



PRIVATE RENTED SECTOR LICENSING: POLICY AND PRACTICE

A Future of London briefing paper





FUTURE OF LONDON

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About London Property Licensing

London Property Licensing is a housing consultancy offering simple, impartial and expert advice on all matters associated with property licensing and the regulation of private rented homes in London.

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INTRODUCTION

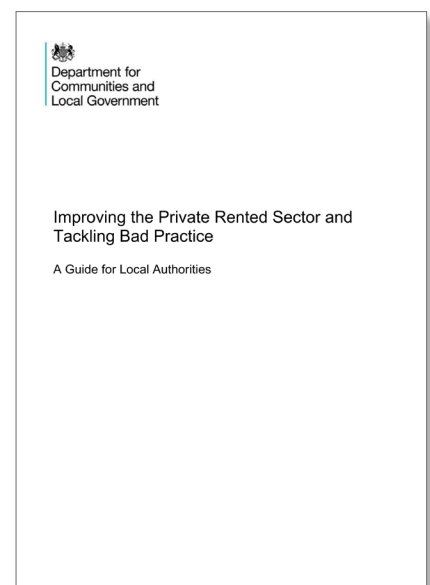
The private rented sector, or PRS, is a pivotal element of national housing strategy, due to its rapid rise and inconsistent standards. This is particularly the case in London, whose PRS has more than doubled since 2001, and where 30% of PRS properties were found to be below the Decent Homes standard in 2011.¹ Management standards vary widely, and include the careless and the criminal. This is now acknowledged by government: in recent guidance, they cite the issue of landlords who deliberately exploit vulnerable tenants by letting out unsafe and unsuitable accommodation for profit, as well as non-professional landlords who are unaware of their responsibilities.²

The licensing of PRS properties is one way to raise standards: currently, licences can be refused on the basis that the landlord is not a 'fit and proper person', and operating without a licence is an offence – as is failing to comply with the licence conditions. Licensing is also an effective legislative instrument for authorities to increase the amount of information held on their growing PRS, and to open up the lines of communication between local authorities and their landlord communities.

The ultimate objective of any property licensing scheme should be to tackle poor standards of management in order to improve housing conditions for tenants. It is therefore essential that licensing be accompanied by robust enforcement. This is challenging for schemes that cover a wide area; of the two borough-wide selective schemes that have been operational for a year or more*, LB Barking & Dagenham is inspecting all its properties before granting a

licence, while Newham has used a phased approach; first focusing on licensing as many landlords as possible, before moving onto an audit of licence-holders to demonstrate their compliance.³ Both options have their advantages and disadvantages, though Newham has been guided by its pilot scheme, internal evaluation of which found that unlicensed properties were four times more likely to be below the statutory minimum housing standards than licensed properties.

In recently published guidance, the Department for Communities and Local Government (CLG) names licensing schemes as part of a suite of tools local authorities can use to improve their PRS properties. The guidance also includes the housing health and safety rating system (HHSRS) and powers for prosecuting landlords for failing to meet the necessary property standards. As with licensing, these powers may not just force landlords to raise standards, but, if promoted well, can raise awareness of responsibilities across a landlord community. It is therefore essential that local authorities find the strategy that is most appropriate to their area and that makes the best use of limited resources.



"Criminal landlords are exploiting vulnerable tenants, who just want a safe place to call home... This cannot continue unchecked, as these activities undermine the work of good landlords and harm the sector's reputation." – CLG, 2015⁴

* LB Waltham Forest's borough-wide selective licensing scheme became operational on 1 April 2015.

Changes to legislation

The licensing of larger Houses in Multiple Occupation (HMOs) has been mandatory since 1 April 2006, and discretionary licensing schemes have also been an important policy lever for local authorities since that date. These schemes can be additional – the licensing of certain types of HMO in addition to the mandatory ones; or ‘selective’ – the licensing of all private landlords in an area (for a more detailed definition, see the next section). In 2010, such schemes were granted General Approval by CLG, provided they are consulted on appropriately and adhere to statutory guidance. But this has recently changed.

On 11 March 2015, Brandon Lewis MP, Minister of State for Housing and Planning, wrote to all council leaders to say it was the government’s intention to amend the General Approval. He said that from 1 April 2015, councils would need Secretary of State approval for any selective licensing scheme that covers more than 20% of their geographical area or that impacts on more than 20% of privately rented homes in that area. This 20% rule applies only to selective licensing schemes.

In announcing this decision, the Housing and Planning minister said:

“Licensing can play an important role when it is strictly focused on discrete areas with specific problems. However, the blanket 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.”⁵

The amended legislation is particularly relevant for London. Although there are only three borough-wide selective schemes operational in London as of 1 April 2015 (Newham, Barking & Dagenham and Waltham Forest), Enfield, Redbridge and Croydon are all trying to implement similar schemes. (See map on page 6 for the full picture of discretionary licensing in London.)

CLG in some way balanced the restriction of selective licensing with the draft Selective Licensing of Houses (Additional Conditions) (England) Order 2015⁶ that was debated and agreed at speed before the dissolution of parliament on 30 March 2015. Now law, this has broadened the conditions authorities can use to implement smaller, more focused schemes. Prior to the Order, selective licensing schemes could only be implemented on the basis of two factors – low housing demand and anti-social behaviour (ASB).

The Order states that local authorities are able to implement schemes that license properties that are occupied under shorthold tenancies, subject to the 20% rule and on the basis that the area has a high proportion of

properties in the private rented sector, if in conjunction with one of four other factors:

- poor property conditions;
- large amounts of inward migration;
- a high level of deprivation; or
- high levels of crime.

This is also relevant for London boroughs, who in the absence of low housing demand, were previously restricted to schemes targeting ASB.

Regardless of legislative changes, additional and selective licensing schemes have a major role to play in improving PRS standards and the management of PRS properties.

