

THE HOUSING ACT 2004 - LICENSING IN THE PRIVATE RENTED SECTOR

An article by Neil Marsden of Environmental Health Services, Leeds City Council summarising those provisions of the Housing Act 2004 that will impact on the private rented sector.

The Housing Act 2004 received Royal Assent in late November last year. The new Act will bring in a number of significant new measures that will impact on the private rented sector (PRS) and in particular HMO licensing.

The Act provides the framework of how HMO licensing will operate and further future regulations will provide the details. The Government is still considering exactly how licensing will operate and is presently consulting with PRS stakeholders on this.

The Government advise that HMO licensing will be implemented from the end of this year.

The following is a summary of the main aspects of HMO licensing.

Change in definition of HMO

There will be changes to the definition of HMO, the key ones being:

- A dwelling will be an HMO if three or more unrelated people are sharing it
- Buildings comprising non self contained flats will be HMOs
- Houses converted to self contained flats before 1991 and not in accordance with the 1991 Building Regs. will be HMOs

The change in definition will particularly impact on smaller shared houses, particularly those occupied by students. Traditionally this type of shared property has been regarded as being singly occupied.

Mandatory HMO licensing

The Act will require that higher risk HMOs will have to be licensed by local authorities.

The government are proposing that the higher risk HMOs will be those comprising 3 or more storeys, five or more occupants comprising two or more households.

Licences will run for 5 years.

After implementation it will be an offence to operate a licensable HMO without a licence. Conviction carries a maximum fine of £20,000.

Property Tribunals will be empowered to require a landlord to pay a tenant up to one years rent as compensation if a licensable HMO has been let without a licence.

Once an application has been submitted no offence is being committed whilst the local authority are processing the application.

Local authorities can issue a licence for an HMO if they are satisfied that the landlord is a fit and proper person, that they are competent and have the resources and systems in place to properly manage HMOs.

Local authorities will be able to place conditions on HMO licences relating to occupancy levels, prevention of occupation of unsuitable parts of HMOs, their proper management, tenant behaviour, improvement works, provision of safety certificates for essential services, provision of a tenancy agreement, obtaining references and may require that landlords undertake a training course on managing HMOs in accordance with good practice.

Licence conditions may include timescales for works to be carried out to make HMOs suitable for occupation

Landlords may appeal to a Property Tribunal if they feel that a refusal to issue a licence or the conditions attached are unreasonable.

Although authorities may inspect HMOs before the issue of a licence they must inspect them as soon as possible after the issue of a licence to check that they are safe and healthy.

If an HMO does not comply with satisfactory health and safety standards, authorities may take enforcement action to require necessary remedial works (Improvement Notice). Alternatively the authority may prohibit the use of, or part of, an HMO for human habitation if the accommodation is not suitable (Prohibition Notice).

The government require that HMO licensing schemes are self funding and accordingly authorities will charge a fee for an application for a licence. Indications are that the fee chargeable may be up to £110 per bedspace.

If an authority do not believe that a landlord is fit to hold a licence they may require that another more competent manager is the licence holder. In practice this may mean that professional managing agents may be the licence holders for landlords who do not have the necessary skills, knowledge, experience or competence.

If an authority refuse to issue a licence and the landlord does not propose an alternative competent option then the authority must issue a Management Order and take over the management of the property until a suitable licence holder can be arranged.

A landlord found to be operating a licensed HMO in breach of the licence conditions will be liable on conviction to a maximum fine of £5000.

Authorities can issue Exemption Orders for up to six months if landlords decide to change an HMO from licensable to non-licensable.

There will be new HMO Management Regulations introduced which will be complemented by a new Code of Practice on HMO Management. The relationship between the Code and the Regulations will be similar to that of the Highway Code and the Traffic Acts.

Standards

The Government intend to introduce national minimum standards for amenity levels in HMOs that are subject to licensing. Authorities may require in excess of this where circumstances justify it.

Authorities will determine their own amenity level standards for non licensable HMOs.

Similarly authorities will determine appropriate minimum space standards (room sizes), although the Government are currently reviewing the law on minimum room sizes.

