

EXPLANATORY MEMORANDUM TO
THE LICENSING OF HOUSES IN MULTIPLE OCCUPATION (PRESCRIBED
DESCRIPTION) (ENGLAND) ORDER 2018

2018 No. 221

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry for Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument changes the prescribed description of houses in multiple occupation (“HMOs”) that are required to be licensed by a Local Housing Authority (“LHA”) in England. The instrument replaces the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (S.I. 2006/371) (“the 2006 Order”), which it revokes. This instrument has the effect of extending the scope of mandatory HMO licensing in England to certain HMOs of less than three storeys.
- 2.2 There is a related instrument which we intend to bring before Parliament, the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 No. [xxx], to be made under the affirmative procedure, which extends mandatory licence conditions in HMOs to include those relating to minimum sleeping accommodation standards, maximum occupancy of such rooms and the disposal of domestic waste in HMOs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Part 2 of the Housing Act 2004 (“the Act”) provides for LHAs to licence HMOs in their areas.
- 4.2 Section 61 of the Act requires every HMO to which Part 2 applies to be licensed unless a temporary exemption notice or an interim or final management order is in force in relation to it.
- 4.3 Part 2 applies to HMOs of a description prescribed under section 55(3) of the Act and to HMOs in areas which are designated as subject to additional licensing by the local housing authority under section 56 of the Act. In the latter case it is the designation that describes the HMOs that are the subject of the additional licensing.

- 4.4 Under Part 2, a licence may only be granted if the licence holder is a “fit and proper” person, the management standards are satisfactory and the HMO is suitable, or can be made suitable, for the specified number of occupiers, including shared amenity standards. Section 67 of the Act provides that an LHA may impose licence conditions relating to the management, use and occupation of the HMO and its condition and contents. Section 72 sets out licensing offences, including that it is an offence to manage or have control of an HMO that is required to be licensed, without a licence being in force.

5. Extent and Territorial Application

- 5.1 The extent of the instrument is England and Wales.
- 5.2 This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The private rented sector accounts for 4.5 million or 20% of households in England¹, and it is the second largest tenure after home ownership. HMOs are an important form of accommodation within the private rented sector because they are typically cheaper than other private rental options and often house vulnerable tenants. It is estimated that there are around 508,000 HMOs across England². Currently, and since 2006, only large HMOs of three storeys or more housing five or more persons in two or more separate households are subject to mandatory licensing – capturing 60,000 HMOs. It is generally not disputed that licensing has been largely successful in improving management and safety standards in those HMOs.
- 7.2 However, since mandatory licensing was first introduced there has been a significant increase in the use of smaller properties, notably two storey houses- originally built for families- and flats, as HMO accommodation. Although some of these HMOs are licensed under local HMO licensing schemes, many are not. Some of these HMOs are operated by rogue landlords who exploit their vulnerable tenants and in some cases the public purse through housing benefit, by renting sub-standard, overcrowded and dangerous accommodation. Poor practice can include: housing illegal migrants; failing to meet the required health and safety standards; permitting overcrowding; and ineffective management of tenant behaviour. This has a significant impact not only on tenants, but also the local community through excessive waste, excessive noise and anti-social behaviour which can include the intimidation of local residents.
- 7.3 In May 2015 the then Prime Minister announced the Government’s intention to crack down on poorly managed HMOs through the extension of mandatory licensing³. The overall goal of the reforms is to address poor conditions and overcrowding in smaller HMOs, and to improve management standards so as to provide better protection for

¹ Department for Communities and Local Government; English Housing Survey 2015 – 2016: Headline Report

² <https://www.gov.uk/government/statistical-data-sets/local-authority-housing-statistics-data-returns-for-2015-to-2016>, Tab F

³ <https://www.gov.uk/government/speeches/pm-speech-on-immigration>

those living in HMOs and reduce their negative impact on the surrounding communities.

- 7.4 This instrument revokes and replaces the 2006 Order. By prescribing a broader description of HMO than the 2006 Order its effect is that mandatory licensing will apply to HMOs that are below three storeys (if they are occupied by five or more persons in two or more separate households) as well as to those of three or more storeys. It is estimated that by doing this, an additional 177,000 HMOs (on top of the existing 60,000) will become subject to mandatory licensing in England.
- 7.5 This instrument comes into force on 1 October 2018. Before that date LHAs must promote the changes this instrument makes and the extension of mandatory licensing in their respective areas. During this period, LHAs must also process applications for licences relating to those HMOs prescribed by this instrument. However, any licences issued in advance by virtue of this instrument cannot come into force before 1 October 2018. Landlords of HMOs falling within the prescribed description who fail to apply for licences by 1 October 2018 commit a criminal offence from that date.
- 7.6 Due to transitional provisions under which around 20,000 HMOs licensed under local schemes will be passported into mandatory licensing automatically, it is estimated that around 160,000 will become licensable for the first time from when the order is made.