To help boroughs make sense of the shifting landscape of rented property licensing, this paper:

- summarises licensing policy;
- maps current licensing activity in London (operational and proposed); and
- offers guidance, examples and signposts to further information to boroughs pursuing schemes.



Source: Future of London

TYPES OF LICENCE

Mandatory HMO licensing

Mandatory licensing of certain larger Houses in Multiple Occupation (HMOs) came into force on 1 April 2006 under Part II of the Housing Act 2004. The licensing scheme applies throughout England and Wales.

The definition of a HMO is contained in section 254 of the act. Mandatory licensing applies to a HMO that:

- is three or more storeys high;
- contains five or more people in two or more households; and
- contains shared facilities such as a kitchen, bathroom or toilet.

There are statutory exemptions in Schedule 14 to the act and in the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. Notable exemptions include: properties controlled by certain public sector bodies, those occupied by religious communities and owner-occupied properties with no more than two lodgers.

Each local authority has responsibility for administering and enforcing the mandatory HMO licensing scheme.



LB Redbridge held a three-month HMO licensing amnesty in 2014. Landlords of unlicensed properties that fell under the mandatory scheme were encouraged to come forward with the promise that no legal action would be taken.⁷

Additional licensing

Part II of the Housing Act 2004 gives councils the power to implement an additional licensing scheme for HMOs that fall outside the mandatory HMO licensing scheme. It is subject to the same exemptions as above.

An additional licensing scheme can only be introduced if a council is satisfied that a significant proportion of the HMOs are being poorly managed and are giving rise, or likely to give rise, to problems affecting the occupiers or members of the public. See 'The licensing process' on page 8 for how such evidence can be gathered.

A scheme can apply to all or part of a borough, and can relate to all HMOs or be restricted to certain types, such as smaller ones prevalent in a given area.

Selective licensing

Part III of the Housing Act 2004 gives councils the power to implement a selective licensing scheme for properties within a defined geographical area in order to tackle problems associated with low demand or where there are significant and persistent problems of ASB.

There are statutory exemptions in the Selective Licensing of Houses (Specified Exemptions) (England) Order 2006, such as properties controlled by certain public sector bodies, holiday homes and occupants living with resident landlords where the accommodation is shared.

The legislation changed at the end of March 2015. The Selective Licensing of Houses (Additional Conditions) (England) Order 2015 states that councils can implement a scheme to address problems stemming from a high proportion of private properties, alongside one of the following criteria: poor property conditions; large amounts of inward migration; a high level of deprivation; or high levels of crime. These additional criteria allow councils more flexibility to implement new schemes.

THE POLICY LANDSCAPE

The licensing of rented properties was introduced by the government through the 2004 Housing Act.

Mandatory licensing

The establishment of mandatory licensing for larger HMOs from 1 April 2006 made good on the Labour government's 1997 and 2001 Election manifestos.⁸ Mandatory licensing was relatively straightforward to introduce, with evidence of the disproportionately poor standards of HMOs, coupled with the particular dangers facing larger properties where higher numbers of people reside.⁹

A Building Research Establishment (BRE) study conducted for CLG between 2008 and 2010 identified between 236,000 and 379,000 HMOs in England, including around 56,000 licensable under the mandatory scheme, i.e. sufficiently large, with high levels of occupation, and not exempted (CLG, 2010). The majority of licensable HMOs were found to be in London and Yorkshire and the Humber. The CLG Local Authority Housing Statistics Report 2012-13 suggests there are 184,878 HMOs in London, of which 21,525 (12%) are licensable under the mandatory scheme.¹⁰

"The main things preventing licensing playing a bigger role in transforming these [licensed] areas are the overall level and security of resources." – CLG, 2010¹³

Although the scheme was introduced with little opposition, the BRE survey reported some capacity issues. It reported that of the estimated 56,000 licensable HMOs, 30,000 mandatory HMO licence applications had been received and 20,000 licences had been issued.* This highlights the resource required both in avoiding an application backlog and tracking down the unlicensed properties.

In terms of the basic objectives of HMO licensing – targeting poor management and property conditions in high-risk properties – the same report used anecdotal evidence to demonstrate that the scheme was working, but with shortcomings. Some of the problems the report raised, such as landlords of larger properties converting them into flats to avoid the licensing fee, seem fairly inevitable of a targeted scheme of this nature. It also stated that communication, training and information on funding sources would ensure that the scheme had the maximum benefit.¹¹

Additional and Selective Licensing

Additional and selective licensing schemes have a more complex history. Both were introduced alongside mandatory HMO licensing in the Housing Act 2004, with the condition that they must be first signed off by the Secretary of State. However, in 2010, and in the spirit of localism and "cutting red tape"¹² the new government developed a General Approval for additional and selective licensing, allowing local authorities to implement their own schemes to suit local conditions, provided they met a number of statutory requirements. This came into force in June 2010.

Additional licensing was created to run in parallel with mandatory – essentially extending the mandatory scheme to types of HMO not already covered, to increase the reach of licensing.



CC source: Matthew Rutledge, Flickr.

* CLG collects data on HMO licensing – the Register of Large Houses in Multiple Occupation (ROLHMO) – but it is not published for reasons of data protection. The last submission was 2013.

There are no changes to additional licensing schemes amongst the March 2015 amendments, suggesting that there are no major concerns with how these schemes have been rolled out.