The Housing Fitness standard, the basic health and safety standard for the last 80 years is being replaced by the Housing Health and Safety Rating System (HHSRS). This is a risk assessment based system of determining hazards to health and safety. The system focuses on the remedying of hazards rather than compliance with standards per se.

When inspecting HMOs authorities will determine if there are deficiencies present that can give rise to hazards. If so enforcement action will be taken to require the landlord to remove or reduce the hazard.

Additional licensing

The Act provides local authorities with a discretionary power to declare all or part of its Area to be subject to additional licensing. This would bring into the licensing regime those lower risk HMOs that are below the trigger point for mandatory licensing. Typically these will be HMOs with less than three storeys or accommodating less than five people.

Additional licensing covering a particular area can operate for no more than five years.

Local authorities wishing to undertake additional licensing will need to satisfy the requirements of a business case as specified in the Act. These are:

- That a significant proportion of HMOs of the above description are being managed ineffectively so as to give rise, or to be likely to give rise, to one or more particular problems for those occupying the HMOs or for members of the public.
- To consult with persons that may be affected by the designation and to consider any representations made.
- That the local authority has considered whether there are any other courses of action available to them that might provide an effective method of dealing with the problem or problems in question, for example an accreditation scheme.
- That the local authority consider that making the designation will significantly assist them to deal with the problem or problems.
- That the authority has considered displacement and housing market effects.

The designation of additional licensing by a local authority may require confirmation by the Government to ensure that the business case is proven. If the authority has been rated as a good authority under the Comprehensive Performance Assessment the council can exercise its discretion to make designations without Government consent provided that the designation fits certain Government criteria.

Selective licensing of privately rented accommodation

In addition to mandatory and additional HMO licensing the Act gives local authorities the power to designate an area(s) as subject to selective licensing, where in all privately rented houses, whether or not in multiple accommodation or rented to single households, would be required to be licensed by the local authority.

The power is available to use:

- Where an area is or is likely to become an area of low housing demand and making a designation will, when forming part of an area regeneration strategy, contribute to the improvement of the social or economic conditions in the area.
- Where an area is experiencing a significant and persistent problem caused by anti-social behaviour which some or all private landlords letting in the area are not combating, and making a designation will, when forming part of an anti social behaviour reduction strategy, lead to a reduction in, or the elimination of the problem.

Privately rented properties within the selective areas will require to be licensed. The licence holders must be fit and proper persons with the competency and means to properly manage properties.

Conditions may be attached to the licence that are considered by the local authority to be appropriate for regulating the management, use or occupation of the property.

Conditions may include:

- Imposing restrictions or prohibitions on the use or occupation of particular parts of the house by people occupying it or
- Requiring the taking of reasonable and practical steps to prevent or reduce anti social behaviour by persons occupying or visiting the house.
- Requiring the taking up of references from people seeking privately rented accommodation in the area.

In summary, selective licensing can regulate which landlords operate in an area and how they manage their properties.

It will be an offence to let property in an area of selective licensing without a licence or to do so in breach of licence conditions.

Local authorities can charge a licence fee to recover some of the costs of operating the scheme.

Conclusion

Mandatory HMO licensing will enable local authorities to identify the higher risk HMOs within their areas and regulate their living conditions and the quality of their management. It presents potential opportunities to contribute to Community Safety.

Additional discretionary HMO licensing would extend this control to lower risk accommodation but a business case for this needs to be satisfied as the Government wishes to avoid over-regulation.

Selective licensing of all PRS stock in a designated area will be a useful tool to support area regeneration where privately rented houses are in poor condition and badly managed and to deal with areas that are subject to high levels of anti social behaviour.

