

EXPLANATORY MEMORANDUM TO

THE LICENSING OF HOUSES IN MULTIPLE OCCUPATION (MANDATORY CONDITIONS OF LICENCES) (ENGLAND) REGULATIONS 2018

2018 No. 616

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes provision for new mandatory conditions to be included in houses in multiple occupation (“HMO”) licences granted in England. This instrument achieves this by amending Schedule 4 to the Housing Act 2004 (the Act). There are two new conditions which local housing authorities (LHAs) must include when granting new or renewal licences from commencement. The first specifies minimum sizes of rooms which may be occupied as sleeping accommodation and also requires the LHA to specify the maximum number of persons (if any) who may occupy a specified room for the purpose of sleeping accommodation in the licensed HMO. The second new condition requires licence holders to comply with any local authority scheme made in respect of refuse storage and disposal at the HMO.

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 This instrument applies to England only.
- 3.3 Schedule 4 to the Act, which this instrument amends, applies only to England as it sets out the mandatory licence conditions for licensed HMOs in England.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

4. Legislative Context

- 4.1 Part 2 of the Housing Act 2004 provides for LHAs in England and Wales to license HMOs in their areas. Under section 55(2)(a) of the Act it is mandatory for all HMOs of a prescribed description to be licensed. Currently these are HMOs that are of three or more storeys and occupied by five or more persons forming two or more

households¹. Section 55(2)(b) permits LHAs to introduce local licensing of other HMOs through additional licensing. 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. In particular, section 67(1) of the Act provides that a LHA may impose conditions relating to the management, use and occupation of the HMO and its condition and contents. Under section 67(3) it is mandatory for the LHA to include certain conditions in HMO licences. The mandatory conditions are specified in Schedule 4. They relate to the provision of smoke and carbon monoxide alarms; gas safety and the safety of electrical appliances and furniture. Schedule 4 conditions apply to all licensed HMOs (under both mandatory and additional schemes).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under Other matters of interest to the House of Commons.

6. European Convention on Human Rights

- 6.1 Heather Wheeler, Minister for Housing and Homelessness has made the following statement regarding Human Rights:

In my view the provisions of the Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 are compatible with the Convention rights.

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 England², and it is the second largest tenure after home ownership. HMOs are an important form of accommodation within this 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 England³. 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 – 60,000 HMOs. Licensing has been important in improving management and safety standards in those HMOs.
- 7.2 In the decade since mandatory licensing was first introduced there has been a significant increase in smaller accommodation, notably two storey houses originally designed for families and flats being used as HMO accommodation. Although some of these properties will be licensed under additional licensing, many are not and largely remain under the radar. Some of these HMOs are operated by rogue landlords

¹ See The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order (SI 2006/371)

² Ministry of Housing, Communities and Local Government; English Housing Survey 2015 – 2016: Headline Report

³ <https://www.gov.uk/government/statistical-data-sets/local-authority-housing-statistics-data-returns-for-2015-to-2016>, Tab F

who exploit their vulnerable tenants, and rent sub-standard, overcrowded and potentially dangerous accommodation.

- 7.3 In May 2015 the Government announced its intention to crack down on poorly managed HMOs through the extension of mandatory licensing⁴. The overall goal of the reforms is to address poor conditions and overcrowding in smaller HMOs, to improve management standards, to better protect those living in HMOs, and reduce their negative impact on the surrounding communities. The reforms are aimed at ensuring that good landlords who comply with the law do not face unfair competition from rogue landlords who ignore the law and their obligations. Mandatory licensing will apply to most HMOs⁵ occupied by five or more persons (in two or more households), regardless of the number of storeys. An estimated additional 160,000 HMOs (in addition to the existing 60,000) will need to be licensed as they will come within scope of mandatory licensing.
- 7.4 As part of the reforms, this instrument introduces a mandatory minimum room size below which no room in an HMO may be occupied as sleeping accommodation. This is in order to reduce overcrowding in smaller HMOs. The standards adopted are similar, but not identical to, those relating to overcrowding in dwellings under section 326 of the Housing Act 1985.
- 7.5 Similar to the Housing Act 1985 overcrowding standards, the prescribed minimum sleeping room sizes set by this instrument will be 6.51 sq. m for one person aged 10 and over and 10.22 sq. m for two persons aged 10 and over. There will also be a minimum bedroom size of 4.64sq. m for one person under the age of 10. Any area of the room in which the distance between the lowest part of the floor and the ceiling is less than 1.5m cannot be counted towards the minimum room size. In addition the new licence condition permits the LHA to specify the maximum number (if any) of persons aged 10 and over and persons under the age of 10 who may occupy specified rooms provided in HMOs for sleeping accommodation.
- 7.6 The standards will also ensure consistency of approach when dealing with small rooms, and so give certainty for landlords, tenants and local authorities on the absolute minimum standards that are acceptable. Those room sizes will be the statutory minimum and are not intended to be the optimal room size. LHAs will continue to have discretion to set their own higher standards above these minimum criteria regarding sleeping room sizes in guidance.
- 7.7 If a licence holder fails to comply with the sleeping room standards by letting a room to or permitting it to be occupied by more persons than is allowed under the condition in the licence they will commit an offence and be liable on conviction to an unlimited fine or alternatively a financial penalty of up to £30,000. The condition will not be breached by temporary arrangements, such as visitors sleeping on an occasional or temporary basis, who are not to be treated as occupying the room.
- 7.8 The minimum size for sleeping accommodation will also not apply to night shelters and temporary accommodation for people recovering from drug or alcohol abuse or mental disorders, where the HMO is provided by a charity. We are allowing these charities, which do not carry out their activities for profit, the flexibility to determine how best to provide this emergency accommodation to those in need.