This is not so with selective licensing, which gives authorities the power to designate areas in which the vast majority of private-rented properties require a licence. As the policy was originally conceived, selectively licensed areas should either experience low housing demand or suffer from anti-social behaviour.¹⁴

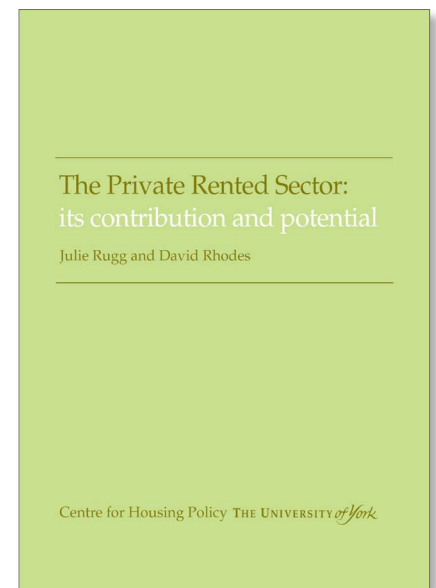
In March 2015, the government announced new rules which would restrict selective licensing schemes to no more than 20% of a local authority's stock or total area. In the new guidance, CLG stresses that discretionary schemes were established to "tackle problems in small and strictly defined areas", and that "when [selective licensing] is applied in a borough-wide fashion and not properly enforced, it can affect the majority of landlords who provide a good service."¹⁵

Organisations representing landlords have been vocal on their dislike of local powers to license all landlords. For example, the National Landlords Association (NLA), which represents 55,000 landlords nationwide, has campaigned against borough-wide selective licensing since discretionary licensing became available in 2010, and was particularly vocal about LB Newham¹⁶, as this was the first borough-wide scheme in England or Wales to be established.

Other property groups such as the British Property Federation (BPF) aired similar concerns to the 2014 CLG Review of Property Conditions in the Private Rented Sector consultation.¹⁷ Overall, however, CLG's 2015 consultation response showed that 73% of respondents said tighter restrictions on selective licensing were not needed.¹⁸

Upon assuming office, the government's stance on improving conditions in the PRS was clear, with the coalition against proposals for any major tightening of controls that could be seen to restrict the market, and in favour of local government freedom to manage its housing market.

In 2010, for example, the new government was swift to announce that proposals for a national register of landlords – framed as "light-touch licensing" by the well-respected Rugg Review – would not be taken forward. The General Approval for discretionary schemes was granted at the same time.



In 2014, CLG reiterated its objections to a national register, but also expressed concern about the increase in borough-wide selective licensing (CLG, 2014 consultation). This concern has culminated in the General Approval amendment. Whilst it is not a surprising move, as far as localism is concerned, it is somewhat of a side-step.

LICENSING SCHEMES IN LONDON

FIGURE 1: Snapshot of PRS licensing in London, March 2015.

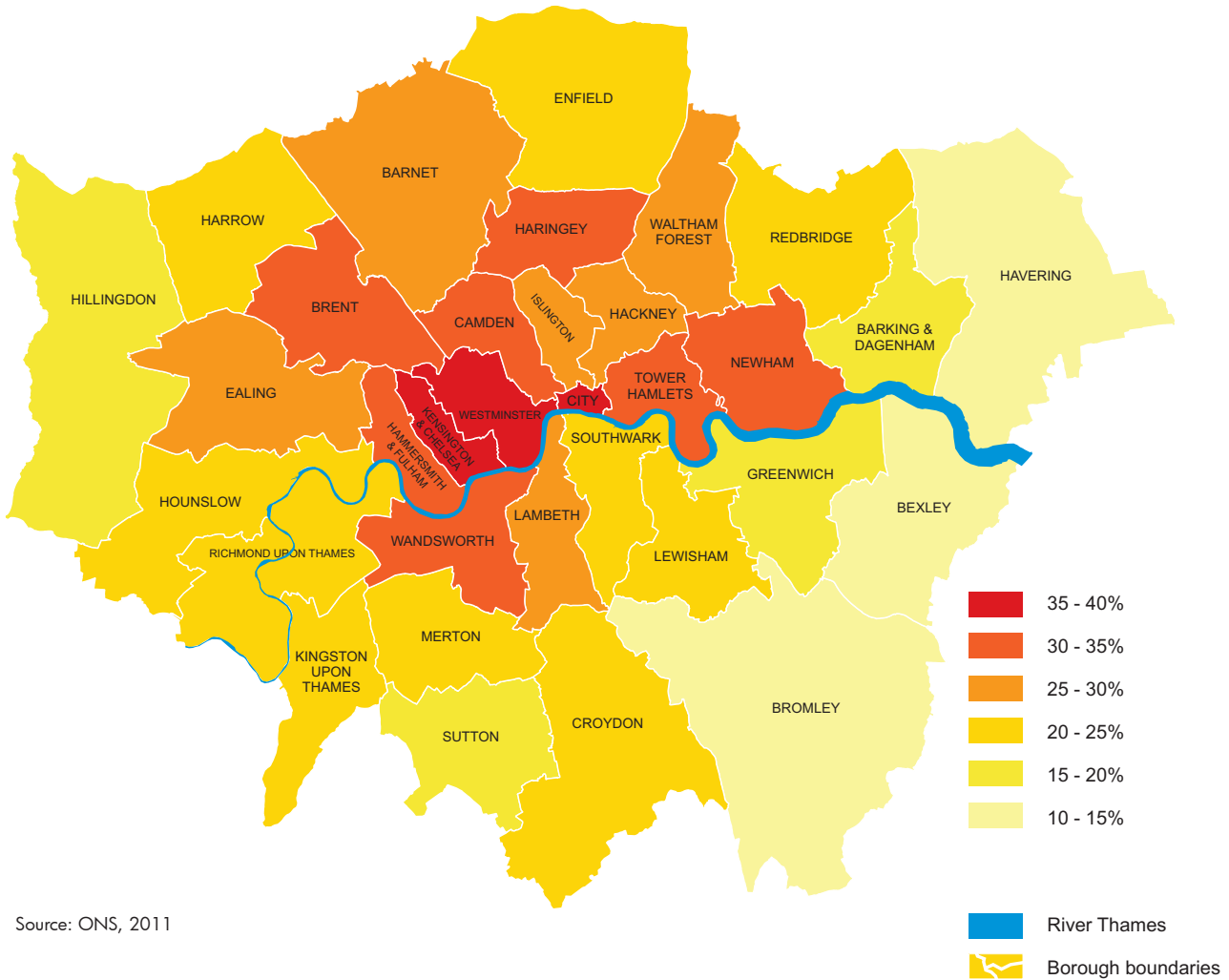


The proposed restriction to selective licensing is a blow to local authorities working towards establishing larger or borough-wide schemes. At the time of publication (April 2015), there were 10 consultations in process or about to start. For instance, LB Croydon and LB Redbridge both recently consulted on borough-wide selective schemes. On 16 March, LB Croydon's scheme won cabinet approval, and will come into force on 1 October 2015, despite the amendments to the General Approval.¹⁹

