficult to disentangle from other factors. However, the largest rises in house prices and demand have taken place in the area where the designation was granted, and the focus of enforcement has been on tackling ASB. This is because problems with low demand are sometimes initially caused, and certainly always exacerbated, by ASB.

Standards of management. There are some indications from both tenants and landlords that licensing has made landlords ‘raise their game’. The requirements for proper referencing and written tenancy agreements together with landlord support services have been instrumental in this. In some areas, there has been an increasing rationalisation of the sector with more properties being managed by agents. Although this makes the licensing process for authorities easier, because it means that they have fewer individual landlords to deal with, it has not always led to improvements in management standards. Tenants and local authority officers cited numerous instances of unscrupulous practices by agents. In some areas, accredited landlords are informing local authority officers about landlords of poorly managed properties who are avoiding licensing.

Property condition. Tenants and residents noted improvements to the condition of some properties in these areas. All parties acknowledged that there were still poor condition properties and it would take time to have a significant impact on large numbers; in some areas these had been licensed without an inspection.

Anti-social behaviour. This is particularly difficult to assess because dealing with just one case can have a profound effect on the area. A number of very problematic cases involving serious ASB (including serious crime) had been resolved or were currently being dealt with but it is too early to assess whether these impacts will be longstanding because people are continuing to move in and out of the areas. Some residents and tenants had noticed some benefits; although others said there had been little change. Residents, tenants and landlords would like to see more focus and resources devoted to dealing with ASB and a better balance between support and sanctions for the perpetrators.

Neighbourhood cohesion. The process of applying for a designation and the intensive working in the designated areas have together provided authorities with a much greater depth of knowledge about the nature and severity of issues affecting all parties. In one area, supporting the creation of a residents’ association has enabled private tenants to become much more involved in their community and have their say on key local issues. However, some residents still hold very negative views of all landlords and there is a need for local authorities to facilitate more dialogue with landlords and between landlords and residents because, ultimately, the vast majority of landlords and residents want the same outcome.

Displacement to neighbouring areas. A number of concerns were expressed in the baseline study that selective licensing would displace the worst landlords and tenants to other areas. This does not appear to have happened yet; although it may become evident when two of the authorities start their enforcement work in earnest. In the authority with the strongest current emphasis on enforcement, tenants causing ASB are moving to a variety of other areas and not creating the same scale of problems there. This is partly due to the support package and monitoring put in
place and partly because they are more isolated from their previous contacts and reputation.

**Ensuring that licensing has a lasting impact.** Local authority officers and residents expressed a number of concerns about licensing schemes only being granted for five years and were anxious what might happen after this time; especially as so many resources had been pumped into the area. There is a need to keep these schemes under constant review to assess when, how and how quickly licensing and the associated intensive support can be withdrawn without risking a return of the problems that led to the designation in the first place.

**Selective licensing and other factors.** Licensing has been introduced alongside a number of other initiatives to deal with regeneration, community cohesion and ASB. Selective licensing appears to have added four main things:

- safeguarding the investment in regeneration by avoiding ‘cheap’ properties being purchased by investors from outside the area looking for quick returns rather than to provide and manage decent quality housing that will have a positive impact on the local community
- helping to control ASB by involving the landlord and the security of the tenancy. Compelling landlords to provide written tenancy agreements together with tenant referencing/vetting has clarified the situation for all parties. If properly drawn up, the terms of the tenancy agreement can be used to deal with persistent ASB by threatening eviction with little prospect of finding decent alternative accommodation locally
- ensuring that those landlords who were unwilling to join voluntary accreditation schemes take steps to improve the physical standards and management of their properties giving local authority staff and others contact with good landlords that they might not have engaged with before. This has started to break down entrenched views about private landlords and the current and potential role of private rented housing. There is, however, still some way to go on this.

**What is working well?**

**Tenant referencing and vetting services.** These have been used in all three areas with a current designation and it is clear that they have had a significant impact on ASB for two reasons. Firstly, they have provided landlords with additional support to help ensure that they have good tenants and secondly the message is getting through to tenants who have caused ASB in the past that they need to behave better in the future otherwise this will seriously compromise their housing choices.