⁴ <https://www.gov.uk/government/speeches/pm-speech-on-immigration>

⁵ Other than converted blocks of self-contained flats to which Section 257 of the Act applies and also flats in multiple occupation in large purpose built blocks.

- 7.9 This instrument includes provisions under which the LHA must allow a reasonable period for compliance (i.e. to remove the overcrowding), which cannot exceed 18 months from the date of notification. This is in order to give landlords a fair amount of time to make adjustments to the accommodation, or to reduce the number of occupants. This grace period applies in two circumstances. Firstly, it applies where the HMO is not meeting the sleeping room standards at the time the licence is granted, but is not available if the applicant has already been convicted of permitting overcrowding in the HMO or of breaching any other licence condition in relation to that HMO. Secondly, the grace period applies where there is a subsequent breach of the condition after the licence has been granted.
- 7.10 The second new mandatory condition introduced by the regulations concerns the provision of suitable storage facilities for domestic refuse generated in HMOs. HMOs, occupied by separate and multiple households, generate more waste and rubbish than single family homes. Inadequate facilities for refuse disposal can result in pest infestation, cause health and safety problems and more generally blight the immediate neighbourhood. This can be a particularly acute problem where there are large numbers of occupiers.
- 7.11 While overall responsibility for refuse collection is for the local waste authority, managers of multiply occupied properties have responsibility for ensuring there are appropriate facilities for storing rubbish their properties generate. This instrument introduces a new mandatory condition in licensed HMOs that the licence holders comply with any scheme issued by the LHA for the storage and disposal of household waste. A licence holder's failure to comply with the scheme is a breach of the licence and an offence for which on conviction the licence holder could be subject to an unlimited fine or alternatively a financial penalty of up to £30,000. This condition must be included in all licences (mandatory or additional) granted or renewed after commencement of the regulations.

8. Consultation outcome

- 8.1 The Ministry of Housing, Communities and Local Government consulted extensively on the changes this instrument introduces through two consultation papers. There was broad support for the proposals, and changes were made to address feedback received.
- 8.2 The Ministry of Housing, Communities and Local Government published a technical discussion paper on 6 November 2015 *Extending mandatory licensing of Houses in Multiple Occupation in England*⁶ (the first consultation). The first consultation set out the principles of the licensing reforms and included a range of potential measures to achieve this, including, by making minimum sleeping room sizes a licence condition, and sought feedback on the proposed measures. 449 complete responses were received.
- 8.3 There was significant support for minimum national sleeping room sizes in HMOs, with 345 (79%) of respondents agreeing this should be introduced. 289 respondents (76% of those who addressed the question) agreed that this minimum should reflect the overcrowding standards in section 326 of the Housing Act 1985 (with the minimum size therefore being 6.51 sq. m). Some of those respondents who disagreed

⁶ <https://www.gov.uk/government/consultations/extending-mandatory-licensing-of-houses-in-multiple-occupation-and-related-reforms>

with minimum sleeping room sizes argued that students and tenants on a low income are content to occupy smaller rooms.

