

Appendix Three – Legal framework and penalties

The Housing Act 2004 provides for three different schemes for the licensing of privately-rented housing:

- 1. Mandatory licensing;**
- 2. Additional licensing**
- 3. Selective licensing**

Selective licensing - relates to the licensing of other privately-rented homes that are not HMOs, such as privately rented houses that are occupied by a single family.

Mandatory licensing - requires local authorities to licence all HMOs occupied by five or more people living in two or more single households.

Additional licensing

In summary, Part 2 of the Housing Act 2004 gives local authorities power to licence HMOs that are not covered by mandatory licensing. However to do so certain criteria need to be met;

That the local authority considers that a significant proportion of the HMOs in the area are being managed sufficiently ineffectively as to give rise to one or more particular problems either for those occupying the HMOs or for members of the public.

The 2004 Act permits a local housing authority to designate either part or all of its area as subject to additional licensing. If an authority makes a designation, the effect is to require landlords of HMOs described in the designation, located in the area to which the designation applies, to apply for and obtain a licence. Licences incorporate conditions regulating, for example, the management of the property.

Exemptions would include:

- properties already licensed as an HMO under mandatory licensing;
- properties let by a local authority or RSL;
- properties already subject to a management order or empty dwelling management order;
- properties subject to a temporary exemption notice;

- holiday lets; and
- tenancies under a long lease and business tenancies.

The London Borough of Havering is proposing to introduce an additional licensing scheme as part of a co-ordinated approach to tackle significant and persistent anti-social behaviour in the borough's private sector.

When an application is received, the council will consider if the applicant is the most appropriate person ("fit and proper") to be the licence holder.

Landlords who own more than one HMO in the designated area would need to apply for a licence for each individual HMO. Additional Licensing Scheme

2.1 Penalties

It is a criminal offence to let out a HMO in the designation area without applying for a licence.

Failure to apply for or obtain a licence could lead to prosecution and an unlimited fine. In addition, the council or the tenants of the property could apply to the First Tier Tribunal for a Rent Repayment Order, requiring the landlord or agent to repay any rent paid.

It is also important to note that once an additional licensing designation has been made, no notice under section 21 of the Housing Act 1988 (notice requiring possession) may be served in relation to a short-hold tenancy of the whole or part of an unlicensed property, whilst it remains unlicensed.

In addition, landlords and managing agents who have a previous poor management record or have failed in the past to comply with the councils requirements to maintain and manage their properties may not be able to hold a licence or, for example, will be given a shorter-term licence and subjected to more frequent checks.

If the person who applies for a licence owns or manages a property, which has previously been the subject of a formal notice, leading to works in default or prosecution by a local authority under the provisions of Part 1 of the Housing Act 2004 (for example, an improvement notice, prohibition order, hazard awareness notice, emergency remedial action, emergency prohibition order, demolition order and clearance area powers), then

the proposed licence holder may be an unsuitable candidate (not „fit and proper“) and may not be granted a licence.

Furthermore, if the person who applies for the licence has previously had a licence revoked or refused by any local authority or owns a property that is subject to an interim or final management order, they may not be considered fit and proper to hold a licence.

This is detailed in the council’s existing enforcement policy

Selective Licensing

In summary a selective licensing designation may be made if the area to which it relates satisfies one or more of the following conditions. The area is one experiencing:

- low housing demand (or is likely to become such an area)
- a significant and persistent problem caused by anti-social behaviour
- poor property conditions
- high levels of migration
- high level of deprivation
- high levels of crime

Part 3 of the Housing Act 2004 allows for licensing of residential accommodation falling outside Part 2 of the Act. The definition of ‘dwelling’ under this part means a building or part of a building occupied or intended to be occupied as a separate dwelling. ‘House’ means a building or part of a building consisting of one or more dwellings.

Government guidance states that to introduce a licensing scheme, (for landlords who rent to families, one household or less than three people) the council has to demonstrate that the area covered by the scheme has a high proportion of privately rented properties, that it is affected by one or more of a range of social factors outlined below, and that licensing will have a positive impact.

- Poor housing conditions
- Anti-social behaviour
- High levels of crime
- High levels of deprivation

- High levels of migration

The proposal is to introduce a selective licensing scheme located in two wards, Romford Town and Brooklands, as these have a high percentage of PRS with high levels of housing in poor condition and ASB. The sections that follow will look at these in turn.

In considering whether to designate an area for selective licensing on the grounds above on property conditions, migration, deprivation and crime the local housing authority may only make a designation if the area has a high proportion of property in the private rented sector. Nationally the private rented sector currently makes up 19% of the total housing stock in England. The actual number of privately rented properties in a given area may be more or less than this, and if it is more than 19%, the area can be considered as having a high proportion of privately rented properties

With effect from 1 April 2015 a local housing authority will now need to apply to the Secretary of State for Communities and Local Government (Secretary of State) for confirmation of any scheme which would cover more than 20% of their geographical area or that would affect more than 20% of privately rented homes in the local authority area.

Under the new arrangements if a local housing authority makes a designation that covers 20% or less of its geographical area or privately rented properties, the scheme will not need to be submitted to the Secretary of State, provided the authority has consulted for at least 10 weeks on the proposed designation. However, if the local housing authority makes one or more designations that are in force partly concurrent to an existing scheme, and cumulatively all the designations cover more than 20% of the area or the private rented stock, those new designations will need to be submitted to the Secretary of State for approval.

Likewise if the local housing authority makes two or more designations at the same time, each of which account for less than 20% of the area or private rented stock, but cumulatively account for more than 20% of either, all of the schemes will need to be submitted to the Secretary of State for confirmation.

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