**Tenancy agreements.** The requirement to have a written tenancy agreement is a significant step forward in clarifying the rights and responsibilities of tenants and landlords. Authorities do, however need to support both tenants and landlords in enforcing these and dealing with issues that arise when one party wishes to change any of the terms.

**Joint working.** Effective working arrangements with other council departments and other agencies have been instrumental in helping to tackle issues of ASB and environmental nuisance.
These arrangements have worked best where there are regular ‘working level’ meetings and where residents, tenants and landlords have one or two named people to contact.

**Community involvement.** Regular meetings with local residents, and in one area helping to set up a residents association, have provided the council with useful information. This has also enabled residents to feel more involved and empowered in tackling problems in their area.

**Targeted approaches.** Prioritising problem streets together with detailed property inspections before awarding a licence appears to have more immediate impact on the worst problems and has more support from all stakeholders than blanket licensing followed up by later inspections. Tenants, landlords and residents expect to see properties being inspected, licences refused where standards are not met and landlords who fail to apply dealt with robustly. The practice of asking tenants to provide feedback on their current landlord provides useful information to help officers evaluate whether a licence should be issued and also opens up a channel of communication with tenants.

**What is not working well?**

**Resources.** None of the three schemes evaluated in this study are self-financing. There are two reasons for this. Firstly, the process has proved more resource intensive than envisaged. Secondly, selective licensing requires the authority to provide a number of linked services like landlord advice and accreditation to ensure that the overall approach is one that provides the right balance of sanctions and support/incentives for landlords. All were therefore funding some of these activities from other streams that are regularly re-assessed e.g. Housing market Renewal and Neighbourhood Renewal. Lack of resources, and lack of security of funding, are therefore key factors deterring authorities from applying for selective licensing. Elected members who make the decisions about the distribution of resources within authorities need to take a more strategic view of housing within their area and, in some cases, this requires a radical rethink of their approaches to private renting and the resources required to support it.

**Purpose and criteria.** Evidence from the case studies with existing schemes and from those considering applying for licensing has highlighted the need to review the purpose of selective licensing. In particular, should the tool be used where ‘normal conditions’ have totally broken down or should it be used to intervene in areas before conditions deteriorate to this extent and/or should it be used to protect other government investment in regeneration. The two criteria for selective licensing: ASB and low demand have come in for considerable criticism related to their appropriateness, definition and measurement. There is a need to reconsider whether low demand is the only appropriate criterion other than ASB since other factors, like very high demand, can have equally problematic consequences for tenants and residents. Other suggestions for additional criteria could include:

- poor standards of management
- poor property condition (because this is almost always a symptom of poor management)
- lack of engagement with voluntary accreditation schemes
high levels of private renting combined with social
deprivation/lack of community cohesion

Consultation process for selective licensing. This was criticised
by a number of landlords in some areas as being meaningless and
it had soured relations with the local authority. It has also
engendered a good deal of cynicism and suspicion about the ‘real’
motives for licensing. We therefore feel that additional guidance
on consultation may be useful. One particular point to consider is
whether consultation should aim to bring different groups
(landlords, tenants and residents) together rather than keeping
them apart and all communicating separately with the local
authority. We have been struck by the animosity expressed by
some residents towards private landlords in general. Bringing the
two groups together, whilst painful at first, may achieve a great
deal in promoting understanding and co-operation which is vital
to the overall success of selective licensing.

Links between inspection, licensing and accreditation.
Landlords, tenants and residents were very critical of authorities
that were carrying out inspections before accreditation but not
before granting a licence. This was because it created confusion
and it meant that sub-standard properties could operate without
a licence for an unspecified period. Local authorities setting up
selective licensing schemes need to ensure that the links between
accreditation and licensing and the inspection regimes for both
are clear and appropriate.

Licensing areas. If these areas are to be turned around then
social landlords must deal with ASB effectively and consideration
needs to be given as to how to encourage them to do this and to
communicate and co-operate fully with those implementing
selective licensing.