THE HOUSING ACT 2004 - A SUMMARY OF MATTERS RELATING TO THE PRIVATE RENTED SECTOR

1. HOUSING HEALTH & SAFETY RATING SYSTEM (HHSRS)

- Replacement for the Housing Fitness Standard
- Will apply to HMOs and singly occupied property
- System identifies and rates the severity of a range of hazards found in dwellings according to their risk to health & safety
- Health includes mental health
- If a hazard is above a specified rating trigger (category 1) Local Authorities will have to take enforcement action; below the trigger but within specified hazard bands (category 2), action will be discretionary
- Enforcement action can be Hazard Awareness Notice, Improvement Notice, Suspended Improvement Notice, Prohibition Order, Demolition Order/Clearance Area
- Local Authorities can declare a Clearance Area if the condition of the properties in it are hazardous
- Local Authority can charge for serving enforcement Notices
- Undertakings to do remedial works will be permissible
- Powers are available to the Local Authority to carry out work in default and/or prosecute where legal contraventions are found
- Enforcement action guidance to be issued by the Government

2. LICENSING OF HOUSES IN MULTIPLE OCCUPATION

- New definition for an HMO – 3 or more unrelated people sharing
- Houses converted to self contained flats after 1991 and in accordance with Building Regs. will not be included in the defn. of HMO
- Buildings in non self contained flats will be HMOs
- Mandatory licensing system for higher risk HMOs (5 or more people AND three or more storeys)
- Discretionary additional licensing system to be available for lower risk HMOs but for which there will need to be a suitable business case
- The business case will need to show that a significant proportion of HMOs in an area are being ineffectively managed to a point that there are problems for the occupiers or members of the public
- A discretionary additional HMO licensing scheme will operate the same as if it was mandatory
- An Exemption Order can be issued for up to six months if the landlord intends to take steps to avoid an HMO being licensable
- Regulations will prescribe standards to be attached to the licence conditions
- Licence conditions may include number, type and quality of amenities & health & safety standards
- Category 1 and 2 HHSRS hazards cannot be remedied using the licence conditions - such hazards will need to be remedied using the Notice procedure as described in the previous section
- If licence refused or revoked - Local Authority will need to make a Management Order and take responsibility for the HMO
- Govt. are to issue an Approved Code of Practice for the Management of HMOs to complement new HMO Management Regulations.
- Local Authorities may make it a licence condition that the licensees attend a training course on the HMO Management Code of Practice
- Licences will last for 5 years
- HMOs owned by Public bodies will exempted from licensing
- Student halls of residence will be exempted if they are operated by the Educational Institutions that own them
- Licensing regime to be self funding - licence fee will be payable

- Up to one years rent will be repayable as compensation to tenants by a landlord for unlicensed HMOs that are found to be unlicensed
- Licence conditions will include matters relating to property management, tenant behaviour, improvement works, occupancy levels, prevention of occupation of parts of the HMO, provision of safety certificates for essential services, provision of a tenancy agreement, obtaining references
- Licence condition can include timescales for works to be carried out to make the HMO suitable for occupation
- 'Fit and proper person' i.e. competency requirement needs to be satisfied for licensee and anyone managing the property on their behalf
- Licensee has to be the most appropriate person to be the licensee
- Before issuing a licence Local Authority need to be satisfied that the license holder has satisfactory management arrangements in place + funding and is competent to be a manager
- Procedure for application - notice to landlord with proposed licence - period of representation - licence issued - right of formal appeal - tenant can also appeal about conditions
- Procedure same for acceptance or refusal
- It will be an offence to let an HMO without a licence (max £20,000 fine) or in contravention of a licence condition (max £5,000 fine)

3. SELECTIVE LICENSING OF PRIVATE LANDLORDS

- Local Authorities will have the power to licence privately rented houses in areas of low demand and in areas with high anti social behaviour
- Power will be available from June 2005
- Characteristics of low demand include high numbers of empty properties, low property prices, high turnover, anti social behaviour
- Area will need to be one that is subject to comprehensive regeneration and/or anti social behaviour action
- Business case needs to be satisfied for an area to be designated
- Government will provide criteria for suitability of an area for selective licensing
- Licence conditions will include matters relating to management, tackling anti social behaviour, property condition, property use and occupation and contents, take up of references, safety certification and terms of occupation
- Licence will require landlord or manager to be fit and proper person
- Licences will run for 5 years
- HMO licensing regime will over ride selective licensing regime where an HMO subject to HMO licensing is within an area subject to selective licensing
- Properties refused a licence or licence revoked will be subject of a Management Order – the Council will then need to take over the management responsibility for the property
- Local Authority can issue an Exemption Order for up to 6 months if a landlord wishes to avoid a property being licensable
- It will be an offence to let a property without a licence or in contravention of a licence condition