That said, the proposed addition of high proportions of private renting (in conjunction with one of four other housing issues) to the General Approval for selective licensing is potentially very useful for London boroughs. At the moment, of the two existing conditions of ASB and low demand, the latter is highly unlikely to apply to London's housing market, particularly in inner London where levels of private renting are very high.

- Live or consulting schemes smaller scale than ward not included
- For boroughs with overlapping schemes, more recent scheme displayed
- Types of HMO being licensed in additional schemes vary

FIGURE 2: Proportion of PRS housing tenure 'heat map'.



Source: ONS, 2011

Figure 3 shows the proportion of private renting in each borough, according to 2011 census data. Although it does not show ward-level PRS density – ‘cooler’ boroughs on this map may still have pockets of high-density private renting – it gives an indication of the dominance of private renting in many parts of London.

The proposed widening of licensing conditions for implementing additional licensing and more focused selective schemes will be an opportunity for many boroughs.

THE LICENSING PROCESS

Legislative wrangles aside, there are several steps to establishing an additional or selective licensing scheme, and it is vital that boroughs considering a scheme afford each step the necessary time and energy. The following section includes guidance, examples of current practice and signposts to further information.

Assessment

The Housing Act 2004 states that any decision to implement a selective or additional licensing scheme must be consistent with the council's housing strategy and must be part of a coordinated approach for dealing with homelessness, empty homes and anti-social behaviour. The council must be satisfied that there are no other courses of action that might provide an effective remedy and that the introduction of a licensing scheme will significantly assist in dealing with the problem. It is therefore important that scheme objectives are clear.

When assessing low demand, Section 80 of the act requires councils to consider the value of residential properties when compared to similar properties in other areas; the turnover of occupants; and the number of properties available for sale or let and how long they have been empty. More detailed information can be found in CLG's 2007 guidance.

When assessing ASB, councils should consider crime, nuisance neighbours and environmental crime, and assess whether landlords are failing to take appropriate action to help resolve the problem.

Evidence requirements

The development of an evidence base to support a new licensing scheme will depend on the nature and scope of the scheme under consideration. It is a complex process that should not be underestimated.

One of the first challenges is obtaining an accurate picture of the private rented sector within the borough. While the 2011 census provides a useful snapshot of the size and density of the PRS, it is out of date and the market is changing rapidly. Nevertheless, it is a good indicator of wards with particularly high densities of PRS, and a comparison between 2001 and 2011 data is an effective way to demonstrate the rapid growth of the sector.

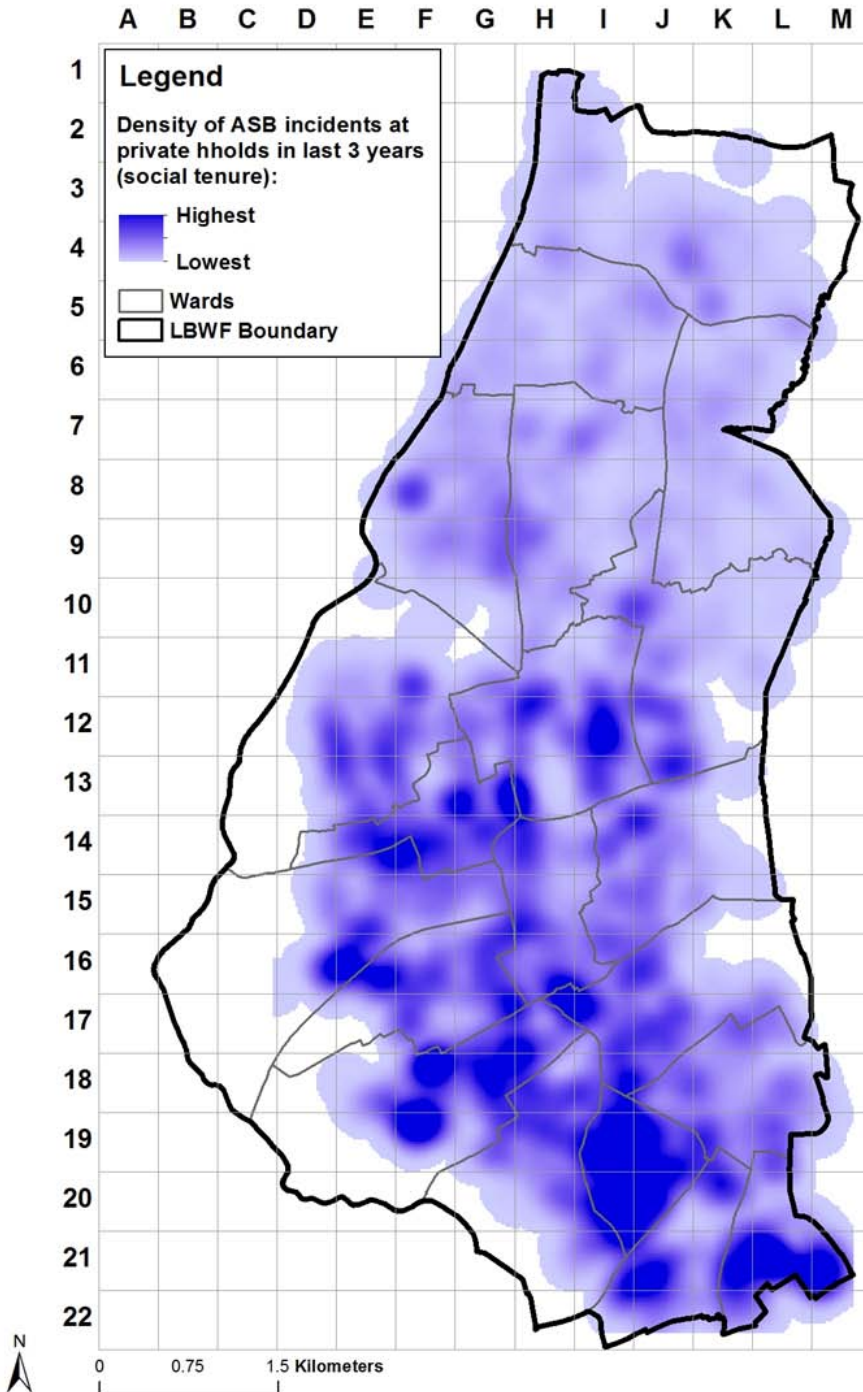
Other sources of information include house condition surveys, housing benefit records, service requests from private tenants and market data from local letting agents. Some councils have used external consultants to provide statistical models mapping out the size and nature of the private rented sector.