8. Consultation outcome

- 8.1 The Government consulted extensively on the changes this instrument introduces through two consultation papers. There was broad support for the extension of scope of mandatory HMO licensing.
- 8.2 The Government published a technical discussion paper on 6 November 2015 *Extending mandatory licensing of Houses in Multiple Occupation in England*⁴ (the first consultation). The first consultation set out the principles of the licensing reforms and invited views on how far the scope of mandatory licensing should be extended. There were 449 responses to this consultation.
- 8.3 In response to the proposal to extend the scope of mandatory HMO licensing beyond those properties with three storeys or more, 380 (78%) respondents thought the scope should cover HMOs of one storey or more, and 90 (22%) thought it should only to apply to buildings of two or more storeys. It was argued by respondents that excluding single storey flats would fail to address the issues of overcrowding and would not capture the landlords who avoid the attention of LHA enforcement by letting out single storey properties. There was support for the proposed extension of mandatory licensing to flats in multiple occupation above and below business premises (regardless of the number of storeys), with 336 (79%) of respondents agreeing with the proposal. 225 (55%) of respondents thought the current threshold of five people in at least two separate thresholds should be changed, however a range of alternatives were put forward (from three persons to nine persons), none of which were more popular than the option to retain the current standard, supported by 201 people (45%).

⁴ <https://www.gov.uk/government/consultations/extending-mandatory-licensing-of-houses-in-multiple-occupation-and-related-reforms>

- 8.4 The response to the first consultation was published on 18 October 2016⁵. It was announced that the Government would extend the scope of HMO mandatory licensing to cover buildings with one storey or more (rather than limited to three storeys or more, as it is currently). The Government also confirmed that it would proceed with bringing flats above and below business premises, where there are less than three flats in the building, into scope of mandatory HMO licensing. It was stated that the current threshold of five people in two or more households would be retained, as there were no compelling reasons provided for a change in the current threshold, and no widely supported alternative.
- 8.5 A second consultation was issued on 18 October 2016 entitled *Houses in Multiple Occupation and residential property licensing reforms*⁶, which invited views on the means to implement a number of measures consulted on in the previous technical discussion paper, including the extension of scope of mandatory licensing to cover buildings of one storey or more. There were 395 responses to this consultation.
- 8.6 159 respondents (52%) agreed to the proposed threshold for mandatory licensing of multiply occupied purpose built flats. Those who disagreed questioned whether the range of flats in scope was right, including whether Tyneside flats⁷ were captured. The consultation also asked whether the proposals were clear. 189 responses (61%) stated that the rules applying to flats in purpose built blocks and converted premises were sufficiently clear. A number of LHAs argued that the proposals were confusing and could allow a number of high-risk HMOs to remain unregulated. 257 respondents (76%) agreed it was clear how the new scheme will apply to buildings that are HMOs occupied by five persons in two or more households.
- 8.7 The Government's response to the second consultation is at: <https://www.gov.uk/government/consultations/houses-in-multiple-occupation-and-residential-property-licensing-reforms>. It sets out how it is planned to implement the reforms through secondary legislation, including how flats in multiple occupation are to be treated.

9. Guidance

- 9.1 We will be issuing non statutory guidance for LHAs on the extent of mandatory HMO licensing and associated rules.

10. Impact

- 10.1 We estimate the annual direct net cost to business will be £23.5m. However, this figure includes costs in relation the new licensing conditions which is being enacted by the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 No. [xxx]. There is no impact on charities or voluntary bodies.
- 10.2 The impact on the public sector is that local authorities will be obliged to licence more HMOs than they currently do. However, the Act provides them with the power to

⁵https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560777/HMO_Tech_Disc_RES_PONSE_DOC.pdf

⁶ <https://www.gov.uk/government/consultations/houses-in-multiple-occupation-and-residential-property-licensing-reforms>

⁷ Tyneside flats are commonly found in the Tyneside area of the North East of England, but similar constructed blocks are also found elsewhere. They comprise of two flats (each with their own entrance from the street) built in a two storey block resembling a typical terrace house of the area.

charge licensing fees to cover the cost of administering their licensing functions under Part 2 of the Act.

- 10.3 A full Regulatory Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The majority of private sector landlords (including landlords of HMOs) own one rented property and would likely be classified as a small business. Therefore, the Government is not proposing to exempt small and micro businesses as it would result in the policy failing to meet its objectives of reducing rogue landlord activity and other exploitative behaviour. It is estimated that the most significant impact on each landlord will be the cost of obtaining a licence, mainly the fee payable, as set out in the Impact Assessment.

12. Monitoring & review

- 12.1 A review of this instrument will be carried out by October 2021.

13. Contact

- 13.1 Laurence Morton at the Ministry for Housing, Communities and Local Government, (telephone: 0303 44 46765 or Laurence.Morton@communities.gsi.gov.uk)

Or

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can answer any queries regarding the instrument.