Sharing solutions and good practice. There is limited contact
between some authorities with a designation and those
considering applying. However, we feel that it would be useful to
have a forum for discussion and support so that they can share
ideas, successes and failures in order to increase both the
efficiency and effectiveness of selective licensing schemes.43

5.3 Rugg & Rhodes review & Government
response 2008
The Communities and Local Government Select Committee report, The
Supply of Rented Housing, (May 2008) drew attention to the poor
quality of accommodation provided by some private landlords and
called on the Government to “address the bad practices of some
landlords and letting agents by strengthening the regulatory approach
to the private rented sector.”44 The Committee also recommended the
introduction of a system of accreditation for private landlords.45 In
response, the Labour Government referred to the review of the private
rented sector carried out by Julie Rugg and David Rhodes at the
University of York. The Rugg/Rhodes report, The Private Rented Sector:
it contribution and potential, was published at the end of October

43 CLG, Evaluation of the impact of HMO licensing and selective licensing, 2010
45 Ibid., p29
A number of respondents to this review argued for a system of compulsory registration (licensing) for all private sector landlords:

The option of a registration scheme for England has also been discussed. The Housing Act 2004 requires local authorities to assess whether an individual is a ‘fit and proper’ person to be a licence holder of HMOs. The assessment must have regard to whether the licence holder has committed an offence involving fraud, dishonesty, violence or drugs, whether they have practiced unlawful discrimination, and whether they have contravened housing or landlord and tenant law. Some tenant and welfare lobby groups consider it appropriate to expand the definition and coverage of the regulation so that all landlords would be licensed, and that requirements would include meeting a minimum management standard. Detractors from this view generally refer to the problems relating to landlord licensing in Scotland.46

Rugg and Rhodes concluded that a system of “light-touch” licensing for all private landlords with effective redress mechanisms should be introduced.47 This was not welcomed by a number of organisations representing private landlords.

The Government published its response to the Rugg review in May 2009 in which it set out an intention to introduce a national register of private sector landlords.48 The register was not established prior to the 2010 General Election.

On 10 June 2010 the new Housing Minister, Grant Shapps, announced that the Coalition Government would not take this proposal forward.

With the vast majority of England’s three million private tenants happy with the service they receive, I am satisfied that the current system strikes the right balance between the rights and responsibilities of tenants and landlords.

So today I make a promise to good landlords across the country: the Government has no plans to create any burdensome red tape and bureaucracy, so you are able to continue providing a service to your tenants.

But for the bad landlords, I am putting councils on alert to use the range of powers already at their disposal to make sure tenants are properly protected.49

5.4 CLG Select Committee inquiry 2012-13

The Communities and Local Government Committee’s inquiry into the private rented sector (2012-13) considered the operation of selective licensing.50 The London Borough of Newham introduced borough-wide licensing for all private landlords in January 2013.51 The National Landlords Association gave evidence to the Committee arguing that this approach could impact on lenders’ willingness to invest in the sector. Affected landlords complained that they had to complete a form for

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46 The Private Rented Sector: its contribution and potential, 2008, pp66-7
47 Ibid., p112
48 The Government Response to the Rugg Review, 2009
49 DCLG Press Notice, 10 June 2010
50 HC 50, First Report of Session 2013-14, 18 July 2013
51 Information on Newham’s current scheme can be found on its website (accessed 12 March 2019).
each property in ownership. Newham Council said it would support simplification of the licensing process; Leeds City Council described the licensing process as “very laborious.”

Camden Council argued for broader criteria under which selective licensing could be introduced. The then Housing Minister, Mark Prisk, said:

> If a good argument demonstrated that a significant proportion of local authorities would welcome something going beyond low demand and antisocial behaviour – in other words, other circumstances they are finding they would like to approach – I would certainly be happy to look at the evidence, absolutely.53

The Committee recommended that the Government should bring forward proposals for a reformed approach to selective licensing “which gives councils greater freedom over when licensing scheme can be introduced and more flexibility over how they are implemented. Councils should ensure that the cost of a licence is not set so high as to discourage investment in the sector.”