The lack of comprehensive and accessible information is another challenge, and one that licensing can address. In June 2012, for instance, Newham council estimated there were 4-5,000 landlords operating in the borough; by March 2015, licences had been issued to just under 22,500 landlords.

FIGURE 3: Table of LB Waltham Forest's ward-level growth in PRS.²⁰

Area	2011 – All households	2011 – Private rented	2001 – Private rented	% change in private rented
Cann Hall	4,988	1,599	858	86.4%
Cathall	4,530	1,480	909	62.8%
Chapel End	5,066	1,261	523	141.1%
Chingford Green	4,467	661	369	79.1%
Endlebury	4,219	449	281	59.8%
Forest	4,344	1,506	952	58.2%
Grove Green	5,220	2,342	1,494	56.8%
Hale End & Highams Park	4,183	551	291	89.3%
Hatch Lane	4,519	549	299	83.6%
High Street	5,553	1,812	1,184	53.0%
Higham Hill	4,864	1,136	609	86.5%
Hoe Street	5,417	1,762	1,058	66.5%
Larkswood	4,451	604	402	50.2%
Lea Bridge	5,597	1,997	1,226	62.9%
Leyton	5,207	1,625	1,000	62.5%
Leytonstone	4,830	1,853	1,148	61.4%
Markhouse	4,864	1,501	868	72.9%
Valley	4,319	617	354	74.3%
William Morris	4,964	1,506	897	67.9%
Wood Street	5,259	1,295	759	70.6%

FIGURE 4: 'Hotspot' map of LB Waltham Forest showing areas of prevalent ASB in PRS households.²¹



Once the PRS has been mapped out for both single-family and multiple-occupied properties, boroughs need to explore any links with poor property management or issues of ASB. While many data sources can be examined internally and by partner agencies, officers must respect the Data Protection Act and the need for appropriate data-sharing protocols.

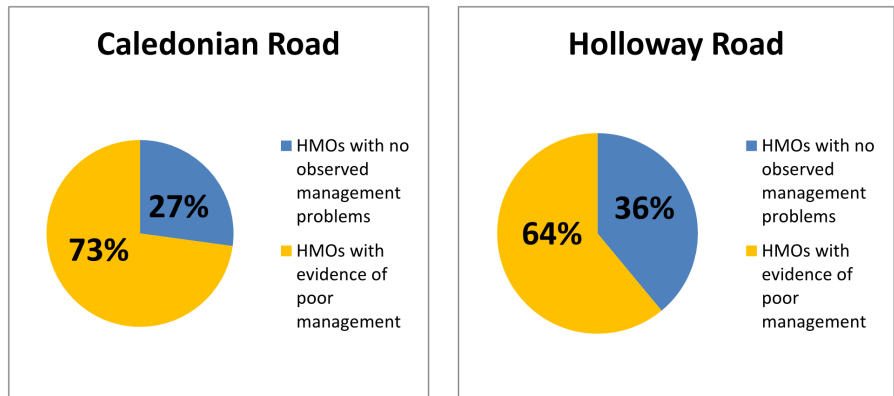
Internally, analysis of private tenant service requests, housing enforcement, street scene enforcement, untidy front gardens, fly-tipping, planning enforcement, noise nuisance service requests and ASB interventions can all help determine a picture of the extent and geographical spread of issues in the borough.

Externally, a useful source of data is the Metropolitan Police, accessed through existing community safety liaison arrangements. The most relevant data sets include CAD ASB data (i.e. ASB calls to police on 101 or 999), CRIS data (i.e. crime reports) and Airspace data (i.e. reported ASB incidents).

The 2007 CLG guidance says crime data on vandalism, criminal damage, burglary, robbery, theft and car crime can all be taken into account if they are linked to tenants not respecting the property in which they live. However, proving a direct link between crime reports and private-rented accommodation can be challenging.

Some of the strongest evidence to support a licensing proposal can be gained from a targeted survey and inspection programme. For example, in the summer of 2014, Islington council surveyed more than 600 properties in Caledonian Road and Holloway Road, about a third of which were found to be HMOs. Internal inspections revealed two-thirds of HMOs had problems with poor management, such as defective alarm systems or poorly maintained communal areas. The survey results provided direct supporting evidence for the additional licensing consultation for these streets.

FIGURE 5: Results from survey of HMOs in Caledonian Road and Holloway Road which formed robust evidence for area-based additional licensing scheme.²²



CC source: Matt Wareham, Flickr.