- 8.4 An additional issue raised by respondents to this consultation was inadequate refuse disposal facilities in HMOs, which had led to problems of rubbish accumulation which blights the neighbourhood and poses a health and safety risk through pest infestation.
- 8.5 The response to the first consultation was published on 18 October 2016⁷. In it the Ministry of Housing, Communities and Local Government announced the decision to introduce minimum mandatory sleeping room sizes and stated it was unable to accept arguments by certain consultation respondents that some tenants were satisfied with sleeping rooms below the proposed minimum size as these arguments were not consistent with the evidence provided by tenants. The consultation announced that, although HMOs are rarely occupied by families, the Government recognised there may be potential impacts on families which would merit further consultation. In response to feedback about refuse disposal issues, the Government also announced that it would be consulting on whether it should be a mandatory condition of a licence to provide adequate facilities for the storage and disposal of household refuse.
- 8.6 A second consultation was issued on 18 October 2016 *Houses in Multiple Occupation and residential property licensing reforms*⁸, which invited views on the means to implement a number of measures consulted on in the previous technical discussion paper, and asked for views on a mandatory licence condition relating to refuse. 395 responses were received.
- 8.7 The consultation specifically asked questions around sleeping room sizes to help inform the Ministry of Housing, Communities and Local Government's Public Sector Equality Impact Assessment. 146 respondents (56%) thought the changes would impact on people sharing protected characteristics. In terms of the impact on families, 116 respondents (52% of those answering this question) thought it would be positive, whilst 103 (48%) believed it would be negative. Some respondents thought the policy would have a positive impact on people with protected characteristics and families. It was argued that removing families from overcrowded conditions would prevent detriments to children's well-being, development and health. On the other hand, some respondents were concerned about the potential negative impact if people were to be suddenly removed from their homes due to their bedrooms being below the minimum size.
- 8.8 The consultation also asked how children should be treated for the purpose of calculating minimum room sizes, and the majority of those responding to the question thought they should not be treated as a full adult.
- 8.9 The second consultation additionally sought views on the need for a mandatory condition on refuse storage and 213 respondents (75%) agreed that this should be a condition of a HMO licence. While there was broad support for this, some landlords disagreed as they thought waste management was the responsibility of tenants and the local authority rather than landlords. 191 respondents (71%) also agreed the proposed

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[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560777/HMO Tech Disc RESP ONSE DOC.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560777/HMO_Tech_Disc_RESP_ONSE_DOC.pdf)

⁸<https://www.gov.uk/government/consultations/houses-in-multiple-occupation-and-residential-property-licensing-reforms>

terms of the condition were reasonable and appropriate. However, comments were received asking for flexibility to recognise variations in local conditions, and the need for local authority discretion.

- 8.10 A copy of the Government's response to the second consultation is published at <https://www.gov.uk/government/consultations/houses-in-multiple-occupation-and-residential-property-licensing-reforms>. It set out how the Government proposes to implement the reforms through secondary legislation. It also set out in detail plans to mitigate the short term impact of the proposals around the minimum sleeping room size and details how that scheme operates through both prohibiting very small rooms to be occupied as sleeping accommodation and by requiring the local authority to specify the maximum number of persons who may sleep in specified rooms. It also announced the intention to introduce a mandatory condition relating to refuse storage, subject to a modification so that it is flexible to reflect both local rules applying for waste collection and local conditions.

9. Guidance

- 9.1 The Ministry of Housing, Communities and Local Government will be issuing non statutory guidance for local authorities on the new HMO licence conditions to which this instrument gives effect.

10. Impact

- 10.1 The impact on businesses includes increased costs in relation to familiarisation of the new licensing conditions concerning sleeping room sizes and refuse which would mean meeting the requirements of waste disposal schemes. We estimate the annual direct net cost to business will be £20.8m. This figure includes extending the mandatory licensing policy to smaller HMOs which is being enacted by the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2018 No. 221.⁹ The impact on charities or voluntary bodies will be minimal as many of these organisations that do not charge for accommodation are already exempt under provisions in the Act; however, those that would not be otherwise exempt may not need to meet the national minimum size for sleeping accommodation under the exemption detailed in paragraph 7.8.
- 10.2 The impact on the public sector is that LHAs will license more HMOs than they currently do. However, they can charge licence fees that cover the costs of doing so¹⁰.
- 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 HMOs) own one rented property and would likely classify as a small business. We are 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. We estimate that the impact on each landlord is minimal, with the main upfront cost being taking the time to become familiar with the regulations.

⁹ <http://www.legislation.gov.uk/ukxi/2018/221/made>

¹⁰ See section 63 (7) of the Act

12. Monitoring & review

- 12.1 There are no plans to monitor or review this instrument because it amends regulatory provisions in primary legislation - Schedule 4 of the Housing Act 2004.

13. Contact

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

Or

Cynthia Brathwaite at the Ministry of Housing, Communities and Local Government, (telephone: 0303 44 42402 or cynthia.brathwaite@communities.gsi.gov.uk)

can answer any queries regarding the instrument.