The Government’s response was published in October 2013:

> The Department recently contacted all local housing authorities in England seeking information on their experience of licensing, whether selective or voluntary, of private rented housing in their area, including information on the type of conditions that are typically attached to such licenses. The purpose of gathering this information was to help to inform any update of the current guidance for local authorities on selective licensing. The closing date was 30 September and we are now considering the responses. A summary of responses to the information gathering exercise will be made available in due course.55

The Government went on to say “there are no plans to amend the current legislative framework or introduce any new regulations in this area.” Section 2.3 of this paper explains the changes that were introduced as a result of the Selective Licensing of Housing (Additional Conditions) (England) (Order) 2015.

5.5 DCLG consultation February 2014

DCLG published the Review of Property Conditions in the Private Rented Sector in February 2014 with a closing date for responses of 28 March 2014. Annex A to the consultation paper contains a summary of responses to the Government’s information gathering exercise on local authorities’ experiences of licensing (194 responses were received).

Section 5 of the Review of Property Conditions in the Private Rented Sector considered licensing schemes:

> A major drawback of licensing is that it impacts on all landlords and places additional burdens on reputable landlords who are already fully compliant with their obligations. This creates additional unnecessary costs for reputable landlords which tend to be passed on to tenants. The majority of landlords provide a good

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52 HC 50, First Report of Session 2013-14, 18 July 2013, para 47
53 Ibid., para 48
54 Ibid., para 49
55 Cm 8730, October 2013
56 Ibid.
service and the Government does not want to impose unnecessary additional costs on them or tenants who may see their rents rise as landlord costs rise.

There is also an increased risk of putting unnecessary costs on landlords who provide a good service where the designated area is not strictly limited to the locality which is directly experiencing low housing demand and/or anti-social behaviour. The Government does not support the use of licensing across an entire local authority area. Such an approach is disproportionate and unfairly penalises good landlords. Authority wide licensing is reportedly having an adverse impact on landlords’ ability to obtain mortgage finance. In addition, we believe that it goes against the policy intention of the original legislation (Housing Act 2004) which was designed to tackle problems in specific and strictly defined parts of a local authority area. One way of addressing this may be to introduce tighter restrictions on the use of selective licensing. For example, there could be a restriction on the geographic size of a designated area or on the type of property to which the designation relates.57

The paper went on to restate the Coalition Government’s opposition to nationwide licensing of privately rented housing58 but expressed support for increased use of voluntary accreditation schemes.59 Responses to the following questions were requested:

**Question 19:** How effective is voluntary accreditation as a way of driving up standards?

**Question 20:** Should we consider introducing tighter restrictions on the use of selective licensing to avoid putting unnecessary burdens on good landlords?

**Question 21:** Should we consider introducing an approach which would enable local authorities to focus any licensing scheme solely on rogue landlords?60

The Government’s response to the consultation process, Review of property conditions in the private rented sector: government response, was published in March 2015. On the question of whether tighter restrictions should be applied to selective licensing, 35 respondents supported this while 94 did not. Those supporting tighter restrictions argued that licensing took up significant resources and is a burden on good landlords while not necessarily targeting bad landlords.61 72 respondents thought voluntary accreditation schemes were generally effective in improving standards while 65 disagreed. 70 respondents wanted authorities to focus licensing on rogue landlords while 80 disagreed. Those in disagreement thought that authorities needed discretion to be able to design schemes which suited local needs, and questioned whether it would be possible to get rogue landlords to engage with such a scheme.62

57 DCLG, Review of Property Conditions in the Private Rented Sector, February 2014, paras 41-2
58 Ibid., para 43
59 Ibid., paras 44-46
60 Ibid., para 47
61 DCLG, Review of property conditions in the private rented sector: government response, p12
62 Ibid.
The Government identified blanket licensing schemes (whole-borough schemes) as a particular issue:

Licensing can play an important role when it is strictly focused on discrete areas with specific problems. However, the blanket licensing approach adopted by some local authorities has major drawbacks. This is because it impacts on all landlords and places additional burdens on reputable landlords who are already fully compliant with their obligations, thereby creating additional unnecessary costs for reputable landlords which are generally passed on to tenants through higher rents. The typical cost of a licence is around £500 and lasts for five years, so we can reasonably assume an annual fee of £100 per property. As a result, the landlord may see a reduction in their property’s investment value, but the more likely outcome is for tenants to bear most of the burden, especially in areas of high rental demand. The vast majority of landlords provide a good service and the Government does not believe it is right to impose unnecessary additional costs on them, or their tenants. Such an approach is disproportionate and unfairly penalises good landlords.63

The Government said it would amend the General Approval to “ensure that local authorities focus their activity on areas with the worst problems while helping to ensure that they do not adversely impact on good landlords” and “expand the criteria for selective licensing.”64

On 11 March 2015 the Housing Minister wrote to all local authorities advising that, from 1 April, local authorities would have to seek confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area. The Selective Licensing of Housing (Additional Conditions) (England) (Order) 2015 expanded the criteria for selective licensing.65

There was a mixed reaction to the March 2015 announcement. Campaign groups, such as Generation Rent, criticised the decision to limit borough-wide schemes in the absence of specific consultation with councils and tenants.66 Some questioned the decision to interfere with councils’ autonomy, arguing that authorities are best placed to decide whether borough-wide licensing is appropriate or not.67 Landlord organisations welcomed the move.68

5.6 HCLG Select Committee inquiry 2017-18

The Housing, Communities and Local Government Committee carried out a further inquiry into the private rented sector over 2017-18.69 The Committee received mixed evidence from witnesses on the effectiveness of selective licensing. Local authorities and their representative bodies said that selective licensing allowed authorities to set “tougher basic

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63 Ibid.
64 Ibid.
65 See p7 of this paper for more information.
66 Inside Housing, “Anger over plans to limit PRS licensing,” 12 March 2015
67 Ibid.
68 Ibid.
69 HCLG Select Committee, Private rented sector, HC 440, 19 April 2018
conditions for private landlords to meet” and resulted in an improved success rate in prosecutions.\textsuperscript{70} Newham and Waltham Forest Councils cited enforcement statistics as proof of the effectiveness of selective licensing\textsuperscript{71} but the data was challenged by the Association of Residential Letting Agents (ARLA) Propertymark. The CEO, David Cox, pointed out that in Newham the number of prosecutions related to only 0.5% of the private rented stock. The RLA said there was little evidence that selective licensing led to anything other than landlords obtaining licences.\textsuperscript{72} There was general agreement over the application process (to the Ministry) being “not fit for purpose”.\textsuperscript{73} Delayed responses were mentioned; witnesses also objected to the need to seek approval “as contrary to the spirit of localism”.\textsuperscript{74} The Committee recommended:

...that the Government therefore remove the 20% cap above which local authorities must seek permission from the Secretary of State to implement selective licensing schemes because it is contrary to the spirit of localism. However, we believe that the Secretary of State should retain a power to require local authorities to reconsider a decision to implement a licensing scheme that does not meet the strict criteria already set out by the Government, and should monitor the effectiveness of schemes once they have been implemented.\textsuperscript{75}

The Government response was published in July 2018.\textsuperscript{76} The recommendation to remove the 20% cap was rejected but the Government said it would be undertaking a review of selective licensing:

As its name implies, selective licensing should be targeted to deal with specific local problems. Blanket licensing of all landlords may impose unnecessary costs on responsible landlords, which would be passed on to tenants in the form of higher rents. We will shortly be undertaking a review of selective licensing to understand its effectiveness as a local enforcement tool. We will act on the evidence from this review to ensure licensing is delivering for local authorities, landlords and tenants.