Consultation

The Housing Act 2004 requires councils to take reasonable steps to consult with people who are likely to be affected by the scheme and to consider any representations made.

The consultation exercise must include local residents, tenants, landlords, letting and managing agents, businesses and any other members of the community associated with or potentially affected by the proposed licensing scheme. It should also include residents and others who operate businesses or provide services outside the area but who may be affected by the scheme.

As part of the consultation exercise, the council should give a detailed explanation of the licensing proposal, share the supporting evidence base and explain how licensing will help to tackle the problem. The minimum length of consultation is 10 weeks.²³

Most boroughs will now be aware of the judicial review decision which quashed Enfield council's additional and selective licensing schemes.*

The review was allowed on two grounds:

- i the council did not consult all the people who should have been consulted outside of the borough boundary; and
- ii the council did not consult for the minimum 10 weeks required.

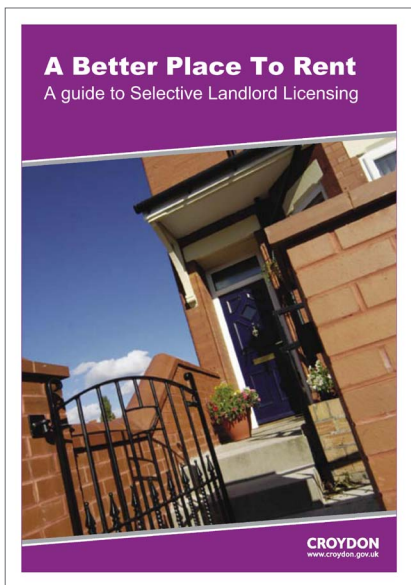
At the time of publication, Enfield council has requested leave to appeal and is awaiting the outcome of its application. In the meantime, other councils such as Camden, Croydon and Redbridge have extended and widened their consultation exercises in response to this judicial review decision.

A key challenge for councils is how to engage and consult with private landlords who operate in the borough but live elsewhere in London, the UK or abroad. There is no easy answer, although promotion through landlord and letting agent associations, advertising in the trade press and

* Regas, R (On the Application Of) v London Borough of Enfield [2014] EWHC 4173 (Admin) (11 December 2014)

through local, regional or national media can all assist in this process.

A clear consultation strategy will need to be developed by each borough. While some boroughs manage the consultation process in-house, others have used external market research companies to demonstrate an unbiased and independent approach.



Financial appraisal

When working on the business model for an additional or selective licensing scheme, it is important to take full account of the operating costs over the life of the scheme. While schemes usually run for five years, the development phase can add six to 18 months. Licences remain in force until their expiry date, so any issues in the final year of the scheme could continue after the scheme – and its budget or staff resource – has expired.

A well-promoted scheme will see the majority of fee income generated in the first year, often encouraged by early-bird discounts. Careful budgeting is needed to ensure sufficient funds for processing and compliance activity throughout the life of the scheme.

It is important to remember that, in accordance with the Housing Act, licence fees can only be spent on administration of the scheme. Therefore, money for related enforcement activity will impact on the authority's General Fund.

Whether councils should absorb the costs of investigating and prosecuting unlicensed operators or pass them on within the licence fee has been subject to lengthy legal consideration in the *Hemming v Westminster Council* judicial review.* Both the High Court and Court of Appeal found against the council and determined these costs could not be included when setting the licence fee. Following a further appeal, the case went to the Supreme Court on 13th January 2015; that decision was pending at publication and the Supreme Court's decision is awaited.

Councils also have some flexibility in developing fee schedules, provided they can demonstrate that all revenue generated is spent on administration. The two most common approaches are a fixed fee per property or a fee calculated on the number of occupiers or lettings.

For example, Newham and Barking & Dagenham both charge £500 per property now that the early-bird discount period of three months has ended. Waltham Forest charges a discounted fee of £250 per property, rising to £500 after three months. Alternatively, Croydon council charges £240 per letting room for an additional licence, with a 25% discount for accredited landlords. Encouraging accreditation through discounted fees is well worth considering, as better-informed landlords should require less intervention, enabling a lighter-touch approach across the board.

FIGURE 6: Image from LB Newham evidence base for selective licensing scheme.



There is considerable variation in licensing fees across London, with each council taking into account administrative and compliance costs, and whether the scheme is to be subsidised or cost-neutral. The licensing scheme cannot make a profit or be used to fund other services.

* *R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council*

Licence conditions

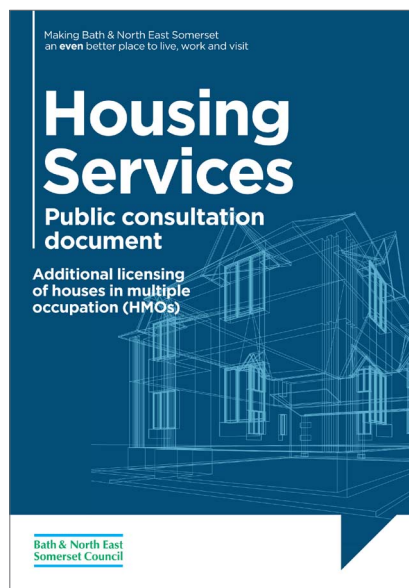
There are certain conditions that **must** be applied to an additional or selective licence under Schedule 4 of the Housing Act 2004. These include:

- producing gas safety certificates for inspection;
- keeping electrical appliances and furniture in a safe condition;
- providing working smoke alarms; and
- giving all occupants a written tenancy or licence agreement.

Selective licences must have an extra condition requiring the landlord to obtain references from prospective tenants. While obtaining references is always good practice, councils need to think carefully about how this condition is applied, to avoid creating unnecessary barriers for people seeking accommodation, such as young people leaving home or low-income migrants. Applying very prescriptive conditions may also restrict a council's ability to discharge its homeless duty to the PRS.

Additional licence conditions can help achieve broader aims, but they must be reasonable, appropriate and fall within the statutory framework provided by the act.

For example, Bath & North East Somerset council's area-based additional licensing scheme includes the condition that, within two years of getting a licence, the HMO property must have a minimum 'E' EPC rating, or have made the maximum improvements possible through the Green Deal and ECO. The scheme has been active since January 2014.



For additional licensing, councils can apply conditions for the management, use and occupation of the house and also its condition and contents.²⁴ For selective licensing, councils can only apply conditions for the management, use or occupation of the house.²⁵ This reinforces that selective licensing was originally intended to address low demand or ASB; poor property conditions should normally be dealt with through the housing health and safety rating system (HHSRS).

It is important to remember that licence conditions should only place obligations on the landlord, not the tenant through the tenancy agreement. Ultimately, licensing is about improving conditions for the tenant by requiring landlords to take their responsibilities seriously.

With licence conditions attracting some controversy, early discussion with landlords and their representative bodies could help cool the atmosphere and frame a balanced set of conditions.

Monitoring appeal decisions through the First-Tier Residential Property Tribunal (RPT) is also important. For example, in June 2014 the Northern RPT ruled that Hyndburn borough council could not require an electrical report as a condition on a selective licence. The same RPT decision also approved an appropriate clause for addressing ASB, following discussion with both parties.

Operating a licensing scheme

Once elected members have approved a licensing scheme, it cannot come into force until at least three months after the designation. In practice, many councils wait longer, to allow ample time for publicity and to prepare for scheme launch. For example, on 24 June 2014, Waltham Forest council decided to implement a selective licensing scheme with effect from 1 April 2015, thereby giving more than nine months' notice. While boroughs can invite applications before a scheme starts, individual licences cannot come into force until the start date in the designation.

Most additional and selective licensing schemes are implemented for the maximum five-year period, although councils must review their schemes from time to time and can end them earlier.

Before and after implementation, an effective communication strategy, including marketing and promotion, is key to ensuring that interested parties are on board and that the scheme is successful.

FIGURE 7: LB Waltham Forest have created a logo specific to their selective licensing scheme, which came into force on 1 April 2015.



The early phase of implementation should involve processing a large influx of applications and enquiries. Developing a user-friendly online application and payment system to streamline the process will be a worthwhile investment for most authorities, although not all boroughs have developed a system.

The licence application process is predominantly an office-based exercise. While all applicants are subject to a fit and proper person assessment, this is often based on the self-declaration on the application form. CLG's 2010 guidance says councils should not routinely carry out police checks or request information on convictions through criminal records bureau (CRB) checks, though meetings with the applicant can be arranged for clarification.

Before issuing the licence, councils must invite representations from all interested parties on the draft licence.²⁶ This adds to the processing time and needs to be factored in when carrying out the financial appraisal.

While most licences are issued for the full five-year period, councils can issue a shorter licence if deemed appropriate, e.g. if there have been examples of poor management or if the landlord has tried to evade the licensing scheme. The latter scenario could also result in the landlord being prosecuted if he or she has been operating a licensable property without a licence.

There is no requirement for councils to inspect each property during the application process, although some councils (such as Barking & Dagenham) have chosen to do so. Without an early inspection, assessing management arrangements, setting occupancy limits and applying any other licence conditions will rely on information from the application form and associated documentation.

That being said, inspecting all properties prior to licence approval is very resource-intensive and councils may experience a shortage of suitably qualified officers to carry out the work. One alternative is to develop a programme of compliance inspections running throughout the life of the scheme. This would enable the council to identify and remedy any serious HHSRS hazards, as required under the Housing Act, but to do so over time.

When developing the operational business plan, it is important to consider how the licensing regime will work with other council services to achieve maximum value. Liaison arrangements with departments dealing with council tax, street scene enforcement, planning enforcement and community safety can be particularly useful.

It is also worth considering what added benefits can be offered to licensed landlords to help them manage their properties more effectively. For example, boroughs might decide to develop a monthly e-bulletin, organise training, promote energy efficiency schemes or invite landlords to participate in customer panels to improve engagement.

FIGURE 8: LB Newham's PRS e-bulletin, sent to landlords and agents who manage licensed properties.



Enforcement

Each council is responsible for ensuring the licensing scheme is well promoted and that steps are taken to identify and take action against the landlords of unlicensed properties who do not apply. Otherwise the scheme may license the good, responsible landlords while 'rogue' landlords continue to flout the law.

Once the application process is underway, councils can start directing more resources to enforcement. This may be best approached on an area basis involving targeted letter drops, street surveys and promotional activity. Councils have many data sources that can help to identify unlicensed properties including Housing Benefit, Council Tax and the Electoral Register, among others. The Housing Act specifically authorises the use of Housing Benefit and Council Tax records for housing enforcement activity.

Effective intelligence-led enforcement can be a challenging and resource-intensive process that involves housing enforcement officers working in partnership with other council services and partner agencies. Newham council has invested heavily in its enforcement service and conducts regular multi-agency enforcement operations supported by the Metropolitan Police. Newham's intensive licensing enforcement has already resulted in several hundred prosecutions, far more than any other council.

But enforcement does not always need to be carried out on this scale. Carefully targeted prosecutions combined with widespread publicity can raise awareness and encourage other landlords to comply, rather than risk the same consequences themselves.

Of course, many boroughs are conducting such enforcement activity without having a licensing scheme in place. LB Lewisham, for example, set up its Rogue Landlords Taskforce after being awarded £125,000 funding from CLG at the end of 2013. The approach includes multi-agency data sharing in order to target the highest-risk landlords. The council was particularly keen to act against housing benefit being paid to criminals: in 2013, £800,000 was paid to the top three rogue landlords in housing benefit. At the time of writing, no follow-on funding had been offered to support the continuation of this work.

Boroughs may wish to consider how they combine licensing enforcement with general housing enforcement activity for properties which do not require a licence. Part I of the Housing Act enables a borough to serve an improvement notice or prohibition order while management regulations mean that poor HMO management can lead to an immediate prosecution.

The seriousness of certain housing offences has been recognised in new legislation that came into force on 12 March 2015. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015, the maximum fine that magistrates can levy for most Housing Act 2004 offences has been substantially increased. Fines that were previously £5,000 or £20,000 are being increased to a maximum unlimited fine, although magistrates will still need to consider the landlord's means.

FIGURE 9: Rented property discovered through LB Lewisham's rogue landlords taskforce work



CONCLUSION

These are interesting times for additional and selective licensing. The recent policy changes suggest that, from now on, few borough-wide selective licensing schemes will be established. Newham, Barking & Dagenham and Waltham Forest's schemes can continue to implement their five-year programmes; those at earlier stages of the process may have to rethink.

Meanwhile, more authorities are likely to develop smaller area-based schemes, which will be easier to justify, given the additional conditions that can be applied. This proliferation of varied schemes in different areas could create a confusing regulatory framework for landlords, agents and tenants, as well as borough officers.

As a reminder, before mandatory licensing's arrival in 2006, local authorities had broader scope to set up HMO registration schemes. In their rationale for HMO licensing becoming mandatory, the government memorandum states that the previous model created *"a plethora of schemes across the country with different standards, as well as some areas with no registration schemes at all. This results in confusion for good landlords and loopholes for those who wish to avoid registration."*²⁷ Is licensing practice heading back in that direction?

CLG's assertion that licensing all landlords is a *"tenants' tax"*²⁸, inevitably passing the cost on to the tenant, seems overstated at best. The average full fee for the three existing borough-wide selective licensing schemes is £447 for five years, which means £89 per year or £7.50 per month. On this basis, and considering the significant capital gains London's landlords can realise, this doesn't seem to represent an enormous burden.

A case can also be made that landlords should contribute more to the locality where they own, considering the capital uplift they stand to gain, plus the potential for revenue from housing tenants the local authority can no longer accommodate. This is not the place of licensing in its current form, which is explicit about fees only being used for scheme administration, but it raises the question of whether PRS finances should be more balanced.

Aside from these financial considerations, the crucial question is whether licensing is actually improving management standards, and ultimately the safety, comfort and well-being of tenants. More work is needed here to assess the now considerable number of schemes up and running in London and nationally. The 2010 BRE review of property licensing cited the difficulty of quantitatively pin-pointing the merits of licensing schemes, since each must operate in conjunction with other efforts to tackle the same issue, be it improving management standards or reducing anti-social behaviour.²⁹

Even the seemingly simple question of whether a scheme has reached all the landlords in a target area is impossible to answer with certainty, as it is based on an estimate of landlord numbers. This is in itself an argument for borough- or London-wide licensing; or for a re-evaluation of the Rugg Review's *"light-touch licensing"* in the form of a national register.

In the meantime, a robust method of evaluating local licensing schemes would provide some much-needed evidence of the strengths and weaknesses of licensing. Qualitative information could be as challenging to obtain as quantitative, given the number of vulnerable people in the PRS. Nevertheless, it is worth pursuing, as it would be hugely valuable to bring the tenant voice into this arena. One immediate step would be to capture the views of residents before a scheme is implemented, as a baseline, and to revisit later.

The question of how housing teams can fund and staff the vital enforcement work required – within licensing schemes or not – looms large. With the likelihood of further cuts coming, it will be difficult enough for local authorities to enforce their mandatory schemes, let alone discretionary ones.

With resources so stretched, it is all the more important for London boroughs to collaborate with other organisations. Landlord associations can help landlords understand make sense of the legislation, lettings agents could help to market licensed landlords, and the London Rental Standard is already helping landlords to be more aware of their responsibilities. Finally, boroughs should reward accredited landlords by offering a discounted licensing fee, incentivising them to take a more professional approach.

Hopefully this paper has filled a gap in offering boroughs guidance on discretionary licensing schemes, and has broadened sector awareness of licensing policy and practice.

Still, the fundamental question remains: in a time of scarce resources, what role does licensing have in managing the rapid growth of the private rented sector and improving the quality of its stock? Future of London will continue to evaluate PRS licensing, and other approaches, in 2015 and beyond.

"Licensing is an important tool to ensure renters get the best deal from their private landlord. Positioning renters in opposition to licensing is not only disingenuous, it is out of touch when tenants are crying out for reform." – Shelter, 2015³⁰

USEFUL RESOURCES

CLG guidance

[Improving the Private Rented Sector and Tackling Bad Practice: A Guide for Local Authorities](#), CLG, 2015

[A guide to the licensing and management provisions in Parts 2, 3 and 4 of the Housing Act 2004](#), CLG, 2010

[Approval steps for additional and selective licensing designations in England](#), CLG, 2007 (archived)

Legislation

[Housing Act 2004](#)

[Housing Act 2004: Licensing of Other Houses in Multiple Occupation and Selective Licensing of Other Residential Accommodation \(England\) General Approval 2015](#)

[Licensing and Management of Houses in Multiple Occupation and Other Houses \(Miscellaneous Provisions\) \(England\) Regulations 2006](#)

[The Selective Licensing of Houses \(Additional Conditions\) \(England\) Order 2015: SI 2015/997](#)

[The Selective Licensing of Houses \(Specified Exemptions\) \(England\) Order 2006: SI 2006/370](#)

Government research papers

[Selective Licensing of Privately Rented Housing \(England & Wales\)](#), House of Commons, 2015 (updated)

[Houses in Multiple Occupation \(HMOs\)](#), House of Commons, 2014

ENDNOTES

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