As set out in statute, and more fully within our guidance, local authorities are already under a duty to review existing schemes, ensuring they remain effective within the designation and set criteria. We will share the outcome of the review with the Committee.\textsuperscript{77}

5.7 Rugg & Rhodes review 2018

Ten years on from their 2008 review, Julia Rugg and David Rhodes carried out further research into the private rented sector and published The Evolving Private Rented Sector: Its Contribution and Potential in

\textsuperscript{70} Ibid., para 107
\textsuperscript{71} Ibid., para 108
\textsuperscript{72} Ibid., para 110
\textsuperscript{73} Ibid., para 115
\textsuperscript{74} Ibid., para 116
\textsuperscript{75} Ibid., para 118
\textsuperscript{76} Cm 9639, July 2018
\textsuperscript{77} Ibid., para 72
They found that evidencing the impact of selective licensing remained “problematic”:

No publicly-available, independent evaluation has been published which assesses the value of selective licensing in effecting sector improvement.\(^79\)

Not all authorities had inspected licenced properties within the five-year term of the scheme.\(^80\) Rugg and Rhodes refer to the process of obtaining approval for a borough-wide scheme as “onerous”:

In July 2017 just five LA-wide schemes were in operation, in Barking & Dagenham, Croydon, Liverpool, Newham and Waltham Forest; a further 35 local authorities had selective licensing applicable only to certain wards, and/or additional licensing schemes in operation.\(^81\)

Newham applied to renew its scheme before the original scheme ended on 31 December 2017 – the replacement scheme does not cover the whole borough.

Recurring issues with selective licensing identified by Rugg and Rhodes included:

- The cost of developing and applying for permission for a licensing scheme. National landlord bodies often provide support to local landlords to resist selective licensing schemes. Licensing fees can vary considerably between local authorities.\(^82\)

- The benefits of licensing for opening a dialogue between ‘compliant’ licenced landlords which means authorities can focus resource and enforcement activity on unlicensed landlords.\(^83\)

Rugg and Rhodes recommended a simpler licensing regime:

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.\(^84\)

5.8 CIEH and CIH joint report 2019

The Chartered Institute of Environmental Health (CIEH) and the Chartered Institute of Housing (CIH) jointly published \textit{A licence to rent} in January 2019. They analysed schemes running in 20 councils and

\(^{78}\) Rugg J & Rhodes D, \textit{The Evolving Private Rented Sector: Its Contribution and Potential}, Centre for Housing Policy at the University of York, 2018

\(^{79}\) Ibid., p101

\(^{80}\) Ibid., p100

\(^{81}\) Ibid. Based on email information from MHCLG July 2018.

\(^{82}\) Ibid., p101

\(^{83}\) Ibid.

\(^{84}\) Ibid., p14
concluded that selective licensing schemes “are helping to tackle poor standards in the private rented sector – but could be even more effective with more government support.” The schemes were found not to generate ‘quick wins’ but councils reported that “high numbers of serious hazards and defects have been identified and addressed as a result of property inspections”. They reported that licenced landlords were more willing to carry out work without the need for enforcement action. The report’s recommendations include:

- Reviewing the way councils get approval for new schemes – as the current process is expensive and unnecessarily bureaucratic and may be putting some local authorities off starting schemes where they may be beneficial.
- Giving councils more flexibility to set licence conditions for their area – so they can require landlords to demonstrate that all legal minimum standards are met and set higher standards that exceed the national minimums.
- Introducing a national landlord registration scheme, which would support and complement selective licensing schemes by making it easier for local authorities to identify the majority of landlords in their area.
- Recommendations for councils looking to set up a scheme, including being clear about their intended outcomes and how they will be measured and monitored; continually reviewing and publicising the results, which can help engagement with landlords; and using civil penalties more to fund enforcement.

5.9 The Government’s independent review of selective licensing

The announcement of an independent review of selective licensing was made on 20 June 2018:

Government is also today announcing a review to look at how selective licensing is used and find out how well it is working.

In areas where selective licensing applies, landlords must apply for a licence if they want to rent out a property. This means the council can check whether they are a “fit or proper person” to be a landlord, as well as making other stipulations concerning management of the property and appropriate safety measures.

The review will see independent commissioners gather evidence from local authorities and bodies representing landlords, tenants and housing professionals.

The review’s findings will be reported in spring 2019. There will be an update on progress in autumn this year.

A PQ response on 14 February 2019 confirmed that the final report of the review is due to be published in Spring 2019.

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85 CIH/CIH Press Release, 24 January 2019
86 Ibid.
87 Ibid.
88 MHCLG Press Release, 20 June 2018
89 Written question – 218310, 14 February 